

**Note from the Attorney General's Office:**

1985 Op. Att'y Gen. No. 85-044 was overruled in part by  
2000 Op. Att'y Gen. No. 2000-035.

**OPINION NO. 85-044****Syllabus:**

1. A township board of zoning appeals is a "public body" for purposes of R.C. 121.22.
2. A township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to R.C. 519.14(A) or (B).

**To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985**

I have before me your opinion request which asks whether a township board of zoning appeals is bound by the provisions of R.C. 121.22, popularly known as the "Sunshine Law." More specifically, your questions are as follows:

1. Is a township board of zoning appeals a "public body" as defined in R.C. 121.22(B)(1)?
2. If so, would a township board of zoning appeals violate R.C. 121.22 if it conducted its deliberations concerning a zoning appeal pursuant to R.C. 519.14(A) or (B) in executive session?

Your first question is whether a township board of zoning appeals is a "public body" for purposes of R.C. 121.22. As set forth in R.C. 121.22(A), the purpose of the statute is "to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law." In this regard, R.C. 121.22(C) provides that, "[a]ll meetings of any public body are declared to be public meetings open to the public at all times" (emphasis added). Further, pursuant to R.C. 121.22(H):

A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) of this section and conducted at an executive session held in compliance with this section.

For purposes of R.C. 121.22, a "public body" is defined, in part, as "any legislative authority or board, commission, committee, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution." (Emphasis added.) R.C. 121.22(B)(1). Pursuant to R.C. 519.13, the members of a township board of zoning appeals are appointed by the board of trustees of any township which has adopted zoning regulations. The board of township trustees may provide compensation to the members of the board of zoning appeals and allow members their expenses. Id. The board of township trustees may also appropriate money to the board to hire assistants. Id. The general purpose of the board of zoning appeals is to assist in the administration of the township zoning plan. See R.C. 519.14. See also R.C. 519.02-.121. Thus, I believe it is clear that a township board of zoning appeals is a board of a township. See 1955 Op. Att'y Gen. No. 4893, p. 89 (pursuant to R.C. 309.09, a county prosecuting attorney is the legal adviser for a township board of zoning appeals within his county since members of the board are township officers). Further, a township board of zoning appeals is a decision-making body, as is apparent from an examination of R.C. 519.14, which states, in pertinent part:

The township board of zoning appeals may:  
 (A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25

of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship. . .

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution.

(D) Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

....

In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

Since a township board of zoning appeals may determine any of those matters specified in R.C. 519.14, it is apparent that the exercise of such powers qualifies the board as a decision-making body. See generally 1979 Op. Att'y Gen. No. 79-110; 1978 Op. Att'y Gen. No. 78-059. I conclude, therefore, that a township board of zoning appeals, created pursuant to R.C. 519.13, is a "public body," as that term is defined in R.C. 121.22(B)(1).<sup>1</sup>

Your second question asks whether the township board of zoning appeals may deliberate in executive session concerning a zoning appeal conducted pursuant to R.C. 519.14(A) or (B). R.C. 121.22, as previously discussed, requires generally that the official business of public bodies be conducted in meetings which are open to the public. Prior to 1975, public bodies were permitted to deliberate in sessions closed to the public so long as all formal actions were taken in open meetings. See 1961 Ohio Laws 582 (Am. H.B. 1, eff. Jan. 10, 1961). R.C. 121.22 was amended in 1975, however, by 1975 Ohio Laws, Part I, 152 (Am. Sub. S.B. 74, eff. Nov. 28, 1975), so that the statute now requires "that not only formal actions of public bodies, but also the deliberations preceding those actions, take place in sessions open to the public." Matheny v. Frontier Local Board of Education, 62 Ohio St. 2d 362, 365, 405 N.E.2d 1041, 1044 (1980). More specifically R.C. 121.22(H), set forth above, invalidates any resolution, rule, or formal action adopted other than in an open meeting of the public body, and also provides that any resolution, rule, or formal action adopted in an open meeting that results from deliberations made in a meeting which is not open to the public is invalid "unless the deliberations were for a purpose specifically authorized in [R.C. 121.22(G)] and conducted at an executive session held in compliance with [R.C. 121.22]." R.C. 121.22, therefore, requires a township board of zoning appeals to conduct its deliberations concerning zoning appeals in meetings which are open to the public, unless such deliberations are for a purpose specified in R.C. 121.22(G).

R.C. 121.22(G) provides for executive sessions, during which a public body may deliberate and discuss in private certain matters enumerated therein. See R.C. 121.22(G)(1)-(6). The deliberations of a township board of zoning appeals conducted prior to the board's taking formal action under R.C. 519.14 with respect to a zoning appeal are not specifically included in R.C. 121.22(G) as matters which may be considered in executive session, and may not, therefore, be discussed in an executive session. Rather, pursuant to R.C. 121.22(C) and (H), such deliberations must be conducted in meetings which are open to the public.

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<sup>1</sup> I note that R.C. 519.15 states, in part: "All meetings of the board of zoning appeals shall be open to the public." R.C. 519.15 further provides that appeals to the board of zoning appeals are "public hearing[s]." Your questions, however, are limited to a discussion of the open meeting requirements of R.C. 121.22 as applied to the township board of zoning appeals.

Accordingly, it is my opinion and you are so advised, that:

1. A township board of zoning appeals is a "public body" for purposes of R.C. 121.22.
2. A township board of zoning appeals may not conduct, in an executive session, deliberations concerning a zoning appeal heard pursuant to R.C. 519.14(A) or (B).