

OPINION NO. 90-028**Syllabus:**

1. Unless a statutory or constitutional provision expressly grants a specific officer of a public body the power to make the decision to call a meeting of such body, the power to make the decision is vested in the body itself and not inherently in an individual officer. The decision that a meeting is necessary requires a concurrence of a majority of the body.
2. Inasmuch as no statutory provision expressly grants the chairman of the county board of revision the power to make the decision to call a meeting of the board, the chairman does not have such power under R.C. Chapter 5715.
3. Pursuant to R.C. 5715.09, the secretary of the board of revision has the power to call a meeting of the board as necessary. A meeting of the board of revision is required by R.C. 5715.19 to be held within such time as to allow the board to reach a decision on a complaint within ninety days of the filing of such complaint with the board of revision.

4. In addition to the power granted by R.C. 5715.09 to the secretary of the county board of revision to call a meeting of the board, a county board of revision may adopt reasonable rules which designate a schedule of regular meetings and a procedure to call special meetings of the board. Such procedure may vest the power to decide to call a meeting in a particular officer or specified number of members of the board.
5. The board of revision may reconsider, vacate, or modify one of its decisions, provided no judicial appeal of such decision has been commenced.

To: Jim Slagle, Marion County Prosecuting Attorney, Marion, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1990

I have before me your request for my opinion concerning R.C. Chapter 5715, relating to a county board of revision. Specifically you have asked:

1. Does the Chairman of the Board of Revision have authority to call a meeting of the Board of Revision?
2. If a Board of Revision issues a decision pursuant to Ohio Revised Code section 5713.351, which is appealed to the Common Pleas Court, naming the Board as a party, does the Board retain jurisdiction to either reverse its decision or authorize settlement of the case while the case remains pending before the Common Pleas Court?

To discuss the issues raised by your specific questions, a general review of the statutory scheme within which the county board of revision operates is required. The primary function of the board of revision is equalization and revision of real property taxation assessments. *Perk v. Board of Revision*, 29 Ohio Misc. 1, 10, 272 N.E.2d 188, 194 (C.P. Cuyahoga County 1971); *aff'd in part, rev'd in part*, 28 Ohio App. 2d 182, 275 N.E.2d 642 (Cuyahoga County 1971). Assessment of real property for taxation purposes is controlled generally by R.C. Chapter 5713 and R.C. Chapter 5715. The overall responsibilities for the assessment process are concisely summarized by R.C. 5715.01, which states, in pertinent part:

County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. *There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.* (Emphasis added).

An appeal from the decision of a county board of revision may be taken to the board of tax appeals, R.C. 5717.01, or in the alternative, to the court of common pleas, R.C. 5717.05.

The board of revision is formed pursuant to R.C. 5715.02, which states:

The county treasurer, county auditor, and the president of the board of county commissioners shall constitute the county board of revision, or they may provide for one or more hearing boards when they deem the creation of such to be necessary to the expeditious hearing of valuation complaints. Each such official may, appoint one qualified employee from his office to serve in his place and stead on each such board for the purpose of hearing complaints as to the value of real property only, each such hearing board has the same authority to hear and decide complaints and sign the journal as the board of revision, and shall proceed in the manner provided for the board of revision by

sections 5715.08 to 5715.20, inclusive, of the Revised Code. Any decision by a hearing board shall be the decision of the board of revision.

A majority of a county board of revision or hearing board shall constitute a quorum to hear and determine any complaint, and any vacancy shall not impair the right of the remaining members of such board, whether elected officials or appointees, to exercise all the powers thereof so long as a majority remains.

Each member of a county board of revision or hearing board may administer oaths.

R.C. 5715.09 outlines the organization of the board and implicitly authorizes meetings of the board by stating:

Each county board of revision shall organize annually on the second Monday in January by the election of a chairman for the ensuing year. The county auditor shall be the secretary of the board. He shall call the board together as often as necessary during the year, keep an accurate record of the proceedings of the board in a book kept for the purpose, and perform such other duties as are incidental to the position.

See also R.C. 121.22 ("public body' means any...board...of any county"; meeting is "any prearranged discussion of the public business of the public body"; board is required "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"); R.C. 5715.17 (upon completion of tax equalization, the county auditor is required to give notice of time and place of the meeting of the board of revision).

Valuation of real estate for purposes of taxation is determined by the county auditor acting as assessor. R.C. 5713.01; R.C. 5713.03; R.C. 5715.01. When a landowner disputes the assessor's valuation, the complaint must be in the form of a written application. If the complaint is for a decrease in assessed valuation, the application must show the facts upon which the complaint is based. R.C. 5715.13. Each complaint must "state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based." R.C. 5715.19(D). Such complaint must be filed with the county auditor on or before the thirty first day of March of the ensuing tax year. R.C. 5715.19(A). The board of revision is required to "hear and render its decision on a complaint within ninety days after the filing thereof with the board." R.C. 5715.19(C).

Turning now to your first question, I note that no provision of R.C. Chapter 5715 specifically empowers the chairman of the board of revision to make the decision to call meetings of the board. Although R.C. 5715.09 requires the board to elect a chairman, no statute directs the chairman to exercise his office in any particular manner regarding the conduct of meetings of the board. A review of R.C. Chapter 5715 reveals that no specific duties are assigned to the chairman concerning meetings of the board. Despite the lack of a statutory power, the common, ordinary meaning of the word "chairman" may be examined to determine whether the term may include the inherent power to call a meeting. *See generally* R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983) (words used but not defined within a statute are to be given their common, ordinary meanings). I note that "chairman" means "a person who presides at a meeting or heads a committee, board, etc." *Webster's New World Dictionary* 235 (2d ed. 1982). "Preside" is defined as "to be in a position of authority in an assembly; serve as chairman." *Id.* at 1125; *accord*, *H. Robert, Robert's Rules of Order* §50 (1907) (a chairman's primary duty is to manage meetings of an organization). I have been unable to find any authority that states that a chairman has the inherent power to decide on his own to call a meeting of the organization. The presiding officer's authority derives not from the nature of the office, but directly from the will of the majority of the public body. *Am. Soc. of Legislative Clerks and Secretaries, Mason's Manual of Legislative Procedure* §578 (rev. ed. 1989) ("[u]nder ordinary conditions the authority of the presiding officer is derived wholly from the board itself. The presiding officer is the servant of the body

to declare its will and obey its commands"). I conclude, therefore, that a chairman of the board of revision does not have any inherent power to call a meeting of the board.

R.C. 5715.09, however, designates the county auditor as secretary of the board and requires the secretary to "call the board together as often as necessary during the year."¹ R.C. 5715.09, in authorizing the secretary to call the board together "as often as necessary", vests a duty to exercise discretion in the secretary. The secretary of the board of revision, thus, by R.C. 5715.09, has the power to make the decision to call a meeting of the board of revision. Such discretion is limited, however, in that the secretary must call a meeting whenever a valuation complaint is received pursuant to R.C. Chapter 5715. As R.C. 5715.19 requires the board of revision to "hear and render its decision on a complaint within ninety days after the filing thereof with the board," the secretary of the board of revision must exercise the discretion to call a meeting of the board within sufficient time to allow a decision within ninety days of the filing of a complaint.² The county auditor, as secretary of the board of revision, is the logical member of the board to be statutorily assigned the duty to call the meeting "in the first instance...because only he can know what number of complaints are on file." *Perk*, 29 Ohio Misc. at 19-20, 272 N.E.2d at 199.

Your letter raises the ancillary question whether the discretion to decide to call a meeting of the board of revision is vested *solely* in the secretary or whether there exists an alternate method of calling a meeting. As I have concluded that the chairman of the board of revision does not have the inherent authority to call a meeting of the board, and R.C. Chapter 5715 does not otherwise explicitly state that any person in addition to the secretary may call the board together, a further examination of the authority of the board of revision relating to meetings is required. Although a board of revision is empowered to hold meetings by R.C. 5715.09, only an organizational meeting is statutorily required. Thereafter, the board need only meet as its business requires. R.C. 5715.09.

Conduct of meetings of public bodies in Ohio is prescribed generally by R.C. 121.22, which classifies meetings as regular, special or emergency. The organizational meeting of the board of revision set by R.C. 5715.09 is a regular meeting. *See generally*, 1988 Op. Att'y Gen. No. 88-029. If the board of revision establishes a schedule of meetings, such meetings are also regular meetings. *Id.* (regular meetings are those held at prescheduled intervals). A special meeting is any

¹ I note that the statutory authorization for meetings of the board of revision to be called by the board's secretary is not unique. The secretary of the county microfilming board and the secretary of the county automatic data processing board may call meetings of these boards. R.C. 307.801; R.C. 307.841. Numerous statutes designate the chairman as an authorized officer to call the meeting of a public body. *See, e.g.*, R.C. 102.05 (Ohio Ethics Commission); R.C. 113.32 (Ohio Funds Management Board); R.C. 303.15 (county board of zoning appeals); R.C. 311.26 (County Sheriffs' Standard Car Marking and Uniform Commission); R.C. 519.15 (township board of zoning appeals); R.C. 1514.31 (Ohio Mining Council). Many statutes authorizing public decision-making bodies lack any language denominating who may call a regular meeting. *See, e.g.*, R.C. 118.05 (financial planning and supervision commission for municipality in a fiscal emergency); R.C. 154.04 (Ohio Public Facilities Commission); R.C. 731.46 (city council); R.C. 1127.03 (Banking Board); R.C. 1502.08 (Keep Ohio Beautiful Commission); R.C. 3333.02 (Ohio Board of Regents).

² The duty of the secretary of the board of revision to call a meeting of the board is a duty imposed by law with reference to the assessment of property taxes. As such, R.C. 5715.45 proscribes the failure of the auditor to perform that duty "on or before the date specified by law for the performance thereof." *See also* R.C. 5715.46 (prohibits the refusal or knowing neglect to perform duties under R.C. Chapter 5715).

meeting other than a regular meeting. *Id.* An emergency meeting is a special meeting which requires immediate official action of the board. See R.C. 121.22(F). R.C. 121.22, however, does not indicate who may decide it is necessary to call a meeting. A thorough review of various parliamentary codes also reveals no relevant discussion of the power to call a meeting. See generally *Mason's Manual*; A. Sturgis, *Standard Code of Parliamentary Procedure* (3d ed. 1988); L. Deschler, *Deschler's Rules of Order* (1976); H. Robert, *Robert's Rules of Order Newly Revised* (1970); *Robert's Rules of Order*; L. Cushing, *Manual of Parliamentary Practice* (E. Cushing rev. ed. 1877).

It is, however, axiomatic that decisions of a public body in Ohio are by concurrence of a majority. See, e.g., *State ex rel. Cline v. Trustees of Wilkesville Township*, 20 Ohio St. 288 (1870); *State ex rel. Shinnich v. Green*, 37 Ohio St. 227 (1881); *State ex rel. Attorney General v. Anderson*, 45 Ohio St. 196, 12 N.E. 656 (1887); 1930 Op. Att'y Gen. No. 2265, p. 1363. Further, the members of a public body have no power to act individually; they must act as a body. *McCortle v. Bates*, 29 Ohio St. 419 (1876). The decision that a meeting is necessary, thus, must be made by the body itself with a concurrence of the majority. Unless a statutory or constitutional provision expressly grants a specific officer of a public body the power to make the decision to call a meeting of such body, the power to make the decision is vested in the body itself and not inherently in an individual officer. Having already concluded that R.C. 5715.09 expressly designates the secretary of the board of revision to call meetings of the board, I conclude that a majority of the members of the board of revision is also permitted to call a meeting of the board independently of the decision of the secretary. Applying the majority rule specifically to the board of revision, the *Perk* court recognized that, although the secretary was designated as the officer authorized to call a meeting, "two or more members may call a meeting of the Board." 29 Ohio Misc. at 19-20, 272 N.E.2d at 199.

A county board of revision has limited powers derived from a statutory grant of the General Assembly. Being a creature of statute, the board of revision, like other legislatively created boards, commissions and decision-making bodies, has only such powers as are expressly conferred by statute, or such others as are necessarily to be implied from those specifically granted in order to perform the duties imposed. See, e.g., *Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975) (state agency); *Dayton Communications Corp. v. Public Utilities Commission of Ohio*, 64 Ohio St. 2d 302, 414 N.E.2d 1051 (1980) (state commission); *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (board of county commissioners); *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875) (township trustees); *Dayton Classroom Teachers Association v. Dayton Board of Education*, 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975) (board of education); 1987 Op. Att'y Gen. No. 87-108 (board of trustees of public library). An implied power may be found where it reasonably relates to the execution of an express power. *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981); *Federal Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 118 N.E. 103 (1917). The power to conduct meetings implies the power to adopt reasonable rules setting forth the schedule of regular meetings and governing the method by which special meetings are called. See *Mason's Manual* §2 ("[e]very governmental body has an inherent right to regulate its own procedure subject to provisions of the constitution, statutes, charter or other controlling authority"); accord, *Standard Code of Parliamentary Procedure* 101. Such rules may properly designate the person or persons responsible for deciding to call a special meeting. Not only is it within the inherent power of the board of revision to adopt a schedule of regular meetings, but R.C. 121.22, commonly referred to as the "Open Meetings Act" or the Ohio Sunshine Law, requires "[e]very public body" to "by rule, establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings." By the terms of R.C. 121.22(B)(1), "public body" includes a county board of revision as "any...board...of any county." The terms of R.C. 121.22, thus, contemplate a schedule of regular meetings and a rule governing the calling of special meetings. Language in R.C. 5715.04 also contemplates a schedule of meetings by referring to "the time fixed for their sessions." I, therefore, conclude that in addition to the statutory power granted by R.C. 5715.09 to the secretary of

the board of revision to call a meeting of the board, the power vested in the board itself to call a meeting may be exercised by adopting a reasonable rule which designates a schedule of regular meetings and the procedure to be used to call a special meeting of the board.

Your second question concerns the power of a board of revision to settle an appeal to the court of common pleas of a decision of the board assessing the taxable value of real property. A careful review of the Ohio statutes relating to tax assessment reveals neither an express prohibition against nor a specific authorization for settlement of a disputed decision of the board of revision. Settlement and compromise of disputes in lieu of litigation, however, is valued and encouraged by Ohio law. *State ex rel. Wright v. Weyant*, 50 Ohio St. 2d 194, 363 N.E.2d 1387 (1977); *Shallenberger v. Motorists Mutual Ins. Co.*, 167 Ohio St. 494, 150 N.E.2d 295 (1958); *Stillwater Turnpike Co. v. Coover*, 25 Ohio St. 558, 565 (1874) ("[t]he law favors the amicable settlement of controverted rights between parties"); *White v. Brocaw*, 14 Ohio St. 339, 346 (1863) ("[i]f there is any one thing which the law favors above another, it is the prevention of litigation, by the compromise and settlement of controversies"); 1978 Op. Att'y Gen. No. 78-014 at 2-58 ("[i]t must be remembered that the entire civil adjudicative process is primarily designed for the settlement of disputes between parties. Once an instrumentality of the state is, by operation of statute, a proper party to such a dispute, it is reasonable to conclude that it is possessed of the implied power to settle the dispute as economically and expeditiously as possible"). Since the manifest policy is the encouragement of settlement, absent an express prohibition, I must conclude that a county board of revision is endowed with the inherent power to settle and compromise a dispute against it.

Your second question, however, clearly indicates that a judicial appeal of the decision of the board of revision has been commenced. While I have concluded that, in general, disputes may be settled, your inquiry raises the possibility of the board of revision reconsidering, vacating, or modifying its decision as a method to effect the settlement. Disposition of a dispute by reconsideration, vacation, or modification is not a permitted option once a judicial appeal is filed. The Ohio Supreme Court has reaffirmed this principle in *Lorain Educ. Assn. v. Lorain School Dist. Bd of Educ.*, 46 Ohio St.3d 12, 544 N.E.2d 687 (1989), by stating as its syllabus:

When a notice of appeal from a decision of an administrative agency has been filed, the agency is divested of its inherent jurisdiction to reconsider, vacate or modify the decision unless there is express statutory language to the contrary. (*Hal Artz Lincoln Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20, 28 OBR 83, 502 N.E.2d 590, paragraph three of the syllabus, and *State, ex rel. Borsuk, v. Cleveland* (1972), 28 Ohio St.2d 224, 57 O.O.2d 464, 277 N.E.2d 419, paragraph one of the syllabus, approved and followed.)

Thus, it is clear that while reconsideration, vacation or modification of the board's decision is an option until the filing of a judicial appeal, such option ceases to exist once the appeal is commenced.³

It is, therefore, my opinion and you are so advised that:

1. Unless a statutory or constitutional provision expressly grants a specific officer of a public body the power to make the decision to call a meeting of such body, the power to make the decision is vested in the body itself and not inherently in an individual officer. The decision that a meeting is necessary requires a concurrence of a majority of the body.

³ This prohibition to reconsider, vacate or modify the board of revision's decision, however, does not prevent the parties from submitting a proposed settlement agreement to the court for its approval.

2. Inasmuch as no statutory provision expressly grants the chairman of the county board of revision the power to make the decision to call a meeting of the board, the chairman does not have such power under R.C. Chapter 5715.
3. Pursuant to R.C. 5715.09, the secretary of the board of revision has the power to call a meeting of the board as necessary. A meeting of the board of revision is required by R.C. 5715.19 to be held within such time as to allow the board to reach a decision on a complaint within ninety days of the filing of such complaint with the board of revision.
4. In addition to the power granted by R.C. 5715.09 to the secretary of the county board of revision to call a meeting of the board, a county board of revision may adopt reasonable rules which designate a schedule of regular meetings and a procedure to call special meetings of the board. Such procedure may vest the power to decide to call a meeting in a particular officer or specified number of members of the board.
5. The board of revision may reconsider, vacate, or modify one of its decisions, provided no judicial appeal of such decision has been commenced.