



Ohio Attorney General's  
**Administrative Law Newsletter**  
Highlighting Recent Cases in Administrative and Sunshine Law

## Summer 2015

The Administrative Law newsletter highlights recent developments in Ohio administrative and sunshine law. Clients of the Ohio Attorney General's Office with questions on specific cases should contact their designated assistant attorney general.

### Boards and Commissions: Antitrust Liability

[\*North Carolina State Bd. of Dental Examiners v. Federal Trade Comm.\*, 574 U.S. \\_\\_\\_, 135 S.Ct. 1101 \(2015\)](#)

A state regulatory board, controlled by active market participants, is not immune from antitrust liability when it, without active state supervision, takes an act outside of a clearly articulated and affirmatively expressed state policy.

### Administrative Procedure: Parliamentary Procedures

[\*Nalluri v. State Med. Bd.\*, 10<sup>th</sup> Dist. Franklin No. 14AP-530, 2014-Ohio-5530](#)

There is no statutory requirement as to what parliamentary procedure a court must follow. A court will not review the parliamentary procedure used for correctness; it is a procedural, not substantive, issue. The procedure used by the regulatory board to adopt the hearing officer's report and recommendation will not be reviewed by the court.

### Administrative Procedure: Final Order — service

[\*Oakes v. Ohio Dept. of Pub. Safety\*, 11<sup>th</sup> Dist. Trumbull No. 2014-T-0010, 2014-Ohio-5314](#)

When an agency serves via certified mail the final adjudicatory order upon the respondent at the address on file with the agency, which mailing is returned as "unclaimed," and the agency then sends the order via ordinary mail obtaining a certificate of mailing, which mailing is not returned, the agency has perfected service as required by R.C. 119.09.

### Administrative Procedure: Judicial Review — standing

[\*State ex. rel Stone Ridge Maintenance Assn. v. Seven Hills\*, 8<sup>th</sup> Dist. Cuyahoga No. 102122, 2015-Ohio-530](#)

Mandamus is precluded when neighbors of a development have an adequate remedy at law in zoning appeal. Whether the neighbors have standing to pursue an administrative appeal is to be decided by the administrative board and does not affect the jurisdiction of the court in mandamus.

### Administrative Procedure: Judicial Review — remand to agency

[\*Khan v. State Med. Bd. of Ohio\*, 10<sup>th</sup> Dist. Franklin Nos. 14AP-772, 14AP-773, 2015-Ohio-1242](#)

When the purpose of a remand from the court of common pleas to the board/agency is solely to reconsider previously submitted evidence, the licensee is not entitled to a second adjudicatory hearing.

### **Administrative Procedure: Judicial Review – stay of agency order**

#### **[Walsh v. Ohio Bur. of Motor Vehicles, Fairfield C.P. No. 14CV879 \(Apr. 7, 2015\)](#)**

- Economic hardship of the revocation of a commercial driver’s license does not cause an “unusual hardship,” thus a stay of the agency’s order is not appropriate.
- Because the filing of a notice of appeal pursuant to R.C. 119.12 does not automatically operate as a suspension, the appellant bears the burden of proving that a stay is appropriate.

### **Administrative Procedure: Judicial Review – notice of appeal, timing**

#### **[Sunpace Property, LLC v. Cleveland, 8<sup>th</sup> Dist. Cuyahoga No. 101821, 2015-Ohio-770](#)**

The Board of Building Standards and Building Appeals first voted to uphold the notice of violation issued by the city. Seven days later, this resolution was then recorded in the city’s record. The board then voted to adopt its prior resolution, which vote, seven days later, was recorded in the city’s record. In an appeal taken pursuant to R.C. 2505.07, the notice of appeal must be filed with the court of common pleas within 30 days from the date the city publishes in the city record the city board’s adoption of its original resolution, not from the date that the board first voted to uphold the notice of violation, nor from the date the board voted to adopt the original resolution.

#### **[Hinton v. Unemp. Rev. Comm., 7<sup>th</sup> Dist. Mahoning No. 14 MA 45, 2015-Ohio-1364](#)**

The Court of Common Pleas lacked subject-matter jurisdiction to consider appeal under R.C. 4141.282 (appeals from decisions of the Unemployment Compensation Review Commission) when the notice of appeal did not list the appellant’s employer or the Director of the Dept. of Job and Family Services as appellees. (R.C. 4141.282(D) requires that the appellant “name all interested parties as appellees in the notice of appeal.”)

### **Administrative Procedure: Judicial Review – failure to prosecute appeal**

#### **[Coman v. Ohio Dept. of Job & Family Services, Franklin C.P. No. 13CVF-09-10047 \(Dec. 4, 2014\)](#)**

The Court of Common Pleas may not dismiss an appeal taken pursuant to R.C. 119.12 for failure to prosecute when the appellant has not filed a brief, but rather, must review the entire record to determine if the administrative decision is supported by reliable, probative, and substantial evidence and is in accordance with law. There is no requirement that the court review briefs or entertain oral argument.

### **Public Records: Privacy Interest/Threat to Personal Safety**

#### **[State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn., Slip Opinion No. 2015-Ohio-1083](#)**

While there is a right to privacy in circumstances in which a person might be at substantial risk of serious bodily harm if personal information is disclosed, the evidence must show that the risk exists at the time the court makes its decision.

### **Public Records: Aggrieved Party**

#### **[State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn., Slip Opinion No. 2015-Ohio-1083](#)**

The identity of the public records requester, as well as his reason for requesting the records, is irrelevant, and the requester may be an “aggrieved person” even though he made his original request through counsel.

### **Open Meetings: Deliberation**

#### **[Brenneman Bros. v. Allen Cty. Commrs., 3<sup>rd</sup> Dist. Allen No. 1-14-15, 2015-Ohio-148](#)**

A meeting does not occur unless public business is deliberated. “Deliberation” requires the public body entertain a discussion of public business. A discussion includes an exchange of words, comments, and ideas among the members of the public body, and not a question-and-answer session with other persons.