

# Ohio Attorney General's Administrative Law Newsletter

Highlighting Recent Cases in Administrative and Sunshine Law



## Winter 2017

This 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.

### Administrative Procedure: Hearing Evidence—expert testimony

[\*Demint v. State Med. Bd. of Ohio\*](#), 10th Dist. Franklin No. 15AP-456, 2016-Ohio-3531.

Distinguishes *In re. Williams*, 60 Ohio St.3d (1991). Here, both sides presented expert opinion evidence. The board did not simply choose the position opposite the respondent's, rather the board chose an expert opinion other than respondent's, and therefore, the record contains evidence supporting the board's position.

### Administrative Procedure: Final Order—reliable, probative, and substantial evidence

[\*Millard v. Accountancy Bd. of Ohio\*](#), Hamilton C.P. No. A1506230 (Oct. 13, 2016).

*Alford* plea (plea of guilty, with protestations of innocence; court may accept the plea when the record supports a factual basis for the guilty plea. *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970)) necessarily constitutes a plea of guilty to each element of the offense. With an *Alford* plea in the record, an agency has reliable, probative, and substantial evidence to find the licensee pled guilty to the offence for purposes of disciplining the license.

### Administrative Procedure: Final Order—journalization

[\*DAMSA, Ltd. V. Sandusky\*](#), 6th Dist. Erie No. E-15-036, 2016-Ohio-5069.

For R.C. 2505.07, journalization of a final order is not required, thus board of zoning appeals order that was sent on agency letterhead, was signed by the assistant planner, and unequivocally stated that the request for variances was denied, was a final order even though the meeting minutes had not yet been approved by the board.

### Administrative Procedure: Judicial Review—notice of appeal, when to file

[\*DAMSA, Ltd. V. Sandusky\*](#), 6th Dist. Erie No. E-15-036, 2016-Ohio-5069.

For R.C. 2505.07, appeal time begins to run on date the agency issues the order ("entry of the final order").

[\*NVR, Inc. v. Centerville\*](#), 2d Dist. Montgomery No. 27021, 2016-Ohio-6960.

R.C. 1.14 applies to an administrative appeal taken pursuant to R.C. Chapter 2505, so that if the 30-day deadline to file the notice of appeal falls on a Sunday, the notice may be filed on the following day that is not a holiday.

**Administrative Procedure: Judicial Review—record on appeal**

[\*Knight v. Cleveland Civ. Serv. Comm.\*](#), 8th Dist. Cuyahoga No. 103104, 2016-Ohio-5133.

Affidavit of agency’s record keeper stating that the attached records are “a true and accurate copy” of the administrative records fulfills R.C. 119.12’s requirement that the agency “certify to the court a complete record of the proceedings in the case.”

**Administrative Procedure: Judicial Review—deference to agency**

[\*Demint v. State Med. Bd. of Ohio\*](#), 10th Dist. Franklin No. 15AP-456, 2016-Ohio-3531.

Courts must defer to the agency’s interpretation of the technical and ethical requirements of its profession. Citing *Pons v. State Med. Bd.*, 66 Ohio St.3d 619 (1993).

**Administrative Procedure: Judicial Review—constitutional challenges**

[\*Steiner v. Morrison\*](#), 7th Dist. Mahoning No. 14 MA 0114, 2016-Ohio-4798.

An “as applied” challenge can be properly raised on appeal through R.C. Chapter 2506, whereas a facial challenge can only be brought through a separate declaratory judgment action. Challenge to a zoning ordinance that the ordinance failed to put a reasonable person on notice and cannot be constitutionally applied in any situation is a facial challenge, and must be brought in a declaratory judgment action.

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

[\*Demint v. State Med. Bd. of Ohio\*](#), 10th Dist. Franklin No. 15AP-456, 2016-Ohio-3531.

Upon remand to court of common pleas, the board’s member composition changed from when the board issued the original order. Court held that the board was not required to issue the same sanctions.

**Public Records: Educational Records**

[\*State ex rel. School Choice Ohio, Inc. v. Cincinnati Pub. School Dist.\*](#), *Slip Opinion*, 2016-Ohio-5026.

- The Family Educational Right to Privacy Act (FERPA) allows school districts the choice of whether to release public “directory information,” but FERPA defines what is considered to be directory information, not the school district.
- Because the school district had an opt-in policy (parents had to affirmatively consent to the release of directory information), the district would violate FERPA by releasing the information of any student whose parent failed to sign the consent form. The district would not violate FERPA by releasing the information of a student whose parents had signed the consent.

### **Open Meetings: Emergency Meeting**

**[State ex rel. Bates v. Smith](#)**, Slip Opinion No. 2016-Ohio-5449.

Emergency meetings do not require 24-hour notice, but may only be held in the event of an “emergency requiring immediate official action.” Nothing in the minutes of the regular meeting, held less than 24 hours prior to the emergency meeting indicated any emergency, let alone one that would compel another meeting in less than 24 hours.

### **Open Meetings: Special Meeting**

**[Keystone Committee v. Switzerland of Ohio Sch. Dist. Bd. of Edn.](#)**, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663.

Notice for special meetings must provide the specific subject matter of the meeting. The stated purpose of “to discuss the 2015-2016 school year” does not serve to inform the public of the true purpose of the meeting, which was to close a high school.

### **Open Meetings: Formal Action**

**[Keystone Committee v. Switzerland of Ohio Sch. Dist. Bd. of Edn.](#)**, 7th Dist. Monroe No. 15 MO 0011, 2016-Ohio-4663.

- Taking public formal action as contemplated by R.C. 121.22, *et seq.*, involves more than merely tallying final votes on an issue. It involves all of the discussions and deliberations on that issue be held in open, public meetings that lead to the final vote. School board that followed executive session for which the stated purpose was unrelated to the subsequent vote, taken without public deliberation, violated the Open Meetings Act.
- Board cannot correct prior Open Meetings Act violation by simply voting again. Deliberations must be public.