

OPINION NO. 77-075

Syllabus:

Pursuant to R.C. 4112.05 (B), the Ohio Civil Rights Commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.

To: Ellis L. Ross, Executive Director, Ohio Civil Rights Commission, Columbus, Ohio

By: William J. Brown, Attorney General, November 21, 1977

I have before me your request for my opinion on the following question:

Must the Ohio Civil Rights Commission reveal the final terms of conciliation written or unwritten or expressed in written agreements executed by the Commission, entered into pursuant to Section 4112.05 (B), to members of the general public not parties to the matters conciliated?

The public's right of access to information concerning the decisions and activities of a public body is provided for in R.C. 149.43, which regulates the availability of public records, and in R.C. 121.22, which regulates the manner in which a public body may conduct its official business.

R.C. 149.43, which requires that certain records be open to the public, provides as follows:

As used in this section, "public record" means any record required to be kept by any governmental unit, including, but not limited to state, county, city, village, township and school district units, except records pertaining to physical and psychiatric examination, adoption, probation, and parole proceedings, and records the release of which is prohibited by state and federal law.

All public records shall be open at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. (Emphasis added)

Moreover, to the extent that the Ohio Civil Rights Commission must take some type of official action in order to execute a written conciliation agreement or to formalize the final terms of conciliation, whether written or unwritten, and thereby dispose of a particular complaint, the provisions of R.C. 121.22 apply. R.C. 121.22, which requires that official business be conducted in open meetings, provides in relevant part as follows:

(A) This section shall be liberally construed 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 laws.

- (B) As used in this section:
- (1) "Public body means any board, commission, committee, or similar decision-making body of a state agency, institution, or authority . . .
 - (2) "Meeting" means any prearranged discussion of public business of the public body by the public body by a majority of its members . . .
- (C) All meetings of any public body are declared to be public meetings open to the public at all times.

The minutes of a regular or special meeting of any such public body shall be promptly recorded and open to public inspection . . . (Emphasis added)

R.C. 121.22 (G) (5), however, provides an alternative procedure where matters of official business are required to be kept confidential by federal law or rules or state statute. Under this statute the members of a public body may hold an executive session only at a regular or special meeting for the purpose of considering such confidential matters.

It is clear that the Ohio Civil Rights Commission is a governmental unit as defined in R.C. 149.43 and is also a public body as defined in R.C. 121.22 (B) (1). It is, therefore, subject to the provisions of these two statutes. It is, however, important to note that both statutes expressly exclude records or matters required to be kept confidential by state or federal law. Thus, the issue for determination herein is whether R.C. 4112.05 (B) prohibits the release or publication of the final terms of conciliation.

Pursuant to the provisions of R.C. 4112.05 (B), upon receipt of a complaint, the Ohio Civil Rights Commission initiates a preliminary investigation to determine if it is probable that unlawful discriminatory practices have occurred. If it is probable that such practices have occurred, the Commission is authorized to attempt to eliminate such practices by informal methods of conciliation. R.C. 4112.05 (B) provides in relevant part as follows:

If it determines after such investigation that it is probable that unlawful discriminatory practices have been or are being engaged in it shall endeavor to eliminate such practices by informal methods of conference, conciliation and persuasion. Nothing said or done during such endeavor shall be disclosed by any member of the Commission or its staff or be used in evidence in any subsequent proceeding. If, after such investigation and conference, the commission is satisfied that any unlawful discriminatory practice of the respondent will be eliminated it may treat the complaint as conciliated, and entry of such disposition shall be made on the records of the commission. (Emphasis added)

While R.C. 4112.05 (B) does not specifically mention the final terms of conciliation, it does expressly provide that nothing said or done during the conciliation process shall be disclosed by the Commission. The final terms of conciliation are inextricably a part of the conciliation process. They are, in fact, the means by which the process is successfully brought to a close. Moreover, it is my understanding that the conciliation agreements often incorporate terms that are expressly negotiated by the parties during the informal conciliation process. In such cases, if the final terms of conciliation were required to be disclosed, pursuant to either R.C. 149.43 or R.C. 121.22, the prohibition against the disclosure of things said or done during the conciliation process would be unavoidably violated.

Thus, it is my opinion that R.C. 4112.05 (B) requires that the final terms of conciliation be kept confidential. For this reason, written conciliation agreements executed by the Ohio Civil Rights Commission are not public records as defined by R.C. 149.43. Moreover, the final terms of conciliation, whether written or unwritten, need not be made public in an open meeting of the Commission. The specific terms of conciliation, pursuant to R.C. 121.22 (G) (5), may be considered by the Commission in an executive session.

Thus, it is my opinion and you are so advised that, pursuant to R.C. 4112.05 (B), the Ohio Civil Rights Commission may not reveal the final terms of conciliation, written or unwritten, to members of the general public who are not parties to the matters conciliated.