

OPINION NO. 92-032**Syllabus:**

1. Pursuant to R.C. 121.22, a board of township trustees must conduct its open meetings in a public meeting place, as determined in its fair and impartial discretion.
2. A board of township trustees may adopt reasonable rules for the conduct of its meetings. (1988 Op. Att'y Gen. No. 88-087, syllabus, paragraph one, approved in part.)
3. A board of township trustees may not conduct an executive session from which the public is excluded in order to deliberate about a proposed zoning change, even if the board ultimately votes on that matter in an open meeting, unless the deliberations were solely for the purpose of discussing one or more of the six subject areas listed in R.C. 121.22(G).

**To: Dennis Watkins, Trumbull County Prosecuting Attorney, Lancaster,
Ohio**

By: Lee Fisher, Attorney General, July 29, 1992

You have requested my opinion concerning the requirements of R.C. 121.22, commonly known as the Sunshine Law. You ask that I address the requirements of R.C. 121.22 as applied to meetings of boards of township trustees, township boards of zoning appeals, and township zoning commissions. 1990 Op. Att'y Gen. No. 90-077 concluded that members of a township zoning commission or a township board of zoning appeals are not township officers and, consequently, that R.C.

309.09 imposes no duty upon the county prosecuting attorney to advise these members. Therefore, I am unable to advise you concerning their responsibilities. Accordingly, the discussion of R.C. 121.22 contained in this opinion is limited to its application to meetings of the board of township trustees.

Your opinion request asks the following questions:

1. Does the Sunshine Act [R.C. 121.22] regulate the location where a public meeting can be held?
2. Must a public body holding a public meeting use a podium and microphone if available?
3. Must a public body holding a meeting for the purpose of preparing new legislation, which will be submitted to the public and subsequent public meeting be scheduled, open the floor to the general public for comment?
4. Is there any special procedure or case law dictating the procedure for discussion, presentation of argument or rebuttal at a public meeting?
5. Is there any prohibition against time elements being imposed on speakers at a public meeting?
6. May a public body impose a registration of speakers prior to the commencement of public meeting? If so, can a public body exclude a person who has failed to register [from speaking]?
7. Must a public body allow the public to address it at every public meeting whether a general meeting or a special meeting?
8. Is a public body allowed to adjourn and caucus after hearing evidence on a zone change before voting, if the vote is done in public?

In order to address your questions, it is first necessary to examine the scheme established by R.C. 121.22 for the conduct of public meetings. As stated in R.C. 121.22(A), "[t]his 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 law." In interpreting the requirements of R.C. 121.22, it is necessary to bear this purpose in mind.

The broadest requirement of R.C. 121.22 is set forth in division (C), which states in pertinent part: "All meetings of any public body are declared to be public meetings open to the public at all times."¹ Exceptions to this requirement are set forth in R.C. 121.22(G), enumerating those subjects about which a public body may meet in executive session, a meeting of the body which is not open to the public.

The necessity of compliance with the requirements of R.C. 121.22 is set forth in R.C. 121.22(H), stating:

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

¹ A board of township trustees is a "public body" as defined in R.C. 121.22(B)(1), and is, therefore, subject to the requirements of R.C. 121.22. *Bd. of Township Trustees v. Spring Creek Gravel Co., Inc.*, 45 Ohio App. 2d 288, 344 N.E.2d 156 (Shelby County 1975); *Thomas v. Bd. of Trustees*, 5 Ohio App. 2d 265, 215 N.E.2d 434 (Trumbull County 1966).

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.² (Footnote added.)

Location of Public Meetings

Your first question asks whether R.C. 121.22 regulates the location of public meetings. Other than requiring that the meetings³ of a public body be open to the public, R.C. 121.22 makes no further specification as to the location of such meetings. The requirement that a public body conduct its business at meetings open to the public is discussed in *Crist v. True*, 39 Ohio App. 2d 11, 13, 314 N.E.2d 186, 187 (Clermont County 1973), as follows:

The Ohio Revised Code is silent on the subject of the times and places of meetings of township trustees....It is apparent from...[the] language [of R.C. 121.22] that public business must be transacted at a public meeting open to the public at all times. Consequently, public meetings must be conducted in a public meeting place, which, in a township, is usually the township hall, or a public building akin to it. (Emphasis added.)

While R.C. 121.22, thus, requires a public body to conduct its meetings in a public meeting place, whether a particular facility constitutes a public meeting place for purposes of R.C. 121.22 is a matter left to the fair and impartial discretion of the public body conducting the meeting, in this case the board of township trustees.⁴ See *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 11-12, 112 N.E. 138, 141 (1915) (in the absence of legislation dictating the manner and method of performing a duty which has been imposed by law upon a public officer, "the officer who is required to perform this duty has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded; otherwise, full directions would have been given the officer or the duty would not have been imposed upon him"). First, as noted in 1944 Op. Att'y Gen. No. 7038, p. 406, compliance with the spirit of the statutory scheme governing the conduct of public meetings would appear to require a political subdivision to conduct its meetings within the geographical boundaries of the subdivision. Further, in deciding whether a particular facility is appropriate for its meetings, the board of township trustees must make its decision in a reasonable manner. See generally *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner").

² See generally R.C. 121.22(G) (specifying the circumstances in which an executive session may be held).

³ R.C. 121.22(B)(2) defines the term "meeting," as used in R.C. 121.22, as meaning "any prearranged discussion of the public business of the public body by a majority of its members."

⁴ In *Crist v. True*, 39 Ohio App. 2d 11, 13, 314 N.E.2d 186, 187 (Clermont County 1973), the court concluded that: "A 'special session' of the board of township trustees, for which no notice is given and which is held at the private residence of a township official, does not, in our judgment, qualify as a 'public meeting open to the public.'"

**Amplification Devices; Public Participation; Discussion Procedures;
Time Restrictions; Registration Requirements**

The answers to questions two, three, four, five, six, and seven are not specifically addressed by either R.C. 121.22 or any Ohio case law of which I am aware. As a general rule, "[a] board of township trustees has authority to adopt reasonable rules for the conduct of its meetings." 1988 Op. Att'y Gen. No. 88-087 (syllabus, paragraph one). That opinion further states: "Reasonableness is dependent on the surrounding circumstances and factors best determined by those at the local level." *Id.* at 2-416. Thus, the board of township trustees may wish to address the specific issues presented in questions two, three, four, five, six, and seven through the adoption of rules for the conduct of its meetings, bearing in mind both the objectives to be promoted in conducting meetings which are open to the public and the particular circumstances relevant to the conduct of that board's meetings. See generally *WJW-TV, Inc. v. City of Cleveland*, 686 F. Supp. 177, 180 (N.D. Ohio 1988) ("the first amendment mandates that the legislative process be made generally available to the press and to the public. Because the public's is a qualified right of access, however, exceptions may be noted to the general rule....But on those occasions where compelling reasons exist for closing meetings to the public...the governmental body in question must make those reasons public").

It should be noted in this regard, that there is no requirement in R.C. 121.22 that a public body provide the public with an opportunity to comment at its meetings. See *Forman v. Blaser*, No. 13-87-12 (Ct. App. Seneca County August 8, 1988). However, if a public body chooses to provide for public participation in its meetings, such participation would generally be subject to first and fourteenth amendment protections. See, e.g., *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989).

Executive Sessions

Your final question reads as follows: "Is a public body allowed to adjourn and caucus after hearing evidence on a zone change before voting, if the vote is done in public?"

The public body about which you are asking, the board of township trustees, has various duties with regard to township zoning, as imposed by R.C. Chapter 519. For example, R.C. 519.02 authorizes the board of township trustees to regulate building and land use in the unincorporated territory of the township. R.C. 519.04 provides for the establishment of a township zoning commission, whose purpose is to recommend a zoning plan to the board of township trustees. After receiving the certified plan from the zoning commission, the township trustees must hold a public hearing before adopting the zoning resolution. R.C. 519.08. Should the trustees decide to make changes in the zoning commission's recommended plan, the trustees must first conduct another public hearing in accordance with R.C. 519.09. The trustees may then consider the recommendation and vote upon the adoption of the resolution. R.C. 519.10. Upon adoption of the resolution by the trustees, the question of whether to put the plan into effect must be submitted to the voters of the unincorporated area of the township. R.C. 519.11. Once the zoning plan becomes effective, amendments to the plan may be made as provided for in R.C. 519.12. After the public hearings on the proposed change are conducted by the township zoning commission, the board of township trustees must also conduct a public hearing. R.C. 519.12. The board of township trustees must then decide within twenty days of the public hearing whether to adopt, deny or modify the zoning commission's recommendation. R.C. 519.12(H). Thus, the board of township trustees is required to hold public hearings in various instances with regard to township zoning matters. See generally *Bd. of Township Trustees v. Spring Creek Gravel Co., Inc.*, 45 Ohio App. 2d 288, 344 N.E.2d 156 (Shelby County 1975)

(concluding that the statutory requirements for the enactment of township zoning resolutions must be strictly followed).

Your question asks whether the board may "adjourn and caucus" after hearing evidence on a zoning change before voting, so long as the vote is taken in public. I assume that you are asking whether the board may exclude the public from that portion of the meeting where the board discusses a proposed zoning change.

Pursuant to R.C. 121.22(H), "[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." R.C. 121.22(G) authorizes a public body to conduct an executive session from which the public may be excluded for the sole purpose of discussing one of the six subjects set forth in that division, i.e., certain personnel matters, the purchase or sale of certain public property, conferences with an attorney concerning pending or imminent court action, collective bargaining matters, matters required to be kept confidential by state or federal law, and details of certain security arrangements. It appears that the only exception which might apply to authorize an executive session in the circumstances you describe is if the discussion of a proposed zoning change by the board of township trustees were required to be kept confidential by state or federal law. Nothing in R.C. Chapter 519 or any other law of which I am aware, however, imposes a requirement of confidentiality in the discussion of zoning matters. Thus, the subject of zoning changes is not generally appropriate for an executive session. Even if the vote on the proposed zoning change were taken in a public meeting, it would not, therefore, be valid, having resulted from deliberations in a meeting which was not open to the public. *See generally Gannett Satellite Information Network, Inc. v. Chillicothe City School District Bd. of Education*, 41 Ohio App. 3d 218, 221, 534 N.E.2d 1239, 1242 (Ross County 1988) ("[a] violation of the Sunshine Law cannot be 'cured' by subsequent open meetings if the public body initially discussed matters in executive session that should have been discussed before the public").

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 121.22, a board of township trustees must conduct its open meetings in a public meeting place, as determined in its fair and impartial discretion.
2. A board of township trustees may adopt reasonable rules for the conduct of its meetings. (1988 Op. Att'y Gen. No. 88-087, syllabus, paragraph one, approved in part.)
3. A board of township trustees may not conduct an executive session from which the public is excluded in order to deliberate about a proposed zoning change, even if the board ultimately votes on that matter in an open meeting, unless the deliberations were solely for the purpose of discussing one or more of the six subject areas listed in R.C. 121.22(G).