

Protecting Ohio's Families

OHIO SUNSHINE LAWS 2016

An Open Government Resource Manual



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The Ohio Open Meetings Act

Chapter One: “Public Body” and “Meeting” Defined

specifically exempted by law.⁸⁶⁹ The Act defines a “meeting” as: (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.⁸⁷⁰

a. Prearranged

The Open Meetings Act governs prearranged discussions,⁸⁷¹ but does not prohibit unplanned encounters between members of public bodies, such as hallway discussions. One court has found that an unsolicited and unexpected email sent from one board member to other board members is clearly not a prearranged meeting; nor is a spontaneous one-on-one telephone conversation between two members of a five-member board.⁸⁷²

b. Majority of Members

For there to be a “meeting” as defined under the Open Meetings Act, “a majority of a public body’s members must come together.”⁸⁷³ The requirement that a gathering of a majority of the members of a public body constitutes a meeting applies to the public body as a whole and also to the separate memberships of all committees and subcommittees of that body.⁸⁷⁴ For instance, if a council is comprised of seven members, four constitute a majority in determining whether the council as a whole is conducting a “meeting.” If the council appoints a three-member finance committee, two of those members would constitute a majority of the finance committee.

i. Attending in Person

A member of a public body must be present in person at a meeting in order to be considered present, vote, or be counted as part of a quorum,⁸⁷⁵ unless a specific law permits otherwise.⁸⁷⁶ In the absence of statutory authority, public bodies may not conduct a meeting via electronic or telephonic conferencing.⁸⁷⁷

ii. Round-robin or Serial “Meetings”

Unless two members constitutes a majority, isolated one-on-one conversations between individual members of a public body regarding its business, either in person or by telephone, do not violate the Open Meetings Act.⁸⁷⁸ However, a public body may not “circumvent the requirements of the statute by setting up back-to-back meetings of less than a majority of its members, with the same topics of public business discussed at each.”⁸⁷⁹ Such conversations may be considered multiple parts of the same, improperly private, “meeting.”⁸⁸⁰

⁸⁶⁹ R.C. 121.22(A), (B)(2), and (C).

⁸⁷⁰ R.C. 121.22(B)(2).

⁸⁷¹ *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 1996-Ohio-372 (holding that the back-to-back, prearranged discussions of city council members constitutes a “majority,” but clarifying that the statute does not prohibit impromptu meetings between council members or prearranged member-to-member discussion).

⁸⁷² *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 7.

⁸⁷³ *Berner v. Woods*, 9th Dist. No. 07CA009132, 2007-Ohio-6207, ¶ 17; *Tyler v. Village of Batavia*, 12th Dist. No. CA2010-01-005, 2010-Ohio-4078, ¶ 18 (no “meeting” occurred when only two of five Commission members attended a previously scheduled session).

⁸⁷⁴ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 58-59, 2001-Ohio-130.

⁸⁷⁵ R.C. 121.22(C).

⁸⁷⁶ For example, the General Assembly has specifically authorized the Ohio Board of Regents to meet via videoconferencing. R.C. 333.02. R.C. 3316.05(K) also permits members of a school district Financial Planning and Supervision Commission to attend a meeting by teleconference if provisions are made for public attendance at any location involved in such teleconference.

⁸⁷⁷ See *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 9 (The court noted that during a 2002 revision of the open meetings law, the legislature did not amend the statute to include “electronic communication” in the definition of a “meeting.” According to the court, this omission indicates the legislature’s intent not to include email exchanges as potential “meetings.”); *White v. King*, 5th Dist. No. 14CAE020010, 2014-Ohio-3896, ¶ 26.

⁸⁷⁸ *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544, 1996-Ohio-372 (“[The statute] does not prohibit member-to-member prearranged discussions.”); *Haverkos v. Northwest Local School Dist. Bd. of Edn.*, 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 11 (finding that a spontaneous telephone call from one board member to another to discuss election politics, not school board business, did not violate the Open Meetings Act); *Master v. Canton*, 62 Ohio App.2d 174, 178 (5th Dist. 1978) (agreeing that the legislature did not intend to prohibit one committee member from calling another to discuss public business).

⁸⁷⁹ *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543, 1996-Ohio-372.

⁸⁸⁰ See generally, *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 542-544, 1996-Ohio-372 (the very purpose of the Open Meetings Act is to prevent such a game of “musical chairs” in which elected officials contrive to meet secretly to deliberate on public issues without accountability to the public); *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 16-17, 43 (Board President conceded that pre-meeting decision of school board president and superintendent to narrow field of applicants should