

Why have open meetings?

Democracy works best when there is an open governmental system that is representative, accountable, responsive to its constituents, and assures opportunities for citizen participation in government decision-making.

Ohio's Open Meetings Act, commonly referred to as the "Sunshine Law," can serve this function if elected officials understand its provisions and the public demands its implementation. The principle is that people must be able to observe the operations of their representative government. The Open Meetings Act requires public bodies to take official action and to conduct deliberations upon official business in open meetings.

What does the law say?

The Open Meetings Act is found in the Ohio Revised Code (ORC), section 121.22. The law is to 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." (See the questions on closed meetings for exceptions.)

What is a public body?

"Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority, or board, commission, committee, council, agency, authority or similar decision-making body of any county, township municipal corporation, school district or other political subdivision or local public institution." Note: a body may be a public office for purposes of public

records, but not a public body for purposes of open meetings. Subcommittees are also public bodies.

Courts disagree as to whether an ad hoc or advisory committee that lacks final decision-making authority is a public body.

What is a meeting?

To be considered a meeting under the Open Meetings Act, three conditions must be met. A meeting must be:

- ◆ prearranged,
- ◆ attended by a majority of the public body's members, and
- ◆ for the purposes of discussing public business of the public body.

How can I find out when there is going to be a meeting?

Depending upon the type of meeting, the public body must meet specific requirements for the timing and type of notice it provides to the public.

- ◆ For **regular meetings**, the public body must establish by rule a reasonable method that will allow the public to know the *time* and *place*.
- ◆ For **special meetings**, the public body must establish by rule a reasonable method that allows the public to know not only the *time* and *place* of the special meeting, but also the *purpose*. If requested, the media must be given at least *24 hours* advance notification. The purpose for a special meeting may be for "general purposes."

- ◆ For **emergency meetings**, in which a situation requires immediate official action, the public body must give notice *immediately*, especially to the media that have requested such notice.

If there is a particular type of business in which a person is interested, the public body must have a procedure for that person to receive notice

of those meetings. This may require the interested party to pay a reasonable fee for the notice.

If I miss a meeting, how can I find out what happened?

All public bodies must keep minutes of their meetings. The public body must prepare the minutes promptly, file them, and maintain them. The minutes are open for inspection by the public.

Can I tape a meeting?

Audio and video recording of a meeting may not be prohibited. However, public bodies can adopt reasonable rules to prevent interference with the ability of others to see, hear, and participate in the meeting.

Can there ever be closed meetings?

Yes. The Ohio Open Meetings Act does not apply to grand juries, audit conferences, the Ohio Organized Crime Investigation Commission, or to certain meetings of the Adult Parole Authority, the State Medical Board, the Board of Nursing, the Pharmacy Board, the Chiropractic Board, the Emergency Response Commission, or the Child Fatality Review Board. Also, the Controlling Board, the Development Financing Advisory Board, the Industrial Technology and Enterprise Advisory Board, the Tax Credit Authority, and the Minority Development Financing Commission may meet in executive session (see below) to discuss information received in confidentiality.

Are there other cases in which a meeting can be closed?

No. However, under certain circumstances a public body can call an "*executive session*," which is a part of an open meeting that may be held outside the public scrutiny. During an open meeting, a majority of the members present must vote to hold

an executive session to discuss a specific announced topic(s). The committee chair determines who may stay for the executive session and who may not stay. Any decisions based on the executive session discussion must be made public in the open meeting. An executive session must be preceded and followed by the open meeting.

Executive sessions may be held only for seven valid reasons:-

- ◆ **Personnel** To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigations of charges or complaints against a public employee, official, licensee, or "regulated individual" (a student in a public educational institution or a person in a public institution for custodial care). However, the person being investigated of charges or complaints has the right to request a public hearing;

- ◆ **Property (Real or Personal)** To consider the purchase or sale of public property if the public interest would be hurt by the premature disclosure of the information;

- ◆ **Court Action** To discuss pending or imminent court action with the public body's attorney;

- ◆ **Collective Bargaining** To prepare for, conduct, or review collective negotiations or bargaining strategy;

- ◆ **Confidential Matters** To discuss matters required by federal laws or rules or state statutes to be kept confidential;

◆ **Security Arrangements** To consider details of security arrangements and emergency response protocols if disclosure could jeopardize the security of the public body or public office;

◆ **Hospitals** A county or municipal hospital and when considering trade secrets.

Is there any way for the public to know what happens in an executive session? Not really, except in the most general terms. In order to hold an executive session, the public body must announce which one or more of the approved matters are to be considered in executive session. The minutes of an executive session must promptly be made public, although the minutes need only reflect the reasons that the session was held. Specific motions and their disposition must not be made in the executive session.

How does the Sunshine Law apply to Ohio's charter municipalities, i.e., cities and villages, that may have their own rules about meetings?

If a municipality has a provision in its charter that requires "open meetings" but does not list exemptions or justifications for executive sessions, all meetings must be open, and there may be no executive sessions.

What can be done if a public body holds or is planning to hold an unauthorized executive session?

Any person may file for an injunction in the Court of Common Pleas of the county where the meeting took place within two years of the alleged violation. If there is sufficient proof of a violation, the Court will issue an injunction to compel the

public body to comply with the law. If the Court issues an injunction, the Court may reimburse the party that filed the injunction all court costs and reasonable attorney's fees. It also shall fine the offending public body \$500. Any member of a public body who "knowingly violates" such an injunction "may be removed from office by an action brought by the prosecutor or Attorney General."

Any rule, resolution, or action adopted in an executive session is invalid. Any rule, resolution, or action adopted in an open meeting after deliberations in an executive session is also invalid unless the deliberations were for one of the specifically-authorized purposes.

What can concerned citizens do?

- ◆ Be sure public bodies in your community are holding open meetings and are giving proper notice of their meetings.
- ◆ Attend public meetings, and encourage others to do so, too.
- ◆ Inform elected officials and other citizens about Ohio's Sunshine Law.
- ◆ If a charter municipality is being formed, or when an existing charter is up for review, review the proposed charter and/or ordinances to ensure that there are provisions for open meetings and that they agree with the state's Open Meetings Act.
- ◆ If your charter municipality is holding executive sessions for reasons that don't appear to be appropriate, ask your city law director whether these practices are legal.
- ◆ If you know of a public body that is holding or planning to hold an unauthorized executive session, contact your local newspaper, radio, or television station and let them know.

Where can I get more information?

The Ohio Attorney General produces the Sunshine Law Update and the Ohio Auditor produces the Open Government Resource Manual. They can be found on the corresponding Web site at www.ag.state.oh.us or www.auditor.state.oh.us.

Unless otherwise noted, the material contained in this pamphlet and quoted passages are from Section 121.22 of the Ohio Revised Code, Effective April 27, 2005. For more detailed information, consult the Ohio Revised Code.

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THE SUNSHINE LAW



Ohio's Open Meetings Act

The League of Women Voters believes that democratic government depends upon informed and active participation and requires governmental bodies protect the citizens' right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible. Ohio's Open Meeting Act is an important step in realizing this goal.