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Auditor of State



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2012 Annual Local
Government Officials'
Conference

LEGAL UPDATE
OPEN MEETINGS

Presented by:
Brendan M. Inscho
Assistant Legal Counsel

Agenda

- Open Meetings Overview
- Definitions
- Obligations
- Notice
- Minutes
- Executive Session
- Penalties
- Q&A




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Definitions



Meeting
Prearranged gathering of a **majority of members** of public body **conducting or discussing public business**

Public Body
Any decision-making body of state, county, township, municipal corporation, school district or political subdivision, or local public institution




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Obligations

To take action & deliberate on public business in **open** session

To give appropriate **notice** of the meeting

To take and file **minutes** of the meeting



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Notice depends on type of Meeting

Regular Meeting ➔ Meeting held at prescheduled intervals

Special Meeting ➔ Any meeting that is not a regular meeting

Emergency Meeting ➔ A special meeting that requires immediate action due to unforeseen emergency. **An executive session may not be conducted during an emergency meeting.**



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Open Meeting Minutes Requirements



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How Detailed Must Meeting Minutes Be?

- Minutes must be "full and accurate" and state sufficient facts and information to permit the public to *understand and appreciate the rationale* behind the public body's decision.
- The public not only has a right to know a government body's final decision on a matter, but also the means by which those decisions were reached.

Long v. Council of the Village of Cardington, quoting White v. Clinton County Board of Commissioners



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Recording Minutes: The Test

It is not necessary to record meeting minutes verbatim.

The Test: Can someone who did not attend a particular meeting read the minutes and understand everything that occurred during the meeting and understand why action was or was not taken?



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Minutes

- The word "minutes" is not defined in the Revised Code. A common definition is "a series of brief notes taken to provide a record of proceedings * * * : an official record composed of such notes." (*Webster's Third New International Dictionary (1986)*).
- The minutes are the official record of your governing body.
- The minutes must contain sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions.



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General Requirements

The minutes of a public body must:

- Be full and accurate
- Include the names of the attendees
- Include the roll call votes



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General Requirements - Attendees:

The minutes should reflect:

- The names of all members of the governing body of the entity **present**;
- The names of all members of the governing body of the entity **absent**;
- The names of all of the entity's **guests**



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General Requirements - Roll Call/Votes:

- Motions to take a vote:

"Motion made by: (Insert Name)"

"Motion seconded by: (Insert Name)"

- The results of each vote (yea & nay or yes & no), along with the tally of the votes



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Taping Open Meetings: The Good, The Bad and The Inaudible

If you want to audio tape your meetings and use the tapes as your official meeting minutes, be aware of the following:

The Ohio Supreme Court determined that audio tapes were not sufficient as the official minutes where:

- portions of the tape were inaudible or not understandable;
- the speaker could not be identified.

Long v. Council of the Village of Cardington



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Audio Taping Open Meetings

Taping the meetings to rely on in preparing written minutes is a good idea, but remember:

- the tape is a public record;
- add the tapes to your records retention schedule to allow for their reuse, otherwise you will need to retain them indefinitely.



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Video Taping Meetings

Suggestions when video recording meetings as the official minutes:

- Insure all members of the public body are clearly visible;
- Identify each member of the public body with a name placard;
- "Mike" each member of the public body so they are clearly heard;
- Be aware of storage and retention issues for video tapes.



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Approval of Minutes:

- No statutory provisions
- It is **customary** that the minutes be approved at the next meeting
- Draft copies of minutes are a public record



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Proper Storage/Retention of Minutes

General Requirements:

- County Records Commission
 - required to meet 2 times per year
 - Chair-member of board of county commissioners, prosecutor, auditor, recorder, clerk of common pleas
- Records Officer
- Retention Schedules



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Permitted Discussion Topics

1. Appointment of public employee
2. Employment of public employee
3. Dismissal of public employee
4. Discipline of public employee
5. Promotion of public employee
6. Demotion of public employee
7. Compensation of public employee
8. Investigation of charges or complaints against public employee unless employee has right to a public hearing



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Permitted Discussion Topics (continued)

9. Purchase of property
10. Pending or Imminent Litigation with Attorney
11. Collective Bargaining Matters.
12. Matters Required to be Kept Confidential
13. Security Matters
14. Hospital Trade Secrets
15. Veterans Service Commission Applicants



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Prohibition

- A public body may not hold an executive session to consider the discipline of an elected official for conduct related to the performance of the official's duties or to consider that person's removal from office.



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Executive Sessions

- **Proper Procedures**
- Must be preceded by a specific motion, a second, and a roll call vote
- Motion should state the **specific** topic(s) that will be discussed in Executive session. Names of employees are not disclosed.
- Meetings must always begin & end in open session. Cannot adjourn from Executive session.



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Procedure to Adjourn to Executive Session

- I move to adjourn into executive session to discuss the dismissal of an employee.
- I second the motion.
- Roll call vote must be taken and recorded.



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Executive Sessions

- **Present in Executive Session:**
- Who may members include?
 - anyone you invite to stay
- Who may the members exclude?
 - anyone you choose to exclude
- Keep in mind that there is no penalty (under the Open Meetings Act) for revealing what was discussed in Executive Session. Choose attendees accordingly.



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Confidentiality Requirement

- Ohio Rev. Code Section 102.03(B) No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.
- Penalty: 1st Degree Misdemeanor (180 days jail, \$1,000 fine max)



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Must Employee Be Notified?

- Unless a public hearing is provided by law, an employee does not have to be notified before a public body adjourns into executive session to discuss such employee's discipline, dismissal, demotion, etc.
- Check with legal counsel.



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Restrictions On Executive Session

- There can be No Decision-Making
- No Voting - other than to vote on a motion to recess or to return to open session
- Non-permitted matters may Not be discussed in Executive Session, even if intertwined with permitted matters



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Minutes in Executive Session

- During a public meeting, the public body voted to go into an executive session to discuss a matter that they were authorized to discuss in an executive session.
- Although not required (or advised), notes were taken by clerk and transcribed into a memo.
- Memo deemed a "public record" and required to be released.



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Executive Sessions

• Records from Executive Session:

- Executive Session does not *make* any material confidential, including documents or other records handed out
- Other confidentiality provisions (property bids and offers, "catch-all" matters)
- Analyze public records issues separately
- Handing records to member of public in Executive Session may waive any exceptions
- No minutes for Executive Session



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Minutes of General Meeting Must Reflect Executive Session, Voting and Purpose

The minutes of the meeting at which the executive session occurs must reflect:

- The motion including the specific purpose of the executive session,
- The roll call vote to enter,
- The adjournment back to the general meeting, and,
- The roll call vote to exit.



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Penalties

Fines (\$500 per violation)⁺

Injunction⁺

Attorney's Fees⁺

Court Costs⁺

Action Invalidated⁺

***Possible Removal⁺
from Office***



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Penalties for Violation

- Any action taken in executive session is void.
- So is any action taken in open session which results from an unlawful executive session.



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MEETING SCENARIO

- ♦ You are a newly-elected township trustee. A meeting is scheduled for Wednesday, March 14, 2012, after being re-scheduled due to the fiscal officer's illness. You meet your fellow trustees in the coat room and bid each other a good evening. Unfortunately, there was no agenda prepared due to the rescheduling. You ask the other members to refresh your memory as to what is to be discussed.
- ♦ The most senior trustee, Adam, reminds you the police department has asked for additional funding for a new police officer. In addition, there are two potential disciplinary actions on the table: First, a township employee has been caught using public dollars for a political campaign. Second, Adam has been engaged in an ongoing political fight with the second most senior trustee, Brian. Adam would like to enter into executive session for both matters, and exclude both the employee and Brian.
- ♦ As you continue your discussion and grab a cup of coffee, Brian joins the discussion. All three of you begin to discuss the funding issue for the police department, including which funds would be appropriate, as well as the unseasonably warm weather and traffic on the way to the meeting.
- ♦ As you enter the room, all trustees are in attendance. You notice the room is basically empty and the meeting is called to order.
- ♦ Issues:



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Questions & Answers

- For Additional Information ...
- **Call Ohio Auditor of State**
 - **Dave Yost**
 - (614) 466-4514 / 800-282-0370
 - Open Government Unit
 - Yellow Book:
- <http://www.ohioauditor.gov/OpenGovernmentUnit/Default.htm>



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