

OHIO AUDITOR OF STATE
KEITH FABER



Recording and Maintaining Minutes

Presented by:
Chris Nolfi

Why?

- ▶ Why are minutes necessary?
 - ▶ The public has a right to know and understand the actions of their elected representatives.
 - ▶ Includes not just the right to know a final decision on a matter, but the ways by which those decisions were reached
 - ▶ Accurate minutes can reflect the difficult decision-making process a public body goes through
 - ▶ Can bring the public to a better understanding of why unpopular decisions are sometimes necessary.



Why?



- ▶ Allows for greater integrity and prevents important decisions from being made behind closed doors.
- ▶ Keeping full minutes allows members of the public who are unable to attend the meetings in person to obtain complete and accurate information about the decision-making process of their government.

How?

- ▶ Public bodies are trusted with a degree of latitude in the preparation of minutes
 - ▶ There is not one specific required method of preparing minutes
 - ▶ May use:
 - ▶ Audio recording
 - ▶ Video recording
 - ▶ Word for word transcripts
 - ▶ Summaries of discussions indicating the identity of the speakers and the timing and substance of their statements



How?

- ▶ Whatever method is used, the minutes must:
 - ▶ State sufficient facts and information to permit the public to understand and appreciate the rationale behind the decision



Where?

Where does the requirement that a public office "take and file meeting minutes" come from?

- ▶ Villages - Rev. Code 733.27
 - ▶ The village clerk shall attend all meetings . . . and keep a record of its proceedings and of all rules, bylaws, resolutions, and ordinances passed or adopted
- ▶ Townships - Rev. Code 507.04
 - ▶ The township fiscal officer shall keep an accurate record of the proceedings of the board of township trustees at all of its meetings



Where?

Where does the requirement that a public office "take and file meeting minutes" come from?

Counties - Rev. Code 305.10

- ▶ The clerk of the board of county commissioners shall keep a full written record of the proceedings of the board, and a written general index of those proceedings, entering each motion with the name of the person making it on the record.

School Boards - Rev. Code 3313.26

- ▶ The treasurer of the board of education shall record the proceedings of each meeting in a book to be provided by the board for that purpose, which shall be a public record.



Where?

Where does the requirement that a public office "take and file meeting minutes" come from?

The Open Meetings Act - Rev. Code 121.22



Open Meetings Act Overview

Meeting

A prearranged gathering of a majority of members of a public body conducting or discussing public business



Open Meetings Act

Obligations

1. Give appropriate notice
2. Deliberate on public business in open session
3. Take and file minutes



10

1. Notice

- ▶ Public bodies establish their own notice rules
- ▶ Notice requirements depend on the type of meeting
 - ▶ **Regular Meetings**
 - ▶ Time and place
 - ▶ **Special Meetings**
 - ▶ Time, place, and purpose
 - ▶ 24 hours notice to all media outlets that have requested it
 - ▶ **Emergency Meetings**
 - ▶ Immediate notice required



11

2. Openness

“All meetings of any public body are declared to be public meetings **open to the public at all times.**”
Rev. Code 121.22(C)



12

3. Minutes



“The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to the public.”

Rev. Code 121.22(C)

Minutes

► Must be full and accurate

- Do not have to be verbatim transcript
- Should enable the public to understand the rationale behind decisions



Minutes

White v. Clinton Cty. Bd. of Comms.,
76 Ohio St.3d 416 (1996)

- Clinton County Commissioners adopted new building inspection policies
- The County health department, concerned with how policies would impact health department procedures, requested minutes of meeting at which Commissioners discussed and adopted new policies
- The minutes provided included only roll call votes

Minutes

White v. Clinton Cty. Bd. of Comms., 76 Ohio St.3d 416 (1996)

Court held:

- Minutes should not be limited to a mere recounting of the body's roll call votes
 - ▶ Must be a "full and accurate record"
- ▶ Minutes did not enable public to understand rationale behind new policy
 - ▶ Should have provided a better understanding of the Commissioners orders

IT'S NOT ENOUGH

Minutes

Insufficient and Inaccurate

State ex rel. Long v. Cardington Village Council, 92 Ohio St.3d 54 (2001)

The Village's minutes:

- ▶ **Contained inaccuracies**
 - ▶ Erroneously included former council member in roll call
- ▶ **Did not contain enough facts to understand rationale behind decisions**
 - ▶ Did not include motions or votes
 - ▶ In one case, minutes merely state that "a meeting was held to sign off on all accounts"
- ▶ **Failed to state the reasons for executive session**
 - ▶ Listed "personnel" instead of one of the specific matters in Rev. Code 121.22(G)(1)

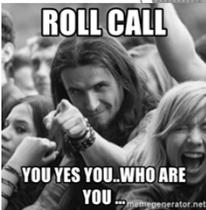


Open Meetings Act

Executive Sessions

Procedure

- ▶ Motion
 - ▶ Must identify the particular purpose and matter
- ▶ Second
- ▶ Roll call vote



Executive Session Acceptable Topics

1. Certain personnel matters (must be specific)
2. Purchase or sale of property
3. Pending or imminent court action
4. Collective bargaining matters
5. Matters required to be kept confidential
6. Security matters
7. Hospital trade secrets
8. Confidential business information of an applicant for economic development assistance
9. Veterans Service Commission applications



19

Executive Sessions What NOT to Do

1. Vote
2. Make any decisions
 - Even a decision to take no action
3. Discuss any other matters



20

Executive Sessions Confidentiality

- ▶ The Open Meetings Act does not create a provision for confidentiality
- ▶ Ethics laws and other privileges may require confidentiality
 - ▶ BUT - those may not apply if members of the public are invited
- ▶ NOTE: Just because a record is created in executive session does not make it confidential



21

Executive Sessions and Minutes

There is **no requirement** to keep minutes of executive sessions.



But—
The minutes should reflect the statutory reason for entering executive session.

22

Minutes and the Public Records Act

23

Public Records Act

Quick Overview

- ▶ Public Records Act = Rev. Code 149.43
- ▶ General Obligations
 - ▶ Adopt public records policy
 - ▶ Promptly prepare records and make available for inspection
 - ▶ Make copies within a reasonable time
 - ▶ Follow an approved records retention schedule



24

Public Records Act Quick Overview

A "record" is:

1. Any document, device, or item, regardless of physical form or characteristic, including electronic records,
2. Created or received by or coming under the jurisdiction of any public office
3. Which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.



25

Notes From the Meeting

- ▶ Not public records if:
 - ▶ Personal papers
 - ▶ Kept for convenience; and
 - ▶ Others did not use or have access
- ▶ *State ex rel. Cranford v. Cleveland*, 2004 Ohio 4884



26

Fiscal Officer's Notes

State ex rel. Santefort v. Wayne Twp. Bd. of Trustees, 2015-Ohio-2009

- ▶ Fiscal officer used combination of notes and memory to draft minutes
 - ▶ Notes were taken for her convenience
 - ▶ To remember names and proposed amendments
 - ▶ Notes were not used by the twp.
 - ▶ Took notes home with her
 - ▶ No one at twp. had access
 - ▶ Notes did not contain enough information to reflect an accurate record



27

Fiscal Officer's Notes

Conclusion?

Court found that the fiscal officer's notes, used in drafting meeting minutes, were personal in nature and not a public record of the township.



28

Are draft minutes a public record?

- ▶ Address in retention schedule
- ▶ Superseded Drafts
 - ▶ Subject to disclosure while they are "kept"



29

Legal Division

88 East Broad Street
Columbus, Ohio 43215

Chris Nolfi
Presenter Phone: (614) 752-8683
Presenter Fax: (614) 466-4333
E-mail: contactus@ohioauditor.gov
