



Mary Taylor, CPA
Ohio Auditor of State



2010 Local Government
Official's Conference

**Mastering Executive
Sessions**

Presented by:
Brian Cook,
Deputy Chief Legal Counsel

Ohio Auditor of State
Mary Taylor, CPA
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Agenda

- Open Meetings Law Overview
- Definition of Executive Session
- Permitted Matters for Discussion
- Procedural Requirements
- Minutes
- Penalties
- Legal Update
- 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

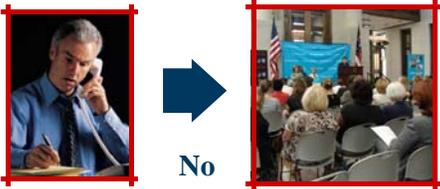
To give appropriate **notice** of the meeting

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

Types of Meetings

- 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.**

Can A Member Participate In A Meeting By Telephone?



A member "shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting." R.C. 121.22(C)

Are Work Sessions "Meetings" Subject to the Open Meetings Act?



Yes

Prearranged work sessions, retreats, etc. where *public business is discussed* among a *majority of the members* of the public body are "meetings" and must be as noticed and open, as with any other meeting.

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Voting at Meetings



The OMA does not govern the method by which a public body must vote unless a particular statute requires a specified method. The public body may use its own discretion in determining the method of voting it will use.

The Attorney General recently advised that the Open Meetings Act does not permit any voting by secret ballot.

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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
- 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.

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



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

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.

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.

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)

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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Beware of Keeping Minutes

- 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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Questions & Answers

For Additional Information or to Schedule a Presentation for your Group...

Call Ohio Auditor of State, Mary Taylor, CPA

(614) 466-4514 / 800-282-0370
Open Government Unit

Yellow Book: <http://www.auditor.state.oh.us/OpenGovernmentUnit/Default.htm>

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