

# Mid-Ohio Educational Service Center Relentless Accountability Administrative Conference Mansfield, Ohio

## Open Meetings Act Issues After the Pandemic

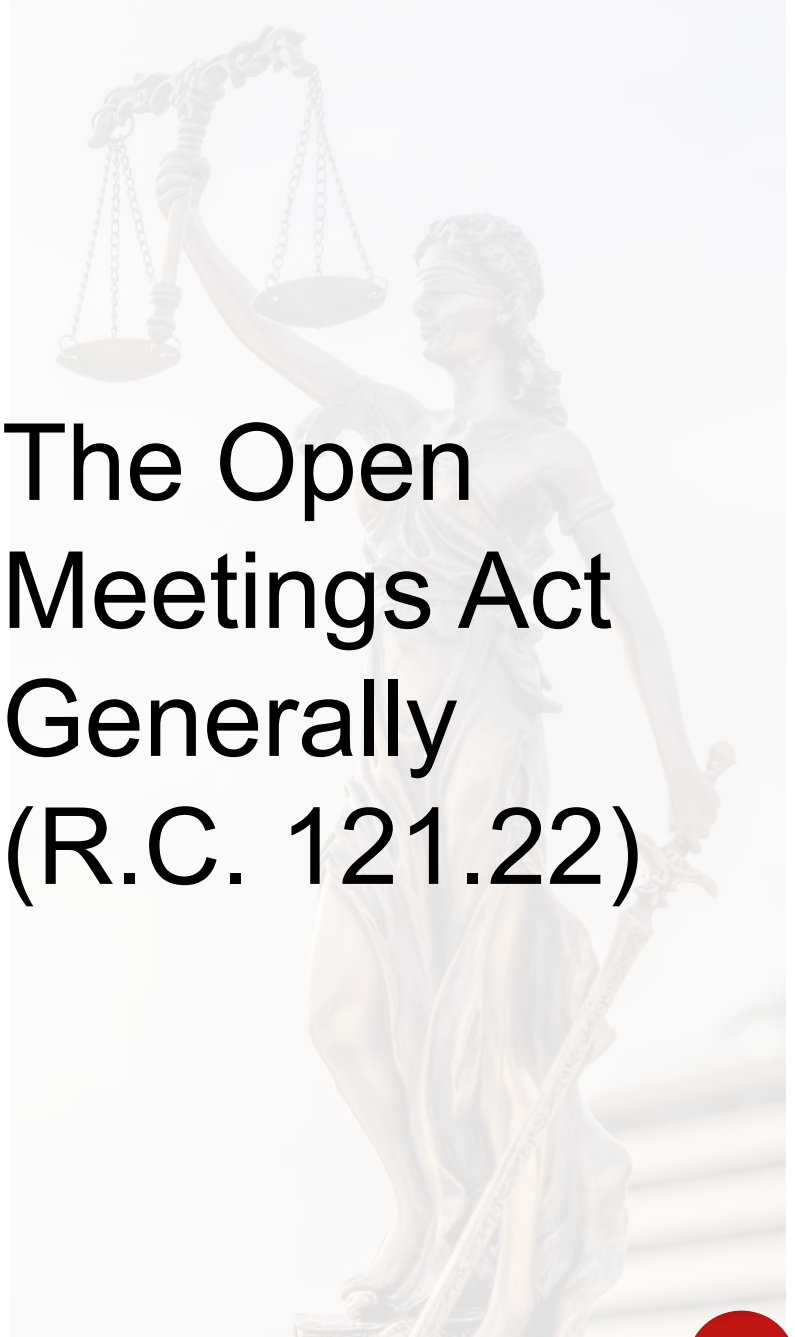
Presented by:  
Christian M. Williams, Esq. **AUGUST 2, 2021**

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# The Open Meetings Act Generally (R.C. 121.22)



## Open Meetings Act.

The Open Meetings Act requires public bodies to take official action and conduct all deliberations upon official business only in open meetings where the public may attend and observe, unless the subject matter is specifically excepted by law. R.C. 121.22(A).

- All meetings of any public body are considered public meetings open to the public at all times.
- The Open Meetings Act is intended to be read broadly in favor of openness. R.C 121.22(A).





## Public Body.

- “Public body” is any board, commission, committee, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commissions, committee, agency, authority or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution or any committee or subcommittee of a body. R.C. 121.22(B)(1).
- A body is a decision-making body even if it is only able to decide the course of action to recommend to the board of education

## Board Committees and Subcommittees.

- Board committees and subcommittees are required to follow all of the requirements of the Open Meetings Act.
- Board members do not have to comprise a majority of the committee for it to be a committee of the Board.
- If the committee is required by law, rule, or regulation, or has been created by action of the Board itself, it is subject to the Open Meetings Act. 1994 Op. Atty. Gen No. 94-096.





A body established solely by the superintendent generally is not subject to the requirements of the Open Meetings Act.



## Meetings.

“Meeting” means any pre-arranged discussion of the public business of the public body by a majority of its members. R.C. 121.22(B)(2).

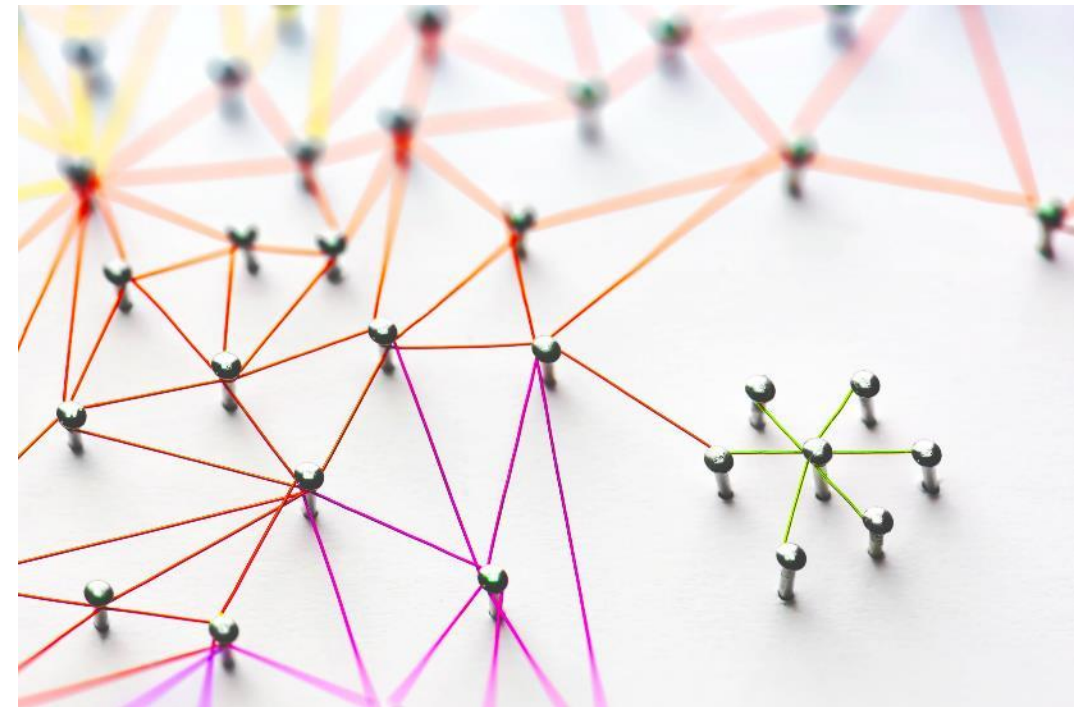
Pre-arranged discussion.

Public business.

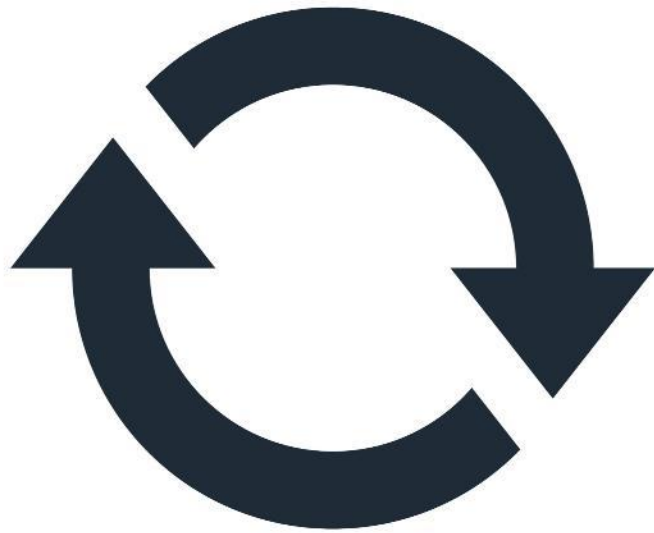
Public body.

Majority of members.

- The Open Meetings Act applies to members of a public body whenever they are taking official action, conducting deliberations, or discussing public business.
- Private communications between a majority of board members, outside of an open meeting, may be found to be “deliberations” in violation of the Open Meetings Act.







- A member of a public body shall be present in person at the 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).
- The Open Meetings Act cannot be circumvented by scheduling back-to-back meetings which, taken together, are attended by a majority of a public body. State ex rel. Cincinnati Post v. Cincinnati, 76 Ohio St.3d 540 (1996).
- Gatherings strictly of an investigative and information-seeking nature.



## Work Sessions.

- “Work sessions,” “workshops,” and “work retreats” are meetings.



## Collective bargaining sessions.

- Collective bargaining sessions are private and not subject to the Open Meetings Act.

# Virtual Meetings Under Ohio Law.





Historically, Ohio law has not permitted public bodies to conduct meetings by telephone, teleconference, video conference, or other electronic means.

## **H.B. 197**



The ability to conduct electronic meetings expired July 1, 2021. Under H.B. 197, boards of education were permitted to conduct public meetings electronically and to further allow board members to attend the meeting electronically and be considered present for purposes of quorum.



A board of education is still permitted to live-stream its meetings.



Ohio law does not prohibit a member of a public body to call or video-conference into a meeting. **However**, a board member who is not physically present at a meeting may **not** be considered present for purposes of establishing quorum, and may **not** deliberate or vote upon matters which come before the public body.

## Examples of Unlawful Meetings

### Communication by e-mail:



In White v. King, 2016-Ohio-2770, the Ohio Supreme Court held that the Act “prohibits any private prearranged discussion of public business by majority of members of a public body regardless of whether discussion occurs face to face, telephonically, by video conference, or electronically by e-mail, text, tweet, or other form of communication.” Id., ¶15.



One e-mail sent by a board member to two other board members, with no responses or counter-responses, does not constitute a discussion or a meeting under the Open Meetings Act. Haverkos v. Northwestern Local School Dist. Bd. of Edn., 2005-Ohio-3489.



“The mere use or passive receipt of e-mail does not automatically constitute a ‘meeting’.” Wood v. Battle Ground School Dist., 107 Wash. App. 550, 564, 27 P. 3d 1208, 1217 (2001).

# Examples of Unlawful Meetings



## Conference Calls.



A series of consecutive telephone calls that included a majority of Board members, even though the individual conversations were limited to two members at a time. Del Papa v. Board of Regents of University and Community College System of Nevada, 114 Nev. 388, 956 P.2d 770 (1998).

# Examples of Unlawful Meetings



**Face-to-face discussions between a majority of Board members outside of a meeting.**



**Back-to-back meetings. The Open Meetings Act cannot be circumvented by scheduling back-to-back meetings which, taken together, are attended by a majority of a public body. State ex rel. Cincinnati Post v. Cincinnati, 76 Ohio St.3d 540 (1996).**

## Examples of Unlawful Meetings

### Other electronic forms of communication:



**Texting and other messaging apps.**



**Skype/video conferencing.**

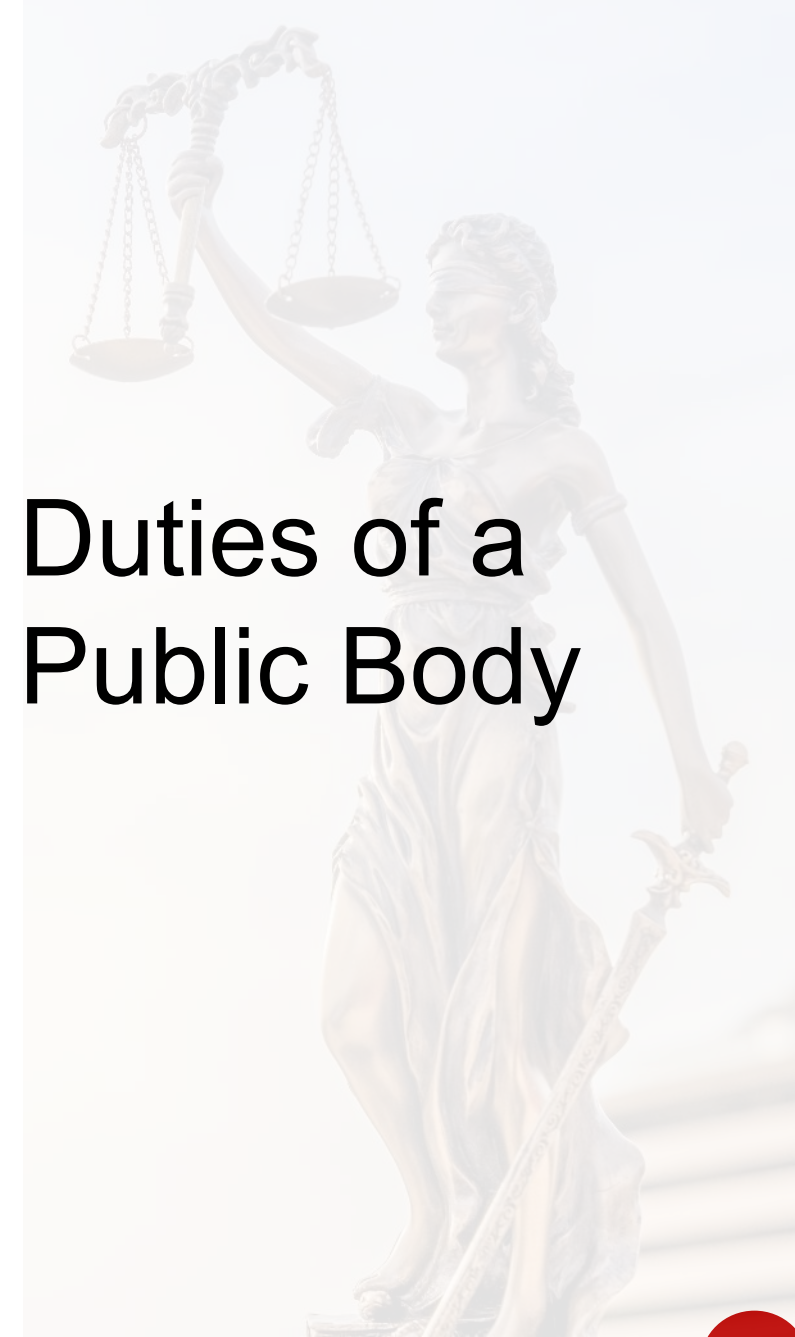


**Google docs and other on-line collaborative document creation and editing software.**



**Social media.**





# Duties of a Public Body

## Openness.

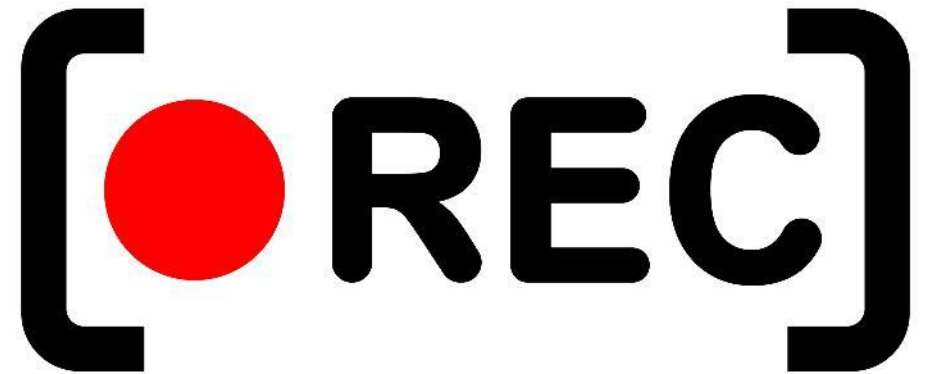
- A public body must conduct its meetings in a venue that is open to the public. State ex rel. Randles v. Hill, 66 Ohio St.3d 32, 1993-Ohio-204.



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## Video and Audio Recording by a Member of the Public.

- A public body cannot prohibit the public from audio or video recording a public meeting.
- A public body may only regulate the recording of meetings to the extent that the regulation is “necessary to insure the order of the proceedings.”



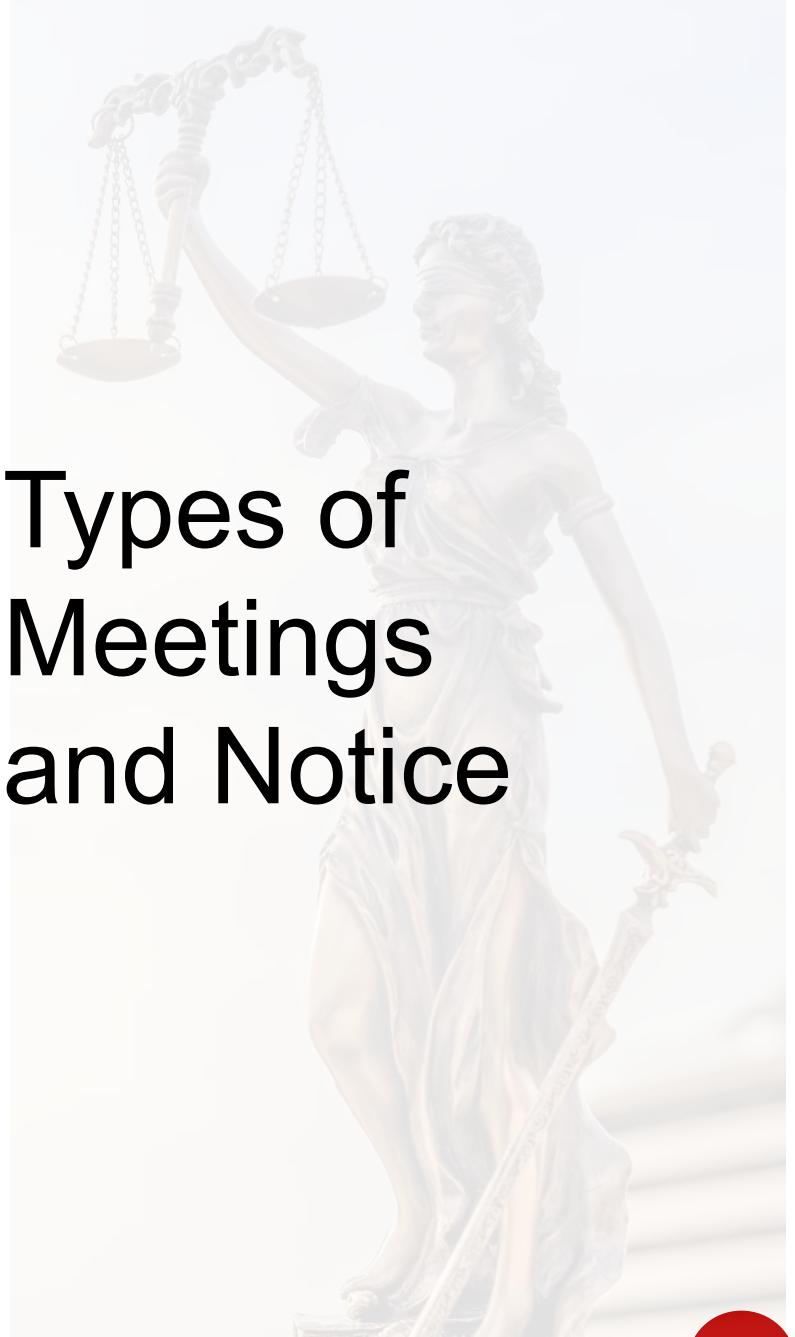


## Meeting Minutes.

- A public body must keep full and accurate minutes of its meetings, but must include enough facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions.
- Audio recordings of meetings typically will not serve as a substitute for keeping full and accurate minutes, unless they are treated the same as official minutes.



# Types of Meetings and Notice



- Every public body must establish, by rule, a reasonable method of notifying the public in advance of its meetings. R.C. 121.22(F). All meetings of a public body are either regular meetings or special meetings.
- Any person, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.



| Regular Meetings | Special Meetings | Emergency Meetings |
|------------------|------------------|--------------------|
|------------------|------------------|--------------------|

|  |   |  |
|--|---|--|
| <p>A “regular meeting” is a meeting held at regular intervals, such as monthly meetings.</p>   | <p>“Special meetings” are all meetings other than regular meetings.</p>   | <p>An emergency meeting is a type of special meeting that a public body convenes when a situation requires immediate official action.</p>      |
| <p>Regular meetings require advance notice to the public of the time and place of the meeting, typically done at the public body’s organizational meeting.</p> | <p>Special meetings may be called by the president of the board of education, the treasurer, or any two board members</p>   | <p>The public body must immediately notify certain media outlets and individuals of the time, place, and purpose of the emergency meeting.</p> |
|  | <p>Special meetings require advance notice to the public of the time, place, and purpose of the special meeting.</p> <ul style="list-style-type: none"> <li>• Discussing matters at a special meeting that were not disclosed in the purpose stated in the notice, either in open or executive session, is a violation of the Open Meetings Act.</li> </ul> | <p>Executive sessions are prohibited during emergency meetings.</p>  |
|  | <p>Special meetings require at least 24 hours prior notice to news media that have requested to receive notice.</p>   |  |
|  | <p>Members of the board must receive written notice at least two days prior to the date of the meeting pursuant to R.C.</p>   |  |



# Executive Session



- An “executive session” is a conference between members of a public body from which the public is excluded. The public body, however, may invite any individuals it chooses to attend an executive session.
- Executive session may be conducted only upon roll call vote of a majority of quorum, and only at regular or special meetings for the sole purpose of considering specific matters. R.C. 121.22(G).



There are six permissible reasons that a board of education may enter into executive session.

1

To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing. Discussion of "personnel" is not a valid purpose to enter into executive session.

- Entering into executive session for the purpose of discussing the "restructuring of positions," and not a specific employee, does not meet one of the exceptions set forth by statute. State ex rel. Patrick Bros. v. Board of Putnam Cty. Comm'rs, 3rd Dist. No. 12-13-05, 2014-Ohio-2717.

**2**

To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the public interest.

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**3**

Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.

▪

**4**

Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment.

▪

**5**

Matters required to be kept confidential by federal law or regulations or state statutes.

▪

**6**

Details relative to security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.

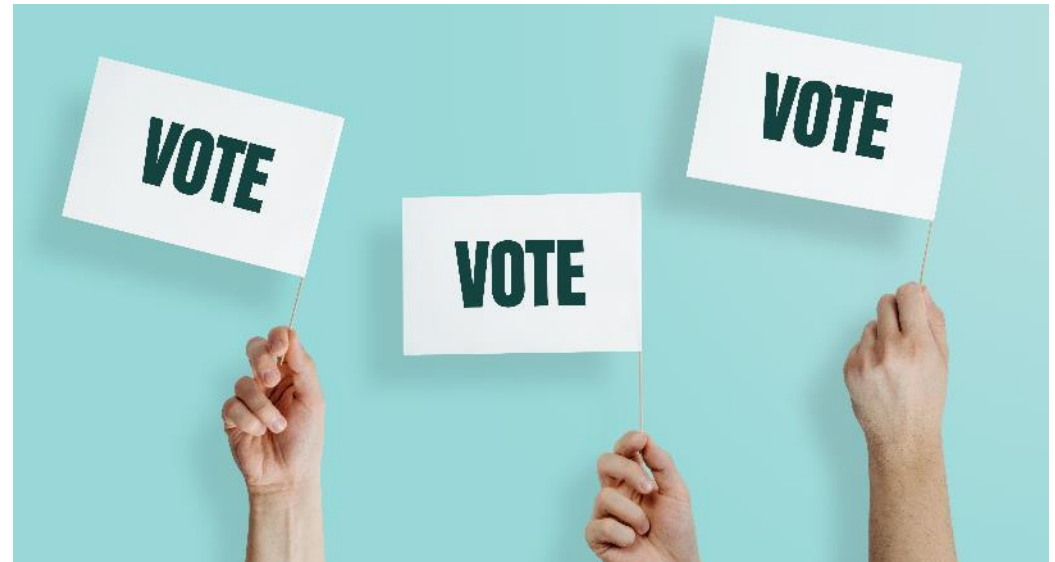
▪

**In presenting a motion for executive session, be specific.**



## **Voting and deliberating in executive session.**

- Any “vote” or formal action taken in executive session is invalid.
- “Straw votes” vs. deliberations in executive session.



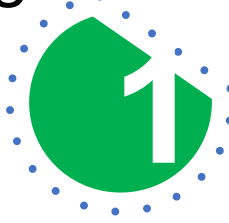
## Confidentiality of Executive Sessions

There is no absolute privilege to be accorded discussions in executive session. However, it may be a violation of the Ohio Ethics Law and a board of education's policy for a board member to disclose what was discussed in executive sessions.

102.03(B).

**CONFIDENTIAL**

Information discussed during executive session shall not be disclosed publicly if it is confidential. R.C. 102.03(B). “Confidential information” may be designated in two ways:



**By statute.**



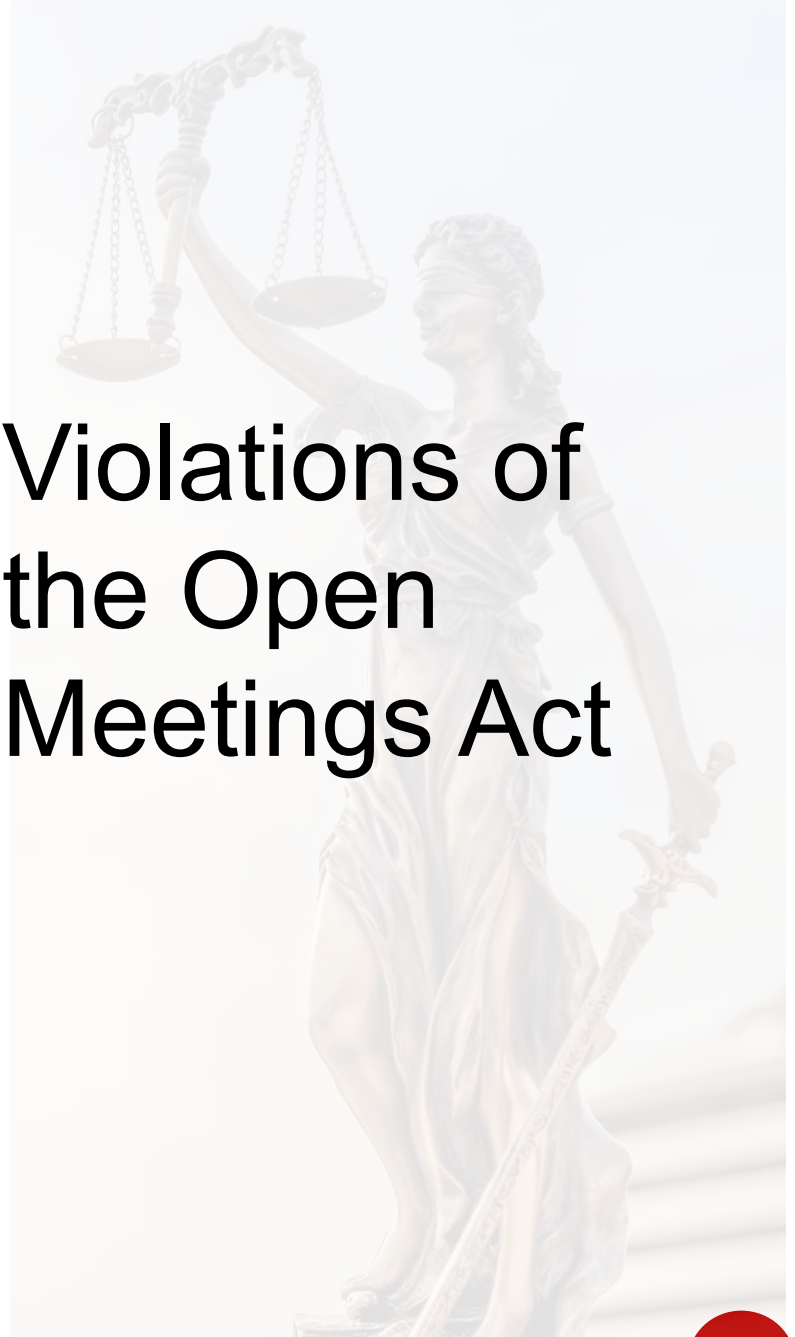
**By the public body provided that:**

- **The designation is clear;**
- **The designation is warranted by the status of the proceedings or the circumstances under which the information was received; and**
- **Preserving the confidentiality of the information is necessary to the proper conduct of the government business. R.C.**

**102.03(B).**



# Violations of the Open Meetings Act





- Any action taken by a public body while that body is in violation of the Open Meetings Act is invalid. R.C. 121.22(H).
- If any person believes that a public body has violated the Open Meetings Act, that person may file an injunctive action any time within two years of the alleged violation in the common pleas court to compel the public body to obey the Law. R.C. 102.03(I).





Cleveland - **PW** - Cincinnati  
[www.pepple-waggoner.com](http://www.pepple-waggoner.com)

# Thank You

-  Christian M. Williams, Esq.
-  1-216-520-0088
-  [CWilliams@pepple-waggoner.com](mailto:CWilliams@pepple-waggoner.com)
-  [www.pepple-waggoner.com](http://www.pepple-waggoner.com)
-  Follow me on Twitter  
[@ChrisWilliamsPW](https://twitter.com/ChrisWilliamsPW)