

Ohio Supreme Court Restores the Presumption of Regularity for Executive Session Deliberations

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Public bodies rejoiced over the Ohio Supreme Court's opinion in [State of Ohio ex rel. Christopher Hicks v. Clermont County Board of Commissioners](#) this past holiday season. The largely contentious case drew statewide attention and hinged upon one crucial question that carried significant ramifications for how public bodies conduct meetings: who bears the burden of proving whether executive session discussions comply with the Open Meetings Act (OMA)? The Court confirmed that, in the absence of evidence showing wrongdoing, public bodies must not "prove" their conduct in executive session complied with the OMA. Rather, the burden always rests with the plaintiff to prove that the public body violated the OMA.

The case began in January 2018, when Clermont County resident Christopher Hicks alleged that the Clermont County Board of Commissioners violated the OMA in a handful of executive sessions during the prior year. Hicks admitted he had no knowledge of what transpired in the closed sessions but argued the commissioners – and not he – must prove the substance of those conversations was lawful. The commissioners conceded that, not unlike most public bodies, formal notes weren't taken in executive sessions. Noting that the meetings in question took place more than two years prior to their sworn testimony, the commissioners could not recall the discussions while in executive session. However, the commissioners argued that they did not have to prove these discussions complied with the OMA – instead, Hicks must prove the commissioners' deliberations violated the OMA.

The trial court agreed with Hicks, holding that the commissioners violated the OMA because they failed to demonstrate that the deliberations in the closed meetings aligned with the stated reasons for adjourning to executive session. In March 2021, the Twelfth District affirmed the trial court's decision.

The Supreme Court of Ohio reversed and remanded the Twelfth District's decision. Though the OMA should be liberally construed to ensure that public bodies conduct deliberations on official business in meetings that are open to the public, the Court made it clear that the complaining party always bears the burden of proving a violation of the OMA. According to the Court, "[t]here is no requirement for the public body to conversely prove that no violation occurred."

The Court further addressed questions swirling since the Twelfth District's decision. First, must public bodies record minutes of its executive sessions to prove compliance with the OMA? The Court refused to burden public bodies with minutes of executive session deliberations, holding that, "the only thing the public body is required to record in its executive-session minutes is the statutorily permitted reason for the executive session." Second, must public bodies discuss every topic listed in a motion to adjourn into executive session? The Court resoundingly answered "no." According to the Supreme Court, "[the OMA] never says that a public body must discuss every single topic that it includes in its motion to enter executive session." The board of a public body simply may not discuss additional topics that are not included in its motion to enter executive session. "A public body must be able to introduce a motion that includes all the topics it might reasonably discuss during an executive session."

The Supreme Court's decision in *Hicks* restores the presumption of regularity for public bodies when deliberating in executive session. Though a public body must introduce a motion that includes all of the statutorily-permitted topics it might reasonably discuss during executive session *and* stick only to those topics while deliberating in executive session, it need not record minutes of those discussions.

If you have any questions, please reach out to one of the attorneys listed below.

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