

Required Detail for Board Meeting Minutes

By Helen S. Carroll

Two recent decisions from the Eleventh District Court of Appeals (Portage County), *State ex rel. Ames v. Brimfield Township Board of Trustees*, both decided in December 2019, serve as a reminder to public boards of education for not only compliance with the requirements applicable to executive sessions but also for how the minutes of the public body must reflect its reasons for an executive session. In his two complaints, Mr. Ames alleged fourteen (14) violations of the Open Meetings Act and that the Township met in executive session to discuss pending litigation but that no attorney was present.

Ohio's Open Meetings Act, Revised Code Section 121.22(G), provides eight separate reasons a public body may meet outside of an open public meeting in executive session. For boards of education, one of the most common reasons for an executive session is to address personnel-related matters as set forth in R.C. 121.22(G)(1). The statute provides the approved personnel-related issues that may be lawfully addressed in executive session and includes a finite list – 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 or official. The motion and majority vote to hold the executive session must specifically state which one or more of the approved reasons form the basis for meeting in executive session, although the motion need not include the name of the person under consideration. It is insufficient for a motion and vote to simply reflect “personnel.” Likewise, it is insufficient for the minutes of the meeting to reflect anything less than the specific reason or reasons applicable to the personnel issue that forms the basis for executive session when a personnel-related issue is to be discussed outside of an open public meeting.

Beyond personnel-related matters, the Open Meetings Act also generally authorizes an executive session for matters related to the purchase of public property, discussions related to collective bargaining, conferences with attorneys for the Board concerning pending or imminent court action, security arrangements/emergency response protocols, confidential issues related to economic development assistance and matters that are considered confidential by federal and state law. Here too, the Open Meetings Act requires that the minutes of the public body reflect the specific purpose for the executive session.

For conferences with an attorney for the public body concerning pending or imminent court action, as permitted by R.C. 121.22(G)(3), the court discussed the distinctions between conferences regarding pending or imminent court action and conferences with the board's attorney on other matters not related to pending or imminent court action. There is no prohibition for the board's attorney to meet with the board in executive session, when invited, where no legal action is pending or imminent and the executive session is based upon one of the enumerated exceptions listed in the Ohio Meetings

Act. However, the board cannot lawfully base an executive session simply upon attorney-client privilege. As the court explained, the exception listed in R.C. 121.22(G)(5), “matters required to be kept confidential by federal law or regulations or state statutes,” does not authorize the board to discuss with its attorney other matters outside of a public meeting if the reason for executive session is unrelated to one of the other authorized reasons in the Open Meetings Act and is merely intended to be based upon the statutory attorney-client privilege. Thus, an executive session for conferencing with the board’s attorney, under a claim of attorney-client privilege, is a violation of the Open Meetings Act. The court also found that the board’s conferences with its attorney in executive session, when the attorney attended by telephone conference rather than in-person at a regular or special meeting of the board, was appropriate and in compliance with the Act.

Board meeting minutes need not reflect the discussions held in executive session but must include one or more of the applicable and specific exceptions to the Open Meetings Act when the board determines that an executive session is needed. This ensures the liberal construction of the Act and the accountability of public officials to conduct their deliberations and official business only in open meetings unless the subject matter of those deliberations is expressly excepted by law. Violations of the Open Meetings Act can include invalidation of action taken by the board, a court-ordered injunction to prevent further violations, a civil forfeiture of \$500.00 against the Board, and an award of court costs and attorney fees to a complaining party.

For more information on the Open Meetings Act or how public boards of education can follow the requirements applicable to executive session, contact any of the listed Roetzel & Andress professionals.

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