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# HANDBOOK

## Ohio County Commissioners

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## CHAPTER 4

# COMMISSIONERS MEETINGS: ORGANIZATION, PROCEDURES, AND RECORDS

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### 4.01 ORGANIZATIONAL MEETING

The board of county commissioners organizes on the second Monday of January of each year, by the election of one of its members as president for a term of one year, and it should establish the times of its regular meetings. The president presides at all meetings. If the position of president becomes vacant, the board selects one of its members to preside (ORC 305.05).

### 4.02 CLERK OF THE BOARD

County commissioners may appoint a full-time clerk and assistant clerks (ORC 305.13). In the appointment of assistant clerks, broad discretion is granted to hire such assistants as are necessary. The clerk and assistants perform statutory duties and other functions specified by the commissioners. To this end, it has been found that a county may appoint a legislative analyst (OAG 81-040).

The clerk and assistants are considered to be in the classified service, unless, by affirmative action they are exempted from the classified service into the unclassified service. For more information on this subject see Chapter 63 and Ohio Administrative Code Chapter 123:1-5.

When a full-time clerk is not appointed, the county auditor is secretary of the board by virtue of his or her office (ORC 319.08).

#### **4.03 DUTIES OF CLERK**

The statutory duties of the clerk are specified in Section 305.10 and 305.11 of the Revised Code. Following is a summary of these responsibilities:

1. To keep a full record of the proceedings of the board.
2. To keep a general index of the proceeding.
3. To enter each motion in the proceedings with the name of the person making the motion.
4. To call and record the roll on each motion involving the levying of taxes or the appropriation or payment of money.
5. To state fully and clearly in the proceedings any question which is raised for consideration by any person; state the decision on the question; and, call and record the roll on such questions.
6. To record, when requested by an interested party, any legal proposition decided by the board and the vote on the decision. In such cases if the interested party or legal counsel takes exception to the decision, the exception must also be recorded in the proceedings.
7. To read the proceedings of the previous day immediately upon the opening of each day's session for approval and signature by the board.

#### **4.04 COUNTY ADMINISTRATOR**

County commissioners may appoint a county administrator, who is then the administrative head of the county under the direction and supervision of the board. The administrator serves at the pleasure of the board, and has the following powers and duties provided by Section 305.30 of the Revised Code:

1. To assist in the administration, enforcement, and execution of the policies and resolutions of the board.
2. To supervise and direct the activities of the affairs of any divisions of the county under the control of the board.
3. To attend all meetings of the board at which his or her attendance is required.
4. To recommend measures for adoption.
5. To prepare and submit to the board such reports as are required.

6. To keep the board fully advised on the financial conditions of the county.
7. To prepare and submit the county budget.
8. To perform much additional duties as the board may determine by resolution.
9. To perform any functions that the board of commissioners has delegated to him or her ,by way of resolution, during a disaster or emergency.

The commissioners may also assign to the county administrator any office, position, or duties under their control. These duties are to be performed are under the direction and supervision of the commissioners.

#### **4.05 RECORD OF PROCEEDINGS**

All action by the board of county commissioners is by motion (resolution), and the record of proceedings must show the yeas and nays on each motion. The accumulation of the individual records of proceedings is usually referred to as the Commissioners Journal. The clerk must keep a full record and general index of the proceedings in the journal (ORC 305.10). At the beginning of each meeting, the journal of the previous meeting must be read by the clerk, and if correct, approved and signed by the commissioners and the clerk (ORC 305.11).

When the board is not in session, the proceedings shall be open for public inspection. The journal is to be kept in the commissioners' office if a full time clerk has been appointed, or in the county auditor's office if a full-time clerk has not been appointed.

No contract or order made by the commissioners is valid unless entered in the journal (ORC 305.25). Commissioners must examine the annual reports and statements by the prosecuting attorney, clerk of courts, sheriff, and treasurer, and place on their journal the result of their examination.

There are probably as many specific ways of keeping the commissioners journal as there are counties. Some counties transcribe every word of every meeting into a printed journal. Others print only a summary of actions in the journal, with a transcript of hearings placed in the hearing folders. Some keep a record of the meetings on audio tape, again with only a summary in the journal. Still others keep a microfilm record of all proceedings and exhibits. A relatively recent method of storage involves using a computerized indexing system with the ability to print out information by title, date, or resolution number.

Although there is no one "correct" way to keep a journal, it is important that full and accurate records be kept. Unless an action by the county commissioners has been recorded and is retrievable, it has not been officially taken.

Each board of commissioners also is required to keep full and accurate minutes of its

meetings, which must enable the public to understand the reasons for the board's decisions. These minutes must be promptly prepared and then filed and maintained for all public meetings. (See *White v. Clinton County Board of Commissioners*, 76 Ohio St. 3d 416 (1996).

#### **4.06 COUNTY HOME JOURNAL**

The commissioners' clerk must keep a record of the board's transactions respecting the county home. Two former requirements in state law no longer apply to this requirement. First, the law no longer requires the record to be maintained in a "suitable book", however, the use of a journal is still the prevalent method. Secondly, the former requirement that there be a "separate record" has been eliminated. This means that commissioners' transactions may be a part of the commissioners journal; however, the commissioners may still determine that the clerk must maintain a separate record or continue the use of the former county home journal (ORC 5155.02).

The journal is still the standard procedure. In either case, county home records must be kept as provided in Sections 305.10 and 305.11 of the Revised Code, and must be open for public inspection at reasonable times.

#### **4.07 MEETINGS OR SESSIONS**

All action taken by the commissioners must be in a regular or special meeting. These meetings are referred to in the Revised Code as "sessions." Regular meetings must be conducted at a specific time fixed in advance, and the board must comply with the notice provisions of Section 121.22(F) of the Revised Code. At least 50 regular meetings each year are required at the commissioners office at the county seat or at another location in the county designated by board resolution. ORC 305.06.

Special meetings may be held as often as deemed necessary, at which the commissioners may take any action that is not restricted by law to a particular regular session. Special sessions may be held at a location other than the usual office at the county seat. To hold a special session at a different location, a resolution must be adopted stating the location of the special session. This law might be useful for hearings that affect smaller areas for such purposes as zoning, annexation or drainage.

Two members of the board of county commissioners constitute a quorum for any meeting. As far as possible, the proceedings of the board should conform to the rules of parliamentary procedure.

#### **4.08 OHIO OPEN MEETINGS LAW**

Section 121.22 of the Revised Code, along with associated Attorney General opinions and court cases, details what is necessary to comply with the open meetings law, popularly known as the "Sunshine Law." The law was originally enacted in 1954. Current law

provides that public bodies may not go into executive session except by a majority roll call on a formal motion, with the purpose for the executive session stated in the motion.

The law authorizes any person to bring court action to enforce the Sunshine Law, but such an action must be brought within two years from the date of the violation or threatened violation. If the violation exists, the court of common pleas will issue an injunction to compel compliance.

If an injunction is issued, the court of common pleas orders the payment of a \$500 fine to the party that sought the injunction. In addition, the court must award all court costs and reasonable attorney fees to the party that sought the injunction. The mandatory award of the attorney fees may only be reduced if the court determines both of the following:

1. That a well informed official, based on the ordinary application of the law and court cases, would reasonably believe that it was not a violation, and
2. That a well informed public body would reasonably believe that the conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting the conduct for which the injunction was granted.

State law further declares that a public official who knowingly violates such an injunction may be removed from office by an action brought by the prosecuting attorney or Attorney General in common pleas court.

The Sunshine Law requires that commissioners take official action and conduct all deliberations on official business only in open meetings, unless the subject matter is specifically excepted. A resolution, rule, or formal cation of any kind is invalid unless it has been adopted in an open meeting. A commissioner must be present in person at the meeting in order to be considered present or to vote on an issue. Devices such as speaker phones may not be used to be present and vote.

The law further requires that the rule adopted by the commissioners must provide that any person may request and obtain advance notification of all meetings at which any specific type of public business will be discussed. The person may be required to pay a reasonable fee for the service. There are two methods listed in the Revised Code by which persons may be required to pay for such advance notification. First, the commissioners may establish a mailing list and subscription fee for meeting agendas or notices. A second method is the mailing of notices or agendas in self-addressed, stamped envelopes provided by citizens. ORC 121.22 (F). If commissioners fail to adopt the notification procedures as required, then any rule, resolution, rule or formal action that they take is deemed to be invalid.

Commissioners are permitted to hold closed executive sessions in certain specific situations, as follows:

1. Meetings where the commissioners consider the purchase or the sale of property where an early disclosure would give an unfair advantage to a prospective bidder.
2. Meetings with attorneys for the county concerning disputes that are the subject of imminent or pending court action.
3. Meetings related to collective bargaining for public employees.
4. Meetings where security arrangements are being discussed where a disclosure could be used to help commit a violation of the laws or avoid prosecution for a violation.
5. Meetings where matters discussed are required to be kept confidential by federal or state law.
6. Meetings dealing with personnel related matters including appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public official or employee. In such cases, if the employee or officials requests a public hearing, an executive session is not permitted.
7. Meetings involving the investigation of charges or complaints against a public employee, official license, or a regulated individual. Under the law a regulated individual, as it relates to counties, includes inmates, patients, or residents of local institutions as a result of criminal behavior, mental retardation or illness, disease, disability, age or other condition requiring custodial care. As with employment related functions, executive sessions are prohibited if the employee, official, licensee, or regulated individual requests a public hearing.
8. Audit conferences conducted by the State Auditor with county officials. (ORC 121.22(D)).

A board of commissioners may adopt a resolution or rule or take a formal action that results from deliberations in executive session, as long as the session was conducted for one of the purposes specified above. However, a board actually must adopt this resolution or rule or take this formal action only in an open meeting. ORC 121.22 (H).

A county central committee of a political party is a public body, and the committee members are public officials as defined by the "sunshine law." Any gathering of the central committee is still considered a meeting subject to the "sunshine law" when less than a quorum is present. A meeting of a political party central committee to make an appointment to fill a vacancy in a county office is subject to the open meeting law, however the central committee may go into executive session to discuss the candidates and may take a secret ballot when selecting the person to fill the vacancy (OAG 80-083). Central committee meetings related solely to internal party affairs are not public meetings.

The governing board of a community improvement corporation is not a public body unless

it has been designated by a political subdivision as its agent (OAG 79-061).

## **FREQUENTLY ASKED QUESTIONS**

### **1. CAN COMMISSIONERS GATHER WHEN NO BUSINESS IS TRANSACTED?**

Before answering this question, ask yourself if this gathering is a prearranged discussion of public business. Is a quorum present? It is impossible for any two members of a board of county commissioners to gather without constituting a quorum, since a quorum is two members. There is no prohibition against commissioners meeting for a meal or social function, but caution should be taken regarding the subject matter discussed. If a work related matter is discussed, even though no conclusion is reached, someone might construe the social function to be an executive session or a special meeting that did not include proper notice to the press or other individuals requesting such notice.

### **2. WHEN DISCUSSING ONE OF THE PERMISSIBLE SUBJECTS IN AN EXECUTIVE SESSION, TO WHAT EXTENT CAN THE SUBJECT BE DISCUSSED WITHOUT BREACHING A "FORBIDDEN SUBJECT?"**

Commissioners have a right to confer together while doing their "homework" in an executive session. It is important that these discussions be free and without restraint. Commissioners need an opportunity to express, exchange and test ideas, to deliberate freely, off the record, and without restraint of outside influence. It is very difficult to feel free during a discussion when under a spotlight or in front of a microphone. It is advisable to play it safe and not vote or come to any agreement on any resolution, rule, regulation or formal action at any executive session.

### **3. CAN THE ROLL CALL BE LEFT OPEN AFTER A VOTE?**

Sometimes commissioners are called out of a meeting, and during their absence a vote is taken. If a commissioner misses a vote, may that commissioner still cast a vote? There is no law or rule permitting the roll call to be left open after the meeting is adjourned, but if the commissioner returns while the meeting is still in session the issue can be brought up for another vote by the commissioners present.