



Ennis Roberts Fischer SCHOOL LAW REVIEW



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Executive Session Requirements

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Ennis, Roberts & Fischer's School Law Review has been developed for use by clients of the firm. However, the review is not intended to represent legal advice or opinion. If you have questions about the application of an issue raised to your situation, please contact an attorney at Ennis, Roberts, & Fischer for consultation

Pursuant to the Ohio Open Meetings Act, a board of education that fails to follow the statutory procedure required to enter into an executive session may be forced to pay an individual seeking to enforce the statute a civil penalty, court costs, and attorney's fees. This is true even when the executive session was otherwise appropriate under the statute. Therefore, before entering into executive session, a board of education must be sure to: (1) draft a motion which states with particularity which one or more of the approved matters listed in the statute are to be considered at the executive session, and (2) hold a roll call vote to consider the motion which must be approved by a majority of a quorum of the board.

A recent settlement agreement between the Pierce Township Trustees and a township resident underscores the importance of adhering to these statutory requirements. In this agreement, the Trustees agreed to pay \$23,500 to settle a lawsuit after admitting that they had violated the Ohio Open Meetings Act numerous times throughout the last two years. The topics discussed during the execu-

tive sessions at issue in the lawsuit were all deemed to be appropriate under the statute. The Trustees, however, violated the procedural requirements of the statute when they failed to explain the statutory reasons giving rise to the executive sessions during an open meeting.

Boards of education must be familiar with the entirety of the Ohio Open Meetings Act in order to avoid liability in this context. The Act, which is codified in Ohio Revised Code section 121.22, requires that all meetings held by a public body must be open to the public. The statute lists a number of purposes, however, which may be discussed in an executive session closed to the public. According to the statute, a public body may enter into executive session to discuss any of the following purposes: (1) the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or the investigation of charges or complaints against a public employee unless such person requests a public hearing; (2) the purchase or sale of property if premature disclosure of information would give an unfair bar-

gaining advantage to a person whose private interest is adverse to the general public interest; (3) disputes that are the subject of pending or imminent court action which are to be discussed with an attorney; (4) preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees; (5) matters required to be kept confidential by federal law, rules or state statutes; and (6) security arrangements and emergency response protocols if disclosure of the matters discussed could reasonably jeopardize the security of the public body or office.

The executive session discussions at issue in the Pierce Township settlement all fell within this list of approved topics. What the Pierce Township Trustees failed to do, however, was follow the statutory procedure required to enter into an executive session. Ohio Revised Code section 121.22(G) provides that before an executive session is held, the board must draft a motion specifying which one or more of the statutory purposes are to be considered at the executive session. Furthermore, the board must approve this motion by a roll call vote

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Executive Session Requirements

passed by a majority of a quorum of the board.

If a board of education properly enters into an executive session, it must restrict discussions to the purposes specified in the motion. The board may not pass a resolution or take any other formal action during the executive session as the law requires that such actions take place during an open meeting. Additionally, any formal action adopted in an open meeting based

on deliberations that were closed to the public are also invalid unless the deliberations took place in a properly held executive session.

How this impacts your district:

A board of education must be sure to limit executive session discussions to the topics specified in the statute, and must carefully specify the basis for any such discussions in a motion which is sub-

ject to a roll call vote. If a board wishes to take a formal action based on its executive session deliberations, it must do so in an open meeting format. It is our hope that familiarity with these laws will help to ensure compliance with the legal requirements and enable your district to avoid costly litigation resulting from an improper executive session.

Parent and Family Involvement Policy

The State Board of Education has approved a model parent and family involvement policy. The model policy, which can be found on the Ohio Department of Education's website, is designed to help districts meet and exceed the policy requirements outlined in Ohio Revised Code section 3313.472(A), which requires school districts, including joint vocational school districts, to adopt a policy on parental involvement. The law requires that this policy be designed to build consistent and effective communication between school teachers and administrators and the parents or foster caregivers of students. The policy must provide the opportunity for parents and foster caregivers to be actively involved in the education of their children or foster children. Specifically, this section of the Code requires parents and foster parents to be informed of the following: (1) The importance of the involvement of parents and foster caregivers in directly affecting the success of their children's or foster children's educational efforts; (2) How and when to assist their children or foster children in classroom learning activities; (3) Techniques, strategies, and skills to use at home to improve their children's or foster children's academic success and to support their children's or foster

children's academic efforts at school and their development as future responsible adult members of society.

In addition to these requirements, districts are encouraged to adopt the model policy drafted by the State Board pursuant to section 3313.472(B). The model policy incorporates and enhances the minimal requirements provided by the statute. The model encourages school districts to adopt the following policies pertaining to family involvement in education and schools:

Parent and Family Involvement in Education

- Respect and value parents and families as children's first teachers and the primary decision-makers in children's education.
- Assist parents and families in acquiring techniques, strategies and skills, by offering trainings and materials they can use to support children's at-home learning and academic success in school.
- Provide parents and families with timely and meaningful information in understandable language on Ohio's academic standards; state and local assessments; and legal require-

ments so that they can make informed decisions about their children's academic future.

These legal requirements include Title I, Section 1118; parent participation rights under IDEA; and gifted students under ORC 3324.04 and 3324.06.

- Collaborate with community-based programs, including health and human service providers, to ensure that the parents and families have the resources they need to be involved in their children's education, growth and development.
- Coordinate and integrate parent and family involvement programs and activities into Head Start, Reading First, Early Reading First, Home Instruction Programs for Preschool Youngsters, Parents as Teachers Programs, public preschool, special education, gifted students' services, parent resource centers and other community activities.
- Help parents and families create supportive conditions at home that emphasize the importance of education and learning.

Parent and Family Involvement Policy

Parent and Family Involvement in Schools

- Respect, value and involve parents and families as partners and decision-makers in school continuous improvement planning.
- Develop policies regarding school involvement with parents and families and distribute the policy in language they can understand.
- Create parent and family engagement activities that respect the various cultures, languages, practices and customs; and build relationships among parents, families and schools through bridging economic and cultural barriers.
- Promote consistent and effective two-way communication between all students' parents, family members and school personnel.
- Prepare parents and families to be involved in meaningful meetings and discussions with administrators, teachers and staff.
- Design a range of meaningful opportunities for parents and families to be involved in schools that reflect the specific needs and characteristics of parents and families in a particular school or district.
- Create welcoming and supportive school environments for parents and families that are child-centered and family-strengthening.
- Provide logistical support (e.g., transportation, child care) so parents and families can participate in school-sponsored family involvement events.
- Encourage businesses and industries to offer parent- and family-friendly policies that support parent and family involvement in children's school activities.

School districts should be familiar with the model policy when adopting the policy for their district. The entire policy, which includes a guide for implementation, can be found on ODE's website.

Public Records Requests and Attorney Fees

Cincinnati Enquirer v. Ronan

Slip opinion NO. 2009-Ohio-5947, November 18, 2009

The Supreme Court of Ohio has rendered a decision that may impact school districts faced with public records requests. In brief, the Court decided that a claim for attorney fees based on an action to compel public records is not rendered moot even when a public office complies with the record's request before the issue is resolved through litigation.

This case involved a dispute between the Cincinnati Enquirer and Cincinnati Public Schools (CPS). On February 5, 2009, the Enquirer requested that CPS provide copies of all documents submitted by prospective superintendent candidates. The school district refused the request because it had not yet checked the post office box to which the documents were directed. It informed the Enquirer that it would not check the box until March 16, and at the time CPS

would make all public records available for inspection. After CPS denied the request, the Enquirer filed a complaint for a writ of mandamus to compel the district these documents pursuant to the Public Records Act.

Before the case was heard by the trial court, CPS provided the requested documents to the Enquirer. Consequently, the trial court decided that the case was rendered moot and dismissed the action to compel the records and a request for attorney fees. Both of these determinations were affirmed by the appellate court on appeal. The Ohio Supreme Court agreed with the lower courts' decisions pertaining to the dismissal of the complaint. The Court noted that the Enquirer's mandamus complaint was clearly moot because CPS had already produced the requested records after the Enquirer had commenced the underlying suit. The Enquirer, however, argued that its claim should be excepted from being moot on the

ground that it is "capable of repetition, yet evading review." The Court noted that this exception only applies in exception circumstances in which two factors are both present: (1) the challenged action is too short in duration to be fully litigated before it expires, and (2) there is a reasonable likelihood that the same complaining party will be subject to the same action again. The Court determined that the Enquirer did not sufficiently allege any expectation that it would be subjected to the same action again. Therefore, the Court upheld the dismissal of the mandamus claim based on mootness.

The Court then considered the Enquirer's request for attorney fees which had been dismissed by the lower courts. The Court relied on its recent decision in a similar case involving the Enquirer, in which the Court held that, "even if the Enquirer's mandamus claim were properly dismissed as moot, a claim for attorney fees in a public-

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Public Records Requests and Attorney Fees

records mandamus action is not rendered moot by the provision of the requested records after the case has been filed.” Therefore, the Court remanded the case to the lower courts to determine whether the Enquirer was entitled to receive attorney fees in this action.

How this impacts your district:

This case should help clarify the nature of litigation resulting from the denial of a public records request. If your district denies a proper public records request, it is

clear that the requesting individual could seek redress in the courts. The individual would seek to compel production by filing a complaint for a writ of mandamus. If the district believes that the request was improper it should not produce the documents until a judge has ruled to the contrary. If the district is aware that the request is proper, however, it may comply with the request before having to settle the issue with litigation and the requester’s complaint will likely be dismissed as moot. This case indicates, however, that even when

such an action is dismissed as moot, the court may still consider whether the district would be liable for the requesting party’s attorney fees. As such, the district should carefully consider any public records request and be sure to comply with a proper request with a reasonable time so as to avoid the potential for litigation. If the district has any reason to believe that the request is improper, however, it should not disclose the records.

Substitute and Conversion Levy Options

Over the last two years, the General Assembly has passed legislation which provides school districts alternative means to increase revenue through the use of two new levy options. School districts may now propose a “substitute levy” pursuant to Ohio Revised Code section 5705.199 or a “conversion levy” pursuant to section 5705.219.

The substitute levy allows a district to raise funds in excess of the standard limitation when the total revenue to be generated from all tax levies that the district is authorized to impose, combined with state and federal funds, will be insufficient to provide for the necessary requirements of the district. A substitute levy may exist for a term of up to ten years, or for a continuing period of time. The substitute levy, thus, was designed to replace emergency levies with a more efficient means to ensure revenue growth over a longer period of time. In the initial year, the substitute levy operates just like the emergency levies it replaces as the board must specify a fixed dollar amount to be derived by the levy. After the first year, however, a substitute levy operates more like a traditional real property tax levy.

During these years, the levy will generate additional revenue based on new real property construction, but it will not create additional tax revenue resulting from inflationary increases to the property values. Additionally, the substitute levy is not subject to the tax reduction factor because it raises a specific dollar amount.

Conversion levies, like substitute levies, are designed to provide a more efficient method to increase revenues without resorting to a levy vote at every cycle. Conversion levies, however, are only available to districts that currently levy taxes above the twenty-mill floor and are available for a period running from January 1, 2010 through December 31, 2014. In order to create a conversion levy, a district must repeal a portion of its levies to achieve an effective rate of twenty mills. The levies that fell above the twenty-mill mark are then converted to a fixed-sum levy. This structure should neutralize the impact of property tax rollbacks and promote stability by generating revenue from the first twenty mills based on the growth in property value, while maintaining a consistent revenue stream from the

millage levied above twenty mills in the conversion levy.

How this impacts your district:

This summary should remind school districts that there are new levy options that may be worth considering based on the financial status of your district. Depending on the condition of your district, these levies may provide more stability by providing longer term revenue streams rather than resorting to submitting repeated emergency levies to the electors. It should be noted that if the board wishes to submit either levy option to the voters, it will have to follow the statutory requirements for passing resolutions and obtaining certifications from the Tax Commissioner as specified in the Revised Code. In sum, if your district is considering a levy, it may want to consider whether it qualifies for either a substitute or conversion levy, and whether the structure of these levies will be advantageous for the stability and growth of the district.

Education Law Speeches/Seminars

Ennis, Roberts & Fischer regularly conducts seminars concerning education law topics of interest to school administrators and staff.

Popular topics covered include:

Cyber law
School sports law
IDEA and Special Education Issues
HB 190 and Professional Misconduct

To schedule a speech or seminar for your district, contact us today!

Upcoming Speeches:

Jeremy Neff at the Special Education Law Workshop on March 5
Special Education Discipline Issues

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