



Members Only

AN INFORMATIONAL BRIEF PREPARED FOR MEMBERS OF THE OHIO GENERAL ASSEMBLY BY THE LEGISLATIVE SERVICE COMMISSION STAFF

Volume 127 Issue 16
November 21, 2008

General Assembly Open Meetings Law*

PREPARED BY: *LYNDA J. JACOBSEN, LSC STAFF ATTORNEY*

REVIEWED BY: *MICHAEL O'NEILL, LSC DIVISION CHIEF*

Introduction

Both the Ohio Constitution and the Ohio Revised Code contain specific provisions requiring General Assembly proceedings to be conducted publicly.¹ Although the state has an Open Meetings Law² that generally requires public officials to conduct official action and deliberations upon official business only in open meetings, the Law does not apply to the General Assembly. Instead, public access to General Assembly sessions and committee meetings is governed by specific provisions applicable only to the General Assembly.

Constitutional requirement--floor actions

Section 13 of Article II of the Ohio Constitution requires that “[t]he proceedings of both houses [of the General Assembly] shall be public, except in those cases which, in the opinion of two-thirds of those present, require secrecy.” Under this requirement, actions taken on the floor of either the House of Representatives or the Senate must be conducted in public, unless two-thirds of the members present agree that those actions require secrecy.

Statutory requirements--committee meetings

Overview

The General Assembly Open Meetings Law, R.C. 101.15, applies to committee meetings of the General Assembly. It generally declares that all meetings of any committee are “public meetings open to the public at all times.” Committees include any committee of either house of the General

Both constitutional and statutory law govern meetings of the General Assembly.

The proceedings of floor sessions of both houses of the General Assembly are open to the public unless, by a two-thirds vote, the members present determine that those proceedings require secrecy.

Committee meetings of the General Assembly are open to the public.

* This *Members Only* brief is an update of an earlier brief on this subject dated October 11, 2006 (Volume 126 Issue 12).



Formal actions of a committee not taken in an open meeting are invalid.

Each General Assembly committee must provide for public and interested party notice of regularly scheduled and special meetings.

Assembly, a joint committee of both houses of the General Assembly, including a conference committee, and a subcommittee of any of those committees. Meetings are prearranged discussions of the public business of a committee by a majority of its members. The law does not apply, however, to most meetings of the Joint Legislative Ethics Committee or to meetings of a caucus. “Caucus” means all of the members of either house of the General Assembly who are members of the same political party.

Notice of committee meetings

Each committee of the General Assembly must establish a reasonable method by which any person may determine (1) the time and place of all of its regularly scheduled meetings and (2) the time, place, and purpose of all of its special meetings. The method must provide that, upon request and payment of a reasonable fee, any person may obtain reasonable advance notice of all meetings at which any specific type of public business will be discussed. Provisions for the required advance notice may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed stamped envelopes provided by the person desiring advance notice. A committee may not hold a regular or special meeting unless it provides at least 24-hours’ advance notice of the meeting to the news media that have

requested to be notified of committee meetings.

Actions taken during committee meetings

In addition to declaring all meetings of a committee to be “public” meetings open to the public at all times, the General Assembly Open Meetings Law invalidates certain committee actions unless they are taken during open meetings. Any action of a committee relating to a bill or resolution or any other formal action of a committee must be taken in an open meeting of that committee or the action is invalid. Additionally, any similar action of a committee is invalid if it is taken in an open meeting but results from deliberations conducted in a meeting not open to the public. Thus, for example, the law cannot be avoided by a majority of a committee’s members conducting prearranged private deliberations on a bill before a formal public vote on the bill. Both the deliberations and the formal committee action must be conducted publicly in order for that action to be valid.

Minutes of committee meetings

The General Assembly Open Meetings Law also requires the minutes of a committee meeting, after specified procedures have been followed, to be open for public inspection. The secretary assigned to the chairperson of a committee must prepare, file, and maintain the



minutes of every regular or special meeting of the committee. At the next regular or special meeting of the committee, it must either approve those minutes, or make corrections to them and then approve the corrected minutes at its next meeting. A committee must make the minutes of its meetings available for public inspection within seven days after a meeting, or not later than its next regular or special meeting, whichever occurs first.

Enforcement

Any person may bring an injunction action in a court of common pleas to enforce the General Assembly Open Meetings Law. The action must be commenced within two years after the date of an alleged violation (e.g., a meeting actually held that was not open to the public) or within two years after the date of a threatened violation (e.g., a committee chairperson indicates that a particular matter will be deliberated or voted on privately). The court must issue an injunction to compel the members of the committee to comply with the Law's requirements upon proof of the alleged or threatened violation.

If a court of common pleas issues an injunction, it also must order the enjoined committee to pay a civil forfeiture of \$500 to the party who sought the injunction and generally must award to that party its court costs and reasonable attorney's fees. The court, in its discretion, may reduce an attorney's fees award if it determines

that (1) based on the ordinary application of statutory and case law as it existed at the time of the alleged or threatened violation, a well-informed committee reasonably would believe that it was not violating or threatening to violate the law, and (2) a well-informed committee reasonably would believe that the conduct or threatened conduct would serve "the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct."³

If a member of a committee knowingly violates an injunction issued by the court of common pleas, that member may be removed from office by an action brought in a court of common pleas by the Franklin County prosecuting attorney or the Attorney General.

The injunction and removal actions are the exclusive remedies for alleged or threatened violations of the General Assembly Open Meetings Law.

If a court of common pleas does not issue an injunction and determines that the bringing of the action constituted frivolous conduct under Ohio law, the court must award to the committee its court costs and the reasonable attorney's fees it incurred in defending the action.

Judicial interpretations

Unlike the state's general Open Meetings Law, the provisions of the General Assembly Open Meetings Law have not been frequently litigated. However, because of similarities

A committee must make minutes of its meetings available within seven days or not later than its next meeting, whichever first occurs.

Violations of the General Assembly Open Meetings Law may become the subject of injunctive proceedings in which a committee is ordered to pay a \$500 civil forfeiture as well as an aggrieved party's court costs and reasonable attorney's fees.



between the two statutes, a court might cite cases determined under the Open Meetings Law in resolving disputes arising under the General Assembly Open Meetings Law.⁴

For example, in *State ex rel. Cincinnati Post v. Cincinnati* (1996), 76 Ohio St.3d 540, the Ohio Supreme Court determined that the requirement that meetings attended by a majority of the members of a public body be open to the public could not be cir-

cumvented by scheduling back-to-back closed meetings each attended by less than a majority of members of the public body, where the same topics of public business were discussed, and where, taken together, the meetings were attended by a majority of that public body. A court interpreting the General Assembly Open Meetings Law could refer to that case. 

Endnotes

¹ Ohio Constitution Article II, Section 13; R.C. 101.15.

² The general Open Meetings Law, R.C. 121.22, specifies that “[a]ll meetings of any public body are declared to be public meetings open to the public at all times.” For the purpose of that section, “public body” includes any decision-making body, or committee or subcommittee of a decision-making body, of a state agency, institution, or authority; any decision-making body, or committee or subcommittee of a decision-making body, of a county, township, municipal corporation, school district, or other political subdivision or local public institution; and a court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for any matter related to the district other than litigation involving it.

³ R.C. 101.15(E)(2)(a).

⁴ Section 7 of Article II of the Ohio Constitution requires both the House of Representatives and the Senate to “determine its own *rules* of proceeding.” In addition, then, to the constitutional and statutory requirements discussed in this brief, Article II, Section 7’s rule requirement must be borne in mind when an issue of committee meetings procedure arises. See, for example, House Rules 34 to 42 and Senate Rules 19 to 32 for the 127th General Assembly. A few of these rules specifically amplify or incorporate by reference the provisions of the General Assembly Open Meetings Law (R.C. 101.15).

As a general rule, if the General Assembly fails to comply with a rule that it has adopted to govern its proceedings, such a failure is a nonjusticiable issue; no court may order the General Assembly to comply with the rule. Such a rule is nonjusticiable because of the doctrine of separation of powers. The authority of both houses of the General Assembly to adopt rules governing their own proceedings is given to them pursuant to Article II, Section 7, and not to the Judicial or Executive Branches of the Ohio government. The General Assembly is the only one with authority regarding the issuance and observance of its own rules.

A legislative rule for which failure to comply is a nonjusticiable issue under the doctrine of separation of powers has the following characteristics: (a) it requires the performance of duties that are purely legislative in character, (b) it requires duties to be performed over which the General Assembly has exclusive control, and (c) it requires the performance of a duty that



the Ohio Constitution does not impose on the General Assembly.

The above precepts regarding nonjusticiability of legislative rules were set out by the Ohio Supreme Court in two notable cases. The first, *State ex. rel. City Loan and Savings Co. of Wapakoneta v. Moore* (1931), 124 Ohio St. 256, addressed a situation in which the General Assembly enacted two acts. The first act revised the law governing automobile certificates of title. The second act returned the law to the way it was before the first act was enacted. The first act was signed by the Governor and therefore had become law, but had not become effective because the 90-day referendum period had not elapsed. The second act was enacted, signed by the Governor, and became law before the 90-day referendum period for the first act had elapsed. The second act, however, had not become effective because the 90-day referendum period for that second act had not elapsed. Thus, a short window of time in which the first act was effective appeared to be open. An action in mandamus was brought to require the Portage County clerk of courts to take action under the first act after its 90-day period had elapsed but before the 90-day period for the second act had elapsed. The Court, in denying the writ, held that the second act, although it was not effective as a piece of legislation, was in substance a motion to reconsider, and therefore effective to reconsider and nullify the first act on the date of the second act's enactment. The fact that the second act was not in the form of a motion to reconsider and did not comply with the timing requirements for a motion to reconsider under the rules of the General Assembly was not determinative. The Court held that the proper course of action by the General Assembly should have been a timely motion to reconsider, but since such a motion for reconsideration was not a constitutional requirement and because such a rule is entirely within the control of the legislature, it did not have to be followed to make the second act effective. The Court concluded by stating, "Having made the rule, it should be regarded, but a failure is not the subject-matter of judicial inquiry." (124 Ohio St. at 259.)

The second case of more recent vintage was *State ex. rel. Grendell, v. Davidson* (1999), 86 Ohio St.3d 629. In that case, an appropriation item that had been included in both the House and Senate versions of the biennial operating budget for the state was deleted in the Conference Committee Report in violation of the Joint Rules of the House and Senate, which specifically provided that the conference committee could only deal with matters of difference between the two houses. The Court, in holding that the Joint Rule should have been complied with, determined that forcing compliance with the Joint Rule would be inappropriate because the Joint Rule was not imposed by the Constitution and it dealt with the performance of duties that are purely legislative in character and over which the General Assembly has complete control. Requiring compliance would be a violation of the doctrine of separation of powers because the General Assembly, and not the courts, had been given the authority under the Constitution to make rules to govern its proceedings. Inquiry by the Court in this circumstance, beyond a cursory determination as to whether the Constitution had been violated, would violate that constitutionally mandated separation.

Thus, as this brief notes, the provisions of the General Assembly Open Meetings Law have not been frequently litigated. But, its "rules of proceeding," if not followed by a committee of the House of Representatives or the Senate, could lead to litigation, and one could readily expect the nonjusticiable principles discussed above to be raised in that litigation. In that situation, however, it is unclear whether the "Enforcement" provisions of the Law discussed in this brief would be found by the courts to prevail over the nonjusticiable principles.

**PUBLISHED BY THE OHIO
LEGISLATIVE SERVICE
COMMISSION STAFF**

9th Floor
Vern Riffe Center
Columbus, Ohio
614/466-3615

Director
Mark C. Flanders

Contributing Author
Lynda J. Jacobsen,
LSC Staff Attorney

Reviewer
Michael O'Neill,
LSC Division Chief

Layout & Design
Jeanette Cupp