

Members Only



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General Assembly Open Meetings Law*

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The Ohio Constitution, Ohio Revised Code, and rules of each house of the General Assembly 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 on official business only in open meetings, it does not apply to the General Assembly. Instead, public access to General Assembly proceedings is governed by specific provisions that apply only to the General Assembly.

Proceedings of General Assembly open to public

Ohio Constitution, Article II, Section 13 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." And, Ohio Constitution, Article II, Section 7 requires both the House of Representatives and the Senate to "determine its own rules of proceeding."

General Assembly Open Meetings Law

In accordance with these provisions, the General Assembly enacted the General Assembly Open Meetings Law to declare that all committee meetings are "public meetings open to the public at all times," and to invalidate certain committee actions if not taken during open meetings.³ The law applies to any committee of either house of the General Assembly, a joint committee of both houses, including a conference committee, and a subcommittee of any of those committees. The law does not apply, however, to most meetings of the Joint Legislative Ethics Committee or to meetings of a caucus. Finally, a meeting is any prearranged discussion of the public business of a committee by a majority of its members.⁴

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

Constitutional law, statutory law, and the rules of each house govern meetings of the General Assembly.

The proceedings 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.



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

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

Notice of committee meetings

Each committee must establish a reasonable method that allows a person to 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. The committee may provide the required advance notice by mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed stamped envelopes provided by the person who requested 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 requested to be notified of committee meetings.⁵

Actions taken during committee meetings

The General Assembly Open Meetings Law invalidates certain committee actions unless they are taken during open meetings. Any formal action of a committee including any action relating to a bill or resolution 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 that was 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.⁶

Minutes of committee meetings

The General Assembly Open Meetings Law also requires the minutes of a committee meeting to be open for public inspection. The secretary assigned to the chairperson must prepare, file, and maintain the minutes of every meeting of the committee. At its next meeting, the committee must approve the minutes or make corrections to them and approve the corrected minutes at the next meeting. The minutes must be made available for public inspection not later than seven days after the meeting or not later than the committee's next meeting, whichever occurs first.⁷

Enforcement

Any person may bring an injunction action in a court of common pleas to enforce the General Assembly Open Meetings Law not later than two years after the occurrence of an alleged violation (e.g., a meeting actually held that was not open to the public) or 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 require the members of the committee to comply with the Law's requirements upon proof of the alleged or threatened violation.⁸



If a court issues an injunction, the court 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.

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 Prosecutor 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.⁹

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 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.¹⁰

Rules of the Senate and House of Representatives

The current rules of the Senate and of the House of Representatives specifically amplify or incorporate by reference the provisions of the General Assembly Open Meetings Law.¹¹ For instance, Senate Rule 21 specifies all Senate committee meetings are governed by the General Assembly Open Meetings Law. House Rule 36 requires the chair of a committee to give at least 24-hours' advance notice of a committee meeting in accordance with the General Assembly Open Meetings Law.

Nonjusticiability

Under the doctrine of separation of powers, the General Assembly's failure to comply with its self-imposed obligations is a nonjusticiable issue because the Constitution grants the General Assembly, rather than the executive or judicial branches, the authority to adopt and observe such obligations.¹² In other words, a court may find the General Assembly's failure to comply with certain elements of the General Assembly Open Meetings

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.



Law or rules of either house is unenforceable, despite the Law's enforcement provisions. However, the General Assembly must comply with the constitutional requirement that its

proceedings remain public because the requirement is mandated by the Ohio Constitution rather than self-imposed by the General Assembly.



Endnotes

¹ Ohio Const., art. II, sec. 13; R.C. 101.15; House Rules 33A to 42; Senate Rules 19 to 32.

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(B) and (D).

⁴ R.C. 101.15(A) and (F). "Caucus" means all of the members of either house of the General Assembly who are members of the same political party.

⁵ R.C. 101.15(C).

⁶ R.C. 101.15(D).

⁷ R.C. 101.15(B).

⁸ R.C. 101.15(E)(1).

⁹ R.C. 101.15(E)(2).

¹⁰ For example, in *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540 (1996), 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 circumvented 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.

¹¹ House Rules 33A to 42; Senate Rules 19 to 32.

¹² *State ex. rel. Grendell, v. Davidson*, 86 Ohio St.3d 629 (1999) (General Assembly failed to adhere to a joint rule limiting the scope of matters to be considered by a conference committee; Ohio Supreme Court held that requiring compliance would be a violation of the doctrine of separation of powers); *City Loan and Savings Co. of Wapakoneta v. Moore*, 124 Ohio St. 256, 259 (1931) (General Assembly failed to adhere to a joint rule regarding the bringing of a motion to reconsider; Ohio Supreme Court concluded the General Assembly's "failure is not the subject matter of judicial inquiry").

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