

Insights, News & Events

## BOARDS OF EDUCATION BEWARE: OHIO SUPREME COURT CLOSES DOOR ON OPEN MEETING LOOPHOLES

Insights  
May 17, 2016

Because public body meetings are required to be open to the public in Ohio, just exactly what constitutes a “meeting” of a public body has long been a matter of some debate, especially as means of communication have expanded dramatically in recent years. Can Board members send and receive private email communications to each other on school matters? Can a Board President conduct straw polls of individual members in one-on-one telephone conferences? Can Board members tweet about public matters when she is followed by a majority of other Board members? Can an email be sent by the Superintendent to other Board of Education members seeking input from each?

These are just a few of the questions that had been left unanswered – until the Ohio Supreme Court’s May 3, 2016 decision in *White v. King*. And the state Supreme Court has now let it be known that the answer to these and just about every other similar question is a resounding “No.” The court held that “any” private prearranged discussion of public business is prohibited, whether that discussion occurs face-to-face, on the telephone, by video conference, by email, by text, by tweet, or by any other form of communication.

### Industry Focus

#### Education

### **Critical Editorial Leads To Private Correspondence**

In *White*, the Columbus Dispatch ran an editorial critical of four members of the Olentangy Local School District Board of Education, including the Board President. The editorial praised the fifth member, Mr. White, for his vote against a measure passed by the majority requiring that any communication between Board members and the staff to first pass through the Superintendent or Treasurer.

The Board President then suggested that he and the three other majority members meet with the Superintendent and district staff to draft a response to the editorial. The Board members, with the exception of Mr. White, engaged in a series of email communications among themselves and the staff resulting in a final written response that the Board President sent to the Columbus Dispatch identifying the four members who approved of the communication.

Mr. White brought suit against the four other members. His lawsuit complained that they violated Ohio's public meeting law, but a lower court dismissed his case and held that the communications were not covered by state public meeting laws.

### **Ohio Supreme Court: Open Meeting Laws Are Broad**

The Ohio Supreme Court reversed this lower court ruling and held that the communications fell under the public meeting law. The court noted that the statute's definition of a meeting – "any prearranged discussion of the public business of the public body by a majority of its members" – was clear, unambiguous, and applied to any form of communication, not just meetings involving "real time" communication. This was true even though the Board of Education approved the actions of the members and the response to the newspaper in an open meeting.

The state Supreme Court, citing decisions from other states interpreting similar statutes, went out of its way to emphasize the broad scope of its decision. It specifically enumerated all the forms of modern

communication in addition to email that cannot be utilized privately by a majority of Board members in discussing public business, even if the communications occur as a "series" of communications.

### **What Does This Decision Mean For You?**

This decision has significant ramifications for members of Boards of education in Ohio who often connect with one another via email, phone, Facebook, and other means of communication to discuss public business. As a practical matter, it means that Boards of education cannot wait to review their policies and procedures to ensure that they comply with this case.

Here are some proactive steps you should consider:

- revise Board policies regarding Board member communication that either are inconsistent with *White* or not adequately crafted to ensure that "meetings" are not conducted outside the presence of the public;
- develop policies for responding to requests for Board response that may be initiated by an individual to a majority of the Board;
- ensure that superintendent and staff communications to the Board are informative, may contain suggested action, etc., but do not solicit input from each of the Board members. Such input will come at the meeting in which the matter is considered;
- ensure that all Board communication to the public is approved by a majority of the Board at a public meeting; and
- require that all presentations to the Board be made in a public meeting or be made to a representative who can then report to the Board as a whole in a public meeting.

If you have any questions about this case, or how it may affect your organization, please contact your

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*This Legal Alert provides an overview of a specific Ohio Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*