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The “reply-to-all” button was never a good idea anyway: Ohio Supreme Court holds that public body discussions via email can be public meetings

On May 3, 2016, the Ohio Supreme Court answered a question that is very relevant in today’s technology-heavy environment: Does Ohio’s Sunshine Law (governing meetings of public bodies) apply to electronic discussions?

The answer is yes. Previously, the only decisions in Ohio were court of appeals decisions. Critically, those decisions had held that the Sunshine Law did not apply to email discussions. Therefore, electronic discussions among a majority of board members, council members, trustees and the like were permissible and “reply-to-all” responses were acceptable in email discussions about public issues.

That has now changed. In *White v. King*, 2016-Ohio-2770, the Ohio Supreme Court held that Ohio’s Sunshine Law prohibits *any* private prearranged discussion of public business by the members of a public body. The Sunshine Law applies regardless of whether the discussion is face-to-face or via some electronic medium (such as email, text, or video conference).

In *White*, a majority of school board members had emailed each other back and forth regarding a proposed response to a newspaper editorial. One of the other board members disagreed with doing so. Eventually, that board member sued the rest of the board, alleging that the email discussion violated the Sunshine Law.

The Ohio Supreme Court agreed. The Court analogized to its prohibition of serial meetings of less than a majority of board members (which had been designed to avoid creating a majority, so the Sunshine Law would not apply). The Court held that a majority of board members discussing public business, via email, subverted

the purpose of the Sunshine Law, just as serial meetings did.

Accordingly, the Court concluded that serial email communications by a majority of a public body could constitute a public meeting, subject to the requirements of the Sunshine Law. This holding represents a major extension of the Sunshine Law (to email discussions), so please be very careful when discussing public business by email. Elected board members, council members, county commissioners, and trustees should avoid the “reply-to-all” button if a majority of your counterparts are on the same email chain.

It is important to note that this decision will not affect a city manager or township administrator from sharing information with all city council members or board members. However, it will affect how the elected officials then respond to that initial email. A majority of the public body should not be on the resulting chain of emails in any discussion about public business. In other words, they should not “reply-to-all” in this scenario.

If you have any questions regarding this important decision, Ohio’s Sunshine Law, or Ohio’s Public Records Act, please feel free to contact [Thomas Allen](#) or any other member of Frost Brown Todd’s [Government Services Practice Group](#).

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