

Cross Your T's and Dot Your I's: A Reminder to Keep General Minutes of Executive Sessions

Apr 21, 2021

Categories:

Publications

If you are a public entity in Ohio, you are permitted to hold non-public meetings (executive sessions) for several specific reasons. One of the listed categories is for what has been termed "personnel-related matters." *See* Ohio Rev. Code § 121.22(G)(1). That is because the statute permits a public entity to go into executive session "[t]o consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official . . . ." (Hence, "personnel-related.")

This specific executive session statute has been the subject of extensive litigation, so public entities would be well-advised to know what to do with their *motions* to go into executive session.

First, in its motion, a public entity cannot just claim that it is going into executive session for "personnel" matters. *See State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001). The motion must be more specific than just citing personnel matters.

Second, the motion can't simply avoid that issue by then citing the entire laundry list of all possible personnel-related reasons. *E.g., Ames v. Portage County Bd. Of County Comm'rs*, 2019-Ohio-3730 (11th Dist.) (holding that public entities are required to state, in their motion to enter executive session, which *particular* purpose or purposes that the public entity wishes to discuss during executive session.)

Now, the focus is (was) on the minutes of that executive session. Again, we start with the statute. In this case, it is Ohio Rev. Code § 121.22(C), which permits public entities to keep general minutes of the executive session portion of their meetings: "The minutes need only reflect the general subject matter of discussions in executive sessions . . . ."

On March 29, 2021, the Twelfth District Court of Appeals in Ohio addressed another challenge to several executive sessions. *State*

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

ex. rel Hicks v. Clermont Cty. Bd. Of Comm'rs,12th Dist. Clermont No. CA2020-06-032, 2021-Ohio-998. This time, the important legal aspect of the decision is the analysis regarding the minutes of the executive session.

Called upon to defend several executive sessions, the public entity first relied on its motions to go into executive session. However, the motions had cited the laundry list of reasons, so they were not much help in recalling who or what was discussed in those meetings. Second, the elected officials tried to rely on their memory. However (and quite understandably), they could not specifically recall who or what was discussed in the years-old executive sessions at issue.

That meant that the validity of the executive sessions rode on the minutes. The public entity, however, did not "exercise its option" to keep general minutes of its executive sessions. *Id.* at ¶ 42. It therefore had no ability to prove that the executive sessions did in fact cover executive session-appropriate topics, and therefore a majority of the court awarded judgment and fees in favor of the challenger.

It is important to note that one judge did dissent, contending that the relator in such cases no longer carries the burden of proof. The relator in this case admitted he did not have any knowledge of what occurred in the executive sessions. Therefore, in the dissenter's view, the public entity never had the burden to come forward with evidence to defend its executive sessions (other than the original motions, of course). The dissenter noted that the decision now effectively forces public entities to keep minutes of their executive sessions.

Our takeaway of the *Hicks* case: public entities would be well-advised, for now, to take *general* minutes of their executive sessions. The level of detail is not burdensome, needing only to reflect the "general subject matter." Essentially, public entities should put enough detail in the notes to be able to prove that the subject of the executive session was in fact a permitted subject. A minute as short as this should suffice to meet the public entity's burden: "A discussion to discipline a public employee occurred in executive session."

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

The debate over how much *Hicks* changes the burden on public entities is not over, but public entities should *always* be prepared to defend their reasons for going into executive session, *Hicks* notwithstanding. At a minimum, keeping minutes of executive sessions reflects a best practice, so public entities are prepared to defend their executive sessions, regardless of who holds the burden of proof in any challenge.

If you have any questions regarding Ohio's Sunshine Law or Ohio's Public Records Act, please feel free to contact Thomas Allen, Brodi Conover, or any other member of Frost Brown Todd's Government Services Practice Group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons