



Supreme Court of Ohio Delivers Victory for Public Bodies in Open Meetings Act Case

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Public bodies generally deliberate and conduct their business in meetings that are open to the public at large. However, the Ohio Open Meetings Act (“OMA”) provides several topics that are exceptions to this general rule. When Public bodies discuss one or more of these topics, they are entitled to enter executive session, and their deliberations are not open to the public. But what is the proper way to memorialize an executive session? And who bears the burden of proving whether executive session discussions violate the OMA? On Dec. 1, the Supreme Court of Ohio addressed these questions in its decision in [State ex rel. Hicks v. Clermont County Board of Commissioners](#), 2022–Ohio–4237.

The Case: State ex rel. Hicks v. Clermont County Board of Commissioners

In *State ex rel. Hicks*, the petitioner alleged that the Board of Commissioners entered executive session on nine different occasions to unlawfully discuss topics that were not permitted to be discussed. Given that the petitioner was not in the meetings, he was unable to produce evidence of what was actually discussed, except for a few minimal notes that were provided in discovery. Because of the time that had elapsed between the meetings and the lawsuit being filed, none of the commissioners could remember who or what was discussed during any of the executive sessions at issue.

With nobody able to “prove” what was actually discussed, both sides filed competing motions for summary judgment. The trial court, applying the framework set forth in *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 2012–Ohio–2569, 972 N.E.2d 115 (12th Dist.), found that the board failed to carry its burden to produce evidence showing that it entered the executive sessions for a valid statutory reason and did not discuss improper topics during the

sessions. In a 2-1 decision, the Twelfth District Court of Appeals affirmed.

The Court's Decision

Plaintiffs bear the burden of proving a violation of the OMA.

The Supreme Court of Ohio reversed and remanded the trial court and Twelfth District decisions. While the Court acknowledged the OMA is to be liberally construed to ensure that public bodies conduct deliberations on official business in meetings that are open to the public, “no construction of the OMA, even a liberal one, changes the default rule that a plaintiff alleging violations of the OMA bears the burden of proving those violations.” Thus, while the underlying courts held that the board’s inability to “prove” its compliance with the law constituted a violation, the Court disagreed. “[T]o receive relief, the plaintiff must prove a violation of the OMA. There is no requirement for the public body to conversely prove that no violation occurred.”

Public bodies can list all statutory topics they might discuss in executive session, without necessarily discussing them all.

The Court also discussed its decision in *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 748 N.E.2d 58 (2001) in relation to the present case, and how public bodies generally must memorialize executive sessions to comply with the OMA. In *Long*, the Court held that the written minutes for public meetings of a village council had violated the OMA because they were not sufficiently specific and contained inaccuracies. Among other reasons, the Court held that in *Long*, the written minutes did not contain sufficient explanation for entering executive session, because the minutes merely stated general reasons such as “personnel and finances,” “personnel,” and “personnel matters.” As a result, the Court held that a motion to enter executive session must contain the statutory reason for entering executive session.

Reflecting on *Long* in *State ex rel. Hicks*, the Court expressly found “[the OMA] never says that a public body must discuss every single topic that it includes in its motion to enter executive session.” The

board of a public body simply may not discuss additional topics that are not included in its motion to enter executive session. “A public body must be able to introduce a motion that includes all the topics it might reasonably discuss during an executive session. There is no rule to the contrary in R.C. 121.22, and there is no reason for this court to impose a rule that is not contained in the statute.”

Frost Brown Todd’s advocacy on behalf of public bodies around the State.

Frost Brown Todd’s team filed “friends of the court” briefs with the Supreme Court of Ohio on behalf of amici curiae seeking reversal, with Charles Galvin presenting their case at [oral argument](#) before the Court. Those amici curiae included the Ohio Municipal League, Ohio Township Association, Coalition of Large Ohio Urban Townships, County Commissioners Association of Ohio, Ohio School Boards Association, Ohio Association of School Business Officials, and Buckeye Association of School Administrators. If you have questions about this decision, please contact any member of Frost Brown Todd’s [Government Services](#) or [Appellate](#) practice groups.

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