

The Ohio Open Meetings Act

Chapter Nine: Executive Session

IX. Chapter Nine: Executive Session

Executive Session Overview

- Executive session is a portion of an open meeting from which the public can be excluded.
- Proper procedure is required to move into executive session:
 - Meeting must always begin and end in open session, where public may be present
 - Motion on the record to move into executive session, followed by a second
 - Specific reason for executive session must be put in the motion and recorded
 - Roll call vote, which must be approved by the majority of a quorum of the public body
 - Motion and vote recorded in the meeting minutes
- Executive session can only be held for one of the following reasons:
 - Certain personnel matters
 - Purchase or sale of property
 - Pending or imminent court action
 - Collective bargaining matters
 - Matters required to be kept confidential
 - Security matters
 - Hospital trade secrets
 - Confidential business information of an applicant for economic development assistance
 - Veterans Service Commission applications
- Discussion in executive session should be limited to the specific, statutory reason for the executive session.
- The public body can invite non-members to be present in an executive session, but cannot exclude other members of the public body from the executive session.
- Discussions in executive session are not automatically confidential, but other confidentiality rules may apply; public records considered in the executive session may be accessible through the Public Records Act.
- The public body may not vote or make any decisions in executive session.

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A. General Principles

An “executive session” is a conference between members of a public body from which the public is excluded.¹⁰³⁴ The public body, however, may *invite* anyone it chooses to attend an executive session.¹⁰³⁵ The Open Meetings Act strictly limits the use of executive sessions. First, the Open Meetings Act limits the matters that a public body may discuss in executive session.¹⁰³⁶ Second, the Open Meetings Act requires that a public body follow a specific procedure to adjourn into an executive session.¹⁰³⁷ Finally, a public body may not take any formal action, such as voting or otherwise reaching a collective decision, in an executive session – any formal action taken in an executive session is invalid.¹⁰³⁸

A public body may only discuss matters specifically identified in R.C. 121.22(G) in executive session and may only hold executive sessions at regular and special meetings.¹⁰³⁹ One court has held that a public body may discuss other, related issues if they have a direct bearing on the permitted matter(s).¹⁰⁴⁰ If a public body is challenged in court over the nature of discussions or deliberations held in executive session, the burden of proof lies with the public body to establish that one of the statutory exemptions permitted the executive session.¹⁰⁴¹

The Open Meetings Act does not prohibit the public body or one of its members from disclosing the information discussed in executive session.¹⁰⁴² However, other provisions of law may prohibit such disclosure.¹⁰⁴³

Note: The privacy afforded by the Open Meetings Act to executive session discussions does not make confidential any documents that a public body may discuss in executive session. If a document is a “public record” and is not otherwise exempt under one of the exemptions to the Public Records Act, the record will still be subject to public disclosure even if the public body appropriately discussed it in executive session. In other words, an executive session under the Open Meetings Act is not an exemption for public records under the Public Records Act. For instance, if a public body properly discusses pending litigation in executive session, a settlement agreement negotiated during that executive session and reduced to writing may be subject to public disclosure.¹⁰⁴⁴

B. Permissible Discussion Topics in Executive Session

There are very limited topics that the members of a public body may consider in executive session:

1. *Certain personnel matters when particularly named in motion*¹⁰⁴⁵

A public body may adjourn into executive session:

- To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; and
- To consider the investigation of charges or complaints against a public employee, official, licensee, or regulated individual,¹⁰⁴⁶ unless the employee, official, licensee, or regulated individual requests a public hearing;¹⁰⁴⁷

but

- A public body may not hold an executive session to consider the discipline of an elected official for conduct related to the performance of the official’s duties or to consider that person’s removal from office.

A motion to adjourn into executive session must specify which of the *particular* personnel matter(s) listed in the statute the movant proposes to discuss. **A motion “to discuss personnel matters” is not sufficiently specific and does not comply with the statute.**¹⁰⁴⁸ One court has concluded that a public body violated the Open Meetings Act by going into executive session for the stated purpose of an employee’s “evaluation.” That court did not “necessarily disagree” that the Act allows discussion on an employee’s “job performance” in executive session, but it concluded that “the

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public body must specify the context in which ‘job performance’ will be considered by identifying one of the statutory purposes set forth in R.C. 121.22(G).¹⁰⁴⁹ The motion need not include the name of the person involved in the specified personnel matter¹⁰⁵⁰ or disclose “private facts.”¹⁰⁵¹

Appellate courts disagree on whether a public body must limit its discussion of personnel in an executive session to a specific individual or may include broader discussion of employee matters. At least three appellate courts have held that the language of the Open Meetings Act clearly limits discussion in executive session to consideration of a specific employee’s employment, dismissal, etc.¹⁰⁵² These court decisions are based on the plain language in the Act, which requires that “all meetings of any public body are declared to be open to the public at all times,”¹⁰⁵³ meaning any exemptions to openness should be drawn narrowly. A different appellate court, however, looked to a different provision in the Act that permits the public body to exclude the name of any person to be considered during the executive session as allowing general personnel discussions.¹⁰⁵⁴

2. *Purchase or sale of property*

A public body may adjourn into executive session to consider the purchase of property of any sort – real, personal, tangible, or intangible.¹⁰⁵⁵ A public body may also adjourn into executive session to consider the sale of real or personal property by competitive bid, or the sale or disposition of unneeded, obsolete, or unfit property under R.C. 505.10, if disclosure of the information would result in a competitive advantage to the person whose personal, private interest is adverse to the general public interest.¹⁰⁵⁶ No member of a public body may use this exemption as subterfuge to provide covert information to prospective buyers or sellers.¹⁰⁵⁷

3. *Pending or imminent court action*

A public body may adjourn into executive session with the public body’s attorney to discuss a pending or imminent court action.¹⁰⁵⁸ Court action is “pending” if a lawsuit has been commenced, and it is “imminent” if it is on the brink of commencing.¹⁰⁵⁹ Courts have concluded that threatened litigation is imminent and may be discussed in executive session.¹⁰⁶⁰ Additionally, a general discussion of legal matters is not a sufficient basis for invoking this provision.¹⁰⁶¹ Note that a member of a public body is not necessarily the public body’s duly-appointed counsel simply because the member happens to also be an attorney.¹⁰⁶²

4. *Collective bargaining matters*

A public body may adjourn into executive session to prepare for, conduct, or review a collective bargaining strategy.¹⁰⁶³

5. *Matters required to be kept confidential*

A public body may adjourn into executive session to discuss matters that federal law or regulations or state statutes require the public body to keep confidential.¹⁰⁶⁴ The common law attorney-client privilege does not qualify under this enumerated exemption to allow general legal advice in executive session because the public body is not *required* to assert the privilege.¹⁰⁶⁵

6. *Security matters*

A public body may adjourn into executive session to discuss details of security arrangements and emergency response protocols for a public body or public office if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.¹⁰⁶⁶

7. *Hospital trade secrets*

Certain hospital public bodies established by counties, joint townships, or municipalities may adjourn into executive session to discuss trade secrets as defined by R.C. 1333.61.¹⁰⁶⁷

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8. Confidential business information of an applicant for economic development assistance¹⁰⁶⁸

This topic requires that the information to be discussed in executive session be directly related to economic development assistance of specified types listed in the statute.¹⁰⁶⁹ “A unanimous quorum of the public body [must determine], by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.”¹⁰⁷⁰

9. Veterans Service Commission applications

A Veterans Service Commission must hold an executive session when considering an applicant’s request for financial assistance unless the applicant requests a public hearing.¹⁰⁷¹ Note that, unlike the previous seven discussion topics, discussion of Veterans Service Commission applications in executive session is mandatory.

C. Proper Procedures for Executive Session

A public body may only hold an executive session at a regular or special meeting, and a meeting that includes an executive session must always begin and end in an open session.¹⁰⁷² In order to begin an executive session, there must be a proper motion approved by a majority¹⁰⁷³ of a quorum of the public body, using a roll call vote.¹⁰⁷⁴

1. The motion

A motion for executive session must specifically identify “which one or more of the approved matters listed ... are to be considered at the executive session.”¹⁰⁷⁵ Thus, if the public body intends to discuss one of the matters included in the personnel exemption in executive session, the motion must specify which of those specific matters it will discuss (e.g., “I move to go into executive session to consider the promotion or compensation of a public employee.”).¹⁰⁷⁶ The public body must specifically identify which of the listed personnel matters set forth in R.C. 121.22(G)(1) it will discuss. It is not sufficient to simply state “personnel” as a reason for executive session.¹⁰⁷⁷ The motion does not need to specify by name the person whom the public body intends to discuss.¹⁰⁷⁸ Similarly, reiterating “the laundry list of possible matters from R.C. 121.22(G)(1) without specifying which of those purposes [will] be discussed in executive session” is improper.¹⁰⁷⁹

2. The roll call vote

Members of a public body may adjourn into executive session only after a majority of a quorum of the public body approves the motion by a roll call vote.¹⁰⁸⁰ The vote may not be by acclamation or by show of hands, and the public body should record the vote in its minutes.¹⁰⁸¹

Although a proper motion is required before entering executive session, a motion to end the executive session and return to public session is not necessary because the closed-door discussion is “off the record.” Similarly, a public body does not take minutes during executive session. Note that any minutes taken during executive session may be subject to the Public Records Act.¹⁰⁸² The minutes of the meeting need only document a motion to go into executive session that properly identifies the permissible topic or topics that the public body will discuss, as well as the return to open session (e.g., “We are now back on the record.”).

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Notes:

¹⁰³⁴ *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. No. 90-P-2193, 1991 WL 132214 (Jul. 19, 1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. No. 89-CA004624, 1990 WL 72316 (May 23, 1990). NOTE: R.C.121.22(G) prohibits executive sessions for sanitation courts as defined in R.C. 121.22(B)(1)(c).

¹⁰³⁵ *Chudner v. Cleveland City School Dist.*, 8th Dist. No. 68572, 1995 WL 472805 (Aug. 10, 1995) (inviting select individuals to attend an executive session is not a violation as long as no formal action of the public body will occur); *Weisel v. Palmyra Twp. Bd. of Zoning Appeals*, 11th Dist. No. 90-P-2193, 1991 WL 132214 (Jul. 19, 1991); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. No. 89-CA004624, 1990 WL 72316 (May 23, 1990).

¹⁰³⁶ R.C. 121.22(G)(1)-(8), (I); see also *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 28-29 (finding evidence showed that discussion in executive sessions was about proposed school closing and not the purpose stated in the executive session motions).

¹⁰³⁷ R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); see also *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding respondents violated R.C. 121.22(G)(1) by using general terms like “personnel” and “personnel and finances” instead of one or more of the specified statutory purposes listed in division (G)(1)); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 473 (10th Dist. 2001) (finding a majority of a quorum of the public body must determine, by roll call vote, to hold executive session); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (Jun. 30, 1995) (holding that “police personnel matters” does not constitute substantial compliance because it does not refer to any of the specified purposes listed in R.C. 149.43(G)(1)); *Vermillion Teachers’ Assn. v. Vermillion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524, 531-32 (6th Dist. 1994) (finding a board violated 121.22(G) when it went into executive session to discuss a stated permissible topic but proceeded to discuss another, non-permissible topic); 1988 Ohio Op. Att’y Gen. No. 029.

¹⁰³⁸ R.C. 121.22(H); *Keystone Committee v. Switzerland of Ohio School Dist. Bd. of Edn.*, 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 37-39 (finding an attempt to “cure” a violation “with an open vote that immediately followed presentations and discussions held behind closed doors in executive sessions is exactly the type of conduct the Act seeks to prohibit”); *Mathews v. E. Local School Dist.*, 4th Dist. No. 00CA647, 2001 WL 243501 (Jan. 4, 2001) (holding that a board was permitted to discuss employee grievance in executive session, but was required to take formal action by voting in an open meeting); *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990) (holding that, once a conclusion is reached regarding pending or imminent litigation, the conclusion is to be made public, even though the deliberations leading to the conclusion were private); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. Richland No. 03 CA 55, 2003 WL 23652878 (Dec. 24, 2003); *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 19 (4th Dist.) (finding that, although a resolution to adopt proposal to create a new school district was later adopted in open session, the resolution was invalid because board members gave personal opinions and indicated how they would vote on the proposal in an executive session); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage Np. 2019-P-0018, 2019-Ohio-5311, ¶ 20 (finding that the board, while in executive session, improperly discussed and deliberated on several issues outside permissible executive session topics).

¹⁰³⁹ R.C. 121.22(G).

¹⁰⁴⁰ *Chudner v. Cleveland City School Dist.*, 8th Dist. No. 68572, 1995 WL 472805 (Aug. 10, 1995) (finding that issues discussed in executive session each had a direct bearing on topic that was permissible subject of executive session discussion).

¹⁰⁴¹ *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989); *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. No. CA2012-02-013, 2013-Ohio-1111, ¶ 61 (holding that board violated Open Meetings Act when the board minutes failed to indicate the stated purpose for the executive session); *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶ 25 (adopting burden shifting analysis). But see *Brenneman Bros v. Allen Cty. Comms.*, 3d Dist. No. 1-14-15, 2015-Ohio-148, ¶¶ 18-19 (holding that party asserting violation has the burden to prove it, and public officials are presumed to have followed the law).

¹⁰⁴² But see R.C. 121.22(G)(2) (providing that “no member of a public body shall use [executive session under property exemption] as a subterfuge for providing covert information to prospective buyers or sellers”).

¹⁰⁴³ See, e.g., R.C. 102.03(B) (providing that a public official must not disclose or use any information acquired in course of official duties that is confidential because of statutory provisions or that has been clearly designated as confidential); *Humphries v. Chicarelli*, S.D. Ohio No. 1:10-cv-749, 2012 WL 5930437 (Nov. 27, 2012) (prohibiting city council members from testifying as to attorney-client privileged matters discussed during executive session); *Talismanic Properties, LLC v. City of Tipp City*, S.D. Ohio No. 3:16-cv-285, 2017 U.S. Dist. LEXIS 90290, **6-7 (June 9, 2017) (holding that when city council entered executive session to discuss pending litigation—this case—and allegedly made the decision not to mediate, those discussions were privileged and not subject to discovery in the subsequent litigation when (1) the council did not violate the Open Meetings Act and (2) even if it had, the information was protected by attorney-client privilege).

¹⁰⁴⁴ *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Comms.*, 80 Ohio St.3d 134, 138, 1997-Ohio-353 (“Since a settlement agreement contains the result of the bargaining process rather than revealing the details of the negotiations which led to the result, R.C. 121.22(G)(3), which exempts from public view only the conferences themselves, would not exempt a settlement agreement from disclosure.”) (quoting *State ex rel. Kinsley v. Berea Bd. of Edn.*, 64 Ohio App.3d 659, 664 (8th Dist. 1990)).

¹⁰⁴⁵ R.C. 121.22(G)(1).

¹⁰⁴⁶ R.C. 121.22(B)(3) (defining “regulated individual” as (a) a student in a state or local public educational institution or (b) a person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or intellectual disability, disease, disability, age, or other condition requiring custodial care).

¹⁰⁴⁷ This provision does not create a substantive right to a public hearing. *Matheny v. Frontier Local Bd. of Edn.*, 62 Ohio St.2d 362, 368 (1980) (“[T]he term ‘public hearing’ in subdivision (G)(1) of [R.C. 121.22] refers only to the hearings elsewhere provided by law.”). An employee who has a statutory right to a hearing may request a public hearing and prevent executive session. *Id.*; *Schmidt v. Village of Newton*, 1st Dist. No. C-110470, 2012-Ohio-890, ¶ 26 (“Only when a hearing is statutorily authorized, and a public hearing is requested, does R.C. 121.22(G) operate as a bar to holding an executive session to consider the dismissal of a public employee.”); *Brownfield v. Warren Local School Bd. of Edn.*, 4th Dist. No. 89 CA 26, 1990 WL 127054 (Aug. 28, 1990) (finding that, upon request, a teacher was entitled to have deliberations regarding his dismissal occur in open meetings). An employee with no statutory right to a hearing may not prevent discussion of his or her employment in executive session. *Stewart v. Lockland School Dist. Bd. of Edn.*, 1st Dist. No. C-130263, 2013-Ohio-5513; *State ex rel. Harris v. Indus. Comm. of Ohio*, 10th Dist. No. 95APE07-891, 1995 WL 739689 (Dec. 14, 1995).

¹⁰⁴⁸ R.C. 121.22(G)(1), (7) (requiring roll call vote and specificity in motion); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding respondents violated R.C. 121.22(G)(1) by using general terms like “personnel” and “personnel and finances” instead of one or more of the specified statutory purposes listed in division (G)(1)); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶¶ 18-21 (finding that non-specific reference to “personnel matters” or “personnel issues” does not satisfy R.C. 121.22(G)); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (Jun. 30, 1995) (stating that “[p]olice personnel matters” does not constitute substantial compliance because it does not refer to any of the specific purposes listed in R.C. 149.43(G)(1)); 1988 Ohio Op. Att’y Gen. No. 88-029, 2-120 to 2-121, n.1; *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (finding that

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minutes stating that executive session was convened for “personnel issues” do not comply with R.C. 121.22(G)(1); see also *State ex rel. Young v. Lebanon City School Dist. Bd. of Edn.*, 12th Dist. No. CA2012-02-013, 2013-Ohio-1111, ¶¶ 63-65.

¹⁰⁴⁹ *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶ 19; see also *Lawrence v. Edon*, 6th Dist. No. WM-05-001, 2005-Ohio-5883 (holding that the Open Meetings Act does not prohibit a public body from discussing a public employee’s evaluations or job performance in executive session). Note: the proper context and enumerated exemption in *Lawrence v. Edon* was “dismissal or discipline”—other enumerated exemptions that might constitute proper contexts for considering employee evaluations include “employment,” “promotion,” “demotion,” or “compensation.”

¹⁰⁵⁰ R.C. 121.22(G)(1).

¹⁰⁵¹ *Smith v. Pierce Twp.*, 12th Dist. No. CA2013-10-079, 2014-Ohio-3291, ¶¶ 50-55 (finding public body’s required publication of statutory purposes under R.C. 121.22(G)(1) for special meetings and executive sessions did not support claim of invasion of privacy under a publicity theory).

¹⁰⁵² *State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Comms.*, 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶ 36; *Gannett Satellite Information Network, Inc. v. Chillicothe City School Dist. Bd. of Edn.*, 41 Ohio App.3d 218 (4th Dist. 1988); *Davidson v. Sheffield-Sheffield Lake Bd. of Edn.*, 9th Dist. No. 89-CA004624, 1990 WL 72316 (May 23, 1990) (rejecting the argument that an executive session was illegally held for a dual, unauthorized purpose when it was held to discuss termination of a specific employee’s employment due to budgetary considerations).

¹⁰⁵³ R.C. 121.22(C).

¹⁰⁵⁴ *Wright v. Mt. Vernon City Council*, 5th Dist. No. 97-CA-7, 1997 Ohio App. LEXIS 4931 (Oct. 23, 1997) (finding it permissible for a public body to discuss merit raises for exempt city employees in executive session without referring to individuals in particular positions).

¹⁰⁵⁵ R.C. 121.22(G)(2); see also 1988 Ohio Op. Att’y Gen. No. 003.

¹⁰⁵⁶ R.C. 121.22(G)(2); see also 1988 Ohio Op. Att’y Gen. No. 003.

¹⁰⁵⁷ R.C. 121.22(G)(2).

¹⁰⁵⁸ R.C. 121.22(G)(3); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 201-P-0018, 2019-Ohio-5311, ¶ 32 (finding there is no requirement that an attorney be physically present for the exception under R.C. 121.22(G)(3) to apply, and board properly conducted conference in executive session with attorney via telephone).

¹⁰⁵⁹ *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Comms.*, 1st Dist. No. C-010605, 2002-Ohio-2038 (determining that “imminent” is satisfied when a public body has moved beyond mere investigation and assumed an aggressive litigative posture manifested by the decision to commit government resources to the prospective litigation); *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728 (1st Dist. 1989); cf. *Greene Cty. Guidance Ctr., Inc. v. Greene-Clinton Community Mental Health Bd.*, 19 Ohio App.3d 1, 5 (2d Dist. 1984) (finding a discussion with legal counsel in executive session under 121.22(G)(3) is permitted when litigation is a “reasonable prospect”).

¹⁰⁶⁰ *Maddox v. Greene Cty. Children Servs. Bd.*, 2d Dist. No. 2013-CA-38, 2014-Ohio-2312, ¶ 22 (finding letter expressly threatening litigation if a settlement is not reached “reasonably made a lawsuit appear imminent”); *Warthman v. Genoa Twp. Bd. of Trustees*, 5th Dist. No. 10CAHO40034, 2011-Ohio-1775, ¶ 104.

¹⁰⁶¹ *State ex rel. Dunlap v. Violet Twp. Bd. of Trustees*, 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶ 25 (finding minutes stating that executive session was convened for “legal issues” do not comply with R.C. 121.22(G)(1)); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. No. 2019-P-0019, 2019-Ohio-5412, ¶ 36 (finding that because meeting minutes did not indicate that board convened in executive session to discuss “pending or imminent court action,” executive session was improper even though it included discussion with an attorney).

¹⁰⁶² *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 185 Ohio App.3d 707, 2009-Ohio-6993, ¶¶ 66-69 (10th Dist.) (finding three board members and executive director who were attorneys were not acting as legal counsel for the board when they discussed legal matters in executive session), *aff’d* 127 Ohio St.3d 511, 2010-Ohio-6207, ¶¶ 8, 27-29; *Awadalla v. Robinson Mem. Hosp.*, 11th Dist. Portage No. 91-P-2385, 1992 WL 188333 (Jun. 5, 1992) (finding executive session improper when a board’s “attorney” was identified as “senior vice president” in meeting minutes).

¹⁰⁶³ R.C. 121.22(G)(4); see also *Back v. Madison Local School Dist. Bd. of Edn.*, 12th Dist. No. CA2007-03-006, 2007-Ohio-4218, ¶ 8 (finding a school board’s meeting with a labor organization to renegotiate teachers’ salaries was proper because the meeting was not an executive session but was a “collective bargaining meeting,” which, under R.C. 4117.21, was exempt from the Open Meetings Act’s requirements).

¹⁰⁶⁴ R.C. 121.22(G)(5).

¹⁰⁶⁵ *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 12th Dist. Nos. CA2011-05-045, CA2011-06-047, 2012-Ohio-2569, ¶¶ 75-79; *State ex rel. Cincinnati Enquirer v. Hamilton Cty. Comms.*, 1st Dist. No. C-010605, 2002-Ohio-2038, *5; *Dispatch Printing Co. v. Columbus City School Dist. Bd. of Edn.*, Franklin C.P. No. 12CVH10-12707 (2014); *State ex rel. Ames v. Brimfield Twp. Bd. of Trustees*, 11th Dist. Portage No. 2019-P-0018, 2019-Ohio-5311, ¶ 27; *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. No. 2019-P-0019, 2019-Ohio-5412, ¶¶ 39-42.

¹⁰⁶⁶ R.C. 121.22(G)(6).

¹⁰⁶⁷ R.C. 121.22(G)(7).

¹⁰⁶⁸ R.C. 121.22(G)(8).

¹⁰⁶⁹ R.C. 121.22(G)(8)(a).

¹⁰⁷⁰ R.C. 121.22(G)(8)(b); *State ex rel. Ames v. Rootstown Twp. Bd. of Trustees*, 11th Dist. No. 2019-P-0019, 2019-Ohio-5412, ¶ 79 (finding that board failed to comply with R.C. 121.22(G)(8)(a) and (b) when meeting minutes reflected merely that the board moved into executive session “to discuss economic development assistance concerning” a development contract).

¹⁰⁷¹ R.C. 121.22(J).

¹⁰⁷² R.C. 121.22(G); *Maddox v. Greene Cty. Children Servs. Bd. of Dirs.*, 2d Dist. No. 2013 CA 38, 2014-Ohio-2312, ¶¶ 24-26.

¹⁰⁷³ To consider confidential business information of an application for economic development assistance under R.C. 121.22(G)(8), the motion must be approved by a unanimous quorum. R.C. 121.22(G)(8)(b).

¹⁰⁷⁴ *Vermillion Teachers’ Assn. v. Vermillion Local School Dist. Bd. of Edn.*, 98 Ohio App.3d 524 (6th Dist. 1994); 1988 Ohio Op. Att’y Gen. No. 029 (detailing proper procedure for executive session).

¹⁰⁷⁵ R.C. 121.22(G)(1), (8).

¹⁰⁷⁶ *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (Jun. 30, 1995); 1988 Ohio Op. Att’y Gen. No. 029; *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001).

¹⁰⁷⁷ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001) (finding that using general terms like “personnel” instead of one or more of the specified statutory purposes is a violation of R.C. 121.22(G)(1)); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411843, *8 (Jun. 30, 1995) (“[A] reference to ‘police personnel issues’ does not technically satisfy [the R.C. 121.22(G)(1)] requirement because it does not specify which of the approved purposes was applicable in this instance.”); 1988 Ohio Op. Att’y Gen. No. 029, 2-120 to 2-121, n.1.

¹⁰⁷⁸ R.C. 121.22(G)(1); *Beisel v. Monroe Cty. Bd. of Edn.*, 7th Dist. No. CA-678, 1990 WL 125485 (Aug. 29, 1990).

¹⁰⁷⁹ *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59 (2001); *State ex rel. Ames v. Portage Cty. Bd. of Comms.*, 11th Dist. No. 2019-P-0015, 2019-Ohio-3729, ¶ 63.

¹⁰⁸⁰ R.C. 121.22(G).

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¹⁰⁸¹ R.C. 121.22(G); 1988 Ohio Op. Att’y Gen. No. 029; *State ex rel. MORE Bratenahl v. Village of Bratenahl*, 8th Dist. Cuyahoga No. 105281, 2017-Ohio-8484, ¶ 29 (finding evidence in the record and on audio recording of the village council meeting that a roll call vote that took place before the council went in to executive session was sufficient to show compliance with the Open Meetings Act, even though the roll call vote technically took place before the court reporter began recording the transcript), *reversed on other grounds*, 157 Ohio St.3d 309, 2019-Ohio-3233.

¹⁰⁸² See Chapter Three: A. “General Principles.”

