

# THE LAW AND LIBRARY TRUSTEES 2023

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# **Focus: Trustees of Ohio Public Libraries**

## **What We'll Cover Today**

- **Types of Ohio Public Libraries**
- **Libraries as Political Subdivisions**
- **Library Trustees as Public Officials**
- **Fiduciary Responsibilities of Trustees**
- **Duty of Care, Loyalty**
- **Ethics and Conflicts of Interest**

# Focus: Trustees of Ohio Public Libraries

## What We'll Cover Today

- **Organizational Duties**
- **Open Meetings**
  - ❑ **Minutes**
  - ❑ **Executive Sessions**
  - ❑ **Meeting Notices**
  - ❑ **Consequences**

# Types of Ohio Public Libraries

## Ohio Governmental Public Libraries

- County District
- County
- School District
- Municipal
- Township

## Association Libraries

- Nonprofit corporations that receive public funds to provide public library service *[will not be a focus of today's discussion]*.

# Libraries as Political Subdivisions

## Ohio Governmental Public Libraries

- ❑ “bodies corporate and politic”
- ❑ Separate and independent of their appointing authorities
- ❑ Do not directly answer to their appointing authorities

**Other states:** libraries typically are a department or a function of another unit of government

# Libraries as Political Subdivisions

## Benefits:

- ❑ Ability to negotiate for funding directly with the Ohio General Assembly [not city council, the school board or the county commission]
- ❑ Greater freedom of action (within reason). ORC 5705.23: taxing authority shall put the question of a library levy on the ballot.
- ❑ Library trustees cannot be removed by their appointing authorities (except potentially for Trustees of Township Public Libraries).

# Library Trustees are Public Officers

- ❑ Trustees continue to hold office at end of term until a successor is appointed
  - unless affirmatively resigned or have been otherwise disqualified to serve
  
- ❑ Removal from office only if:
  - willfully and flagrantly exercise power not authorized by law;
  - refuse to perform your duty;
  - neglect your duty; or
  - commit or engage in gross immorality, drunkenness, misfeasance, malfeasance or nonfeasance.

# Library Trustees are Public Officers

## Removal from Office:

- Requires collection of signatures and the filing of a petition, followed by a trial in common pleas court (ORC 3.07; 3.08)

## Oath of Office:

- Required before serving as a library Trustee
- Administered by qualifying elected official or notary
- Oath of office language in the OLC *Trustee Handbook*



# Library Trustees' Fiduciary Duties

## Fiduciary

- A person in whom others place a special trust or confidence

## Two primary legally imposed duties:

- Duty of Care
- Duty of Loyalty

# Library Trustees' Fiduciary Duties

## Duty of Care

- 1) Knowledge
- 2) Commitment
- 3) Adequate Information
- 4) Inquiry

# Duty of Care

## Business Judgment Rule

- Does not require choosing the least risky path
- Focus is on process, not outcome
- Rely on qualified “experts”

# Library Trustees' Fiduciary Duties

## Duty of Loyalty

- ❑ Must discharge duties in good faith and in a manner the trustee reasonably believes to be in the best interests of the organization.
  
- ❑ Examples of violations:
  - misuse of information
  - misuse of assets
  - usurping of opportunities

# Ethics and Conflicts of Interest

## Ohio Ethics Law: Application to Library Trustees

- No solicitation or acceptance of anything of value that would create a substantial and improper influence upon you in your official duties
- No use of the authority of your office to secure a public contract for: yourself, family members or business associates
- No outside compensation for performing your official duties

# Ethics and Conflicts of Interest

## Ohio Ethics Law: Application to Library Trustees

### *Separate Provision of Ohio Library Law*

- ❑ No library Trustee can have a pecuniary interest in any contract entered into by the library

*More restrictive than the general Ethics Law, which allows contracts under certain narrowly defined circumstances.*

# Ethics and Conflicts of Interest

## No Pecuniary Interest in a Contract

- ❑ Trustee's own business, or that of the Trustee's employer, cannot have a contract with the library.
- ❑ Exceptions:
  - officers, directors, stockholders or employees of a depository institution.
  - serving as the library Fiscal Officer

# Library Boards of Trustees

## Library Board of Trustees as Legal Entity

- ❑ Board is a separate legal entity.
- ❑ Board has the power to sue, be sued, contract, and acquire and hold property.



# Library Boards of Trustees: Organizational Duties

## December or January Meeting Requirements

- ❑ Elect officers for coming year (members of the Board):
  - ✓ President
  - ✓ Vice President
  - ✓ Secretary
- ❑ Appoint Fiscal Officer
  - can (but does not have to) be a member of the board
  - OLC's view – inadvisable for a trustee to serve as fiscal officer
  - receive compensation for serving as a Fiscal Officer –exception to the “no pecuniary interest” rule
- ❑ All officers serve a one year term; no limit on re-election.

# Library Boards of Trustees: Meetings

## **Quorum: Majority of the full membership of the Board**

- ❑ i.e., board size is seven members (including vacancies):  
quorum = four or more members
- ❑ Quorum adequate for majority of decisions; exceptions:
  - Supermajorities (2/3rds vote of the full Board membership) required for:
    - ✓ Real estate purchases (O.R.C. §3375.35);
    - ✓ Submission of a library tax levy (O.R.C. §5705.23).
- ❑ Only those present at a meeting count toward quorum;  
no participation (for quorum or voting purposes) by  
telephone or other means of communication

# Library Boards of Trustees: Authority

## Authority

- ❑ Power to do “all things it considers necessary for the establishment, maintenance, and improvement of the ... public library under its jurisdiction.” ORC 3375.40(B).
- ❑ If it relates to public library service (and isn't elsewhere prohibited), you probably have the power to do it.
- ❑ A long litany of specific powers which supplement the broad general power noted above found in ORC 3375.40

# Open Meetings

## Ohio's Open Meeting Law

- ❑ Applies to Public Library Boards of Trustees
- ❑ Core concept: official action, and conduct deliberations upon official business, can only take place in “open meetings” unless an exception applies.
- ❑ Key terms: “Public Body”, “Meeting”, and “Minutes.”

# Open Meetings

## What is a Public Body?

- The library Board itself.
- Also, any committee or subcommittee of the library Board.
- A quorum of either the library Board or a committee/subcommittee of the Board.

# Open Meetings

## What is a Meeting?

- ❑ Any pre-arranged discussion of the public business of a Public Body by a majority of its members.
  - ✓ It is a “meeting” if four members of a Board of seven arrange to meet to discuss library business
  - ✓ It is a “meeting” if two members of a three-member Board committee get together (by phone, in person, etc.) to talk about library business
  
- ❑ Note the requirement, however, that a “discussion” occur.

# Open Meetings

## Board “Retreats?”

- Can only happen if the Open Meetings Law is followed.

# Open Meetings

## E-Mail Communications

- Proceed with caution*: discussion of library business among the majority of the members of the board that takes place via email or text messages may be subject to the Open Meeting requirements.



# Open Meetings

## What Type of Pre-Arranged Gatherings of Public Bodies are not “Meetings” for the Open Meetings Law?

- ❑ Informational sessions, so long as the Public Body is solely gathering information.
  - Example: Reports of the construction manager on the progress of a building project.
  - Board members can make inquiries to obtain information; any discussion of that information among the Board members would need to occur only in an “open meeting.”

# Open Meetings

## What is an Open Meeting?

- ❑ A meeting that is:
  - Properly noticed as to time, place (and subject, if a special meeting).
  - At which the public is permitted to be in attendance.

# Open Meetings: Minutes

- ❑ Public Bodies must properly record minutes of their meetings.
- ❑ Applies to all meetings – including those of committees and subcommittees.

# Open Meetings: Minutes

## Contents of Minutes

*White v. Clinton County Board of Commissioners*  
76 Ohio St.3d 416 (1996)

### Ohio Supreme Court

- clarified that the Open Meetings Law requires that minutes “contain sufficient facts and information to permit the public to understand and appreciate the rationale behind the relevant public body’s decision”

# Open Meetings: Minutes

## Goals of Minutes Under the *White Standard*?

- ❑ To reflect the decision-making process involved, and hopefully bring the public to a better understanding of why unpopular decisions are sometimes necessary:
  - To allow citizens to evaluate the workings of government and to hold government accountable; and
  - To allow the public to obtain complete and accurate information about the decision making process.

# Open Meetings: Minutes

## How are these goals met?

- ❑ Ohio Supreme Court did not specify; however, the examples provided suggest a significant amount of detail is necessary:
  - audio- or videotape recordings,
  - word-for-word transcripts, and
  - abstracts of the meetings that identify the speakers, chronology, and substance of their statements.

# Open Meeting: Exceptions

## Executive Sessions

- ❑ A meeting of a Public Body can be closed to the public (except for invitees of the Public Body) for an Executive Session under very specific circumstances:
  - To enter an Executive Session, the Public Body needs a roll call vote to go into a closed session, specifying the reason for the Executive Session.

# Executive Sessions

## Matters That Can Be Discussed in Executive Sessions

- ❑ To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official.
  - Note: must be a specific person, or set of persons.
  - Not applicable to defining a job position, or the characteristics of a position (example, “what qualifications should our next director have?”)



# Executive Sessions

## Matters That Can Be Discussed in Executive Sessions

- ❑ To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

# Executive Sessions

## Matters That Can Be Discussed in Executive Sessions

- ❑ Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.
  - Note: the court action must be pending or imminent.

# Executive Sessions

## Matters That Can Be Discussed in Executive Sessions

- Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment.
- Matters required to be kept confidential by federal law or regulations or state statutes.

# Executive Sessions

## Matters That Can Be Discussed in Executive Sessions

- ❑ Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.

***If it is not on the list, you cannot have an Executive Session to discuss it.***

# Executive Sessions: Minutes

## Minutes of Executive Sessions – Special Rules:

- ❑ The minutes “need only reflect the general subject matter of discussions.”
- ❑ The level of detail required for minutes of open sessions of the Board is not required for Executive Sessions.

# Open Meetings: Notice

## Notice Requirements for Meetings of Public Bodies

- ❑ General Rule: posting of the time and place of regularly scheduled meeting.
- ❑ Special Meetings: 24-hour advance notice to news media that have requested advance notice; if emergency requires meeting sooner, give news media as much notice as possible.
- ❑ Special meetings notices require the time, place **and** *purpose* of the meeting to be announced.

# Open Meetings: Consent Agendas

**Recent Ohio Supreme Court opinion indicates that certain uses of consent agendas may violate the Open Meetings requirements**

- Should not be used as a tool to constructively close the meeting to the public.
- Should not be used to avoid due deliberation on important issues

# Open Meetings

## Consequences of Non-Compliance

- ❑ Formal Consequences:
  - Board actions taken can be invalid
  - The library may be required to pay attorneys' fees of the complaining party



# Open Meetings

## Practical Consequences:

- ❑ Library Board is embarrassed.
- ❑ Delays: re-do the action with deliberations and action in an open meeting
- ❑ Missed deadline: i.e., levy request can't be on the desired ballot
- ❑ If a contract award is implicated, it can cost money to re-open bidding.

# Open Meetings

## A Lack of Sunshine

“Ohio Auditor says Columbus schools may have to redo superintendent search if Sunshine Laws violated”

*Columbus Dispatch*  
March 7, 2018

- ✓ **Privately created a short list of candidates?**
- ✓ **No public record as to how list of 19 was narrowed to 3**
- ✓ **Per State Auditor, entire search process may be void**

# Secret Text Messages

“Cincinnati council members admit breaking law with secret text messages”

*Columbus Dispatch*

March 5, 2019

- ✓ **Five of the nine council members exchanged text messages about the fate of the City Manager and other public business**
- ✓ **One council member admitted to destroying public records**
- ✓ **City will pay \$101,000 to settle lawsuit and must release texts**

# Questions?

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