



Ohio School Boards Association Capital Conference and Trade Show

November 8 – 11, 2009

Greater Columbus Convention Center
Columbus, Ohio

The Yellow Submarine – boards in the sunshine

Legal

Wednesday, November 11, 2009

9:00 a.m.

C 210–212

Hollie Reedy, director of legal services, OSBA

Board Leadership Institute

OSBA's Board Leadership Institute (BLI) is a two-day intensive conference specifically designed for and by board members. The conference features multiple learning tracks covering current, important educational topics presented by nationally renowned speakers and education experts.

The 2010 BLI will take place on April 23-24 at the Hilton Polaris in Columbus. Twenty points will be awarded for attendance and completion of the institute, which may be applied toward receiving OSBA's Award of Achievement and Master Board Member Award.

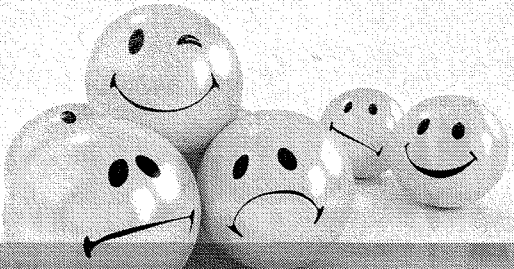
Contact Rob Delane at (614) 540-4000 or (800) 589-OSBA for further information.

OSBA Mission

OSBA leads the way to educational excellence by serving Ohio's public school board members and the diverse districts they represent through superior service and creative solutions.


Ohio School Boards Association

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Yellow Submarine: Boards in the Sunshine

Hollie F. Reedy, Director of Legal Services



So what's new?

- Boards of education still struggle with the demands of the Sunshine law in the areas of:
 - Notice to the public
 - Public participation
 - Executive session
 - Voting
 - Case law continues to develop.



Tell us something we don't know

- Informational meetings:
 - A board of education may attend an informational meeting without violating the Sunshine law.
 - Why?
 - Majority coming together at a
 - Prearranged time, to
 - Discuss the
 - Public business of the public body.



What else?

Trade secrets case:

- Perrea v. Cincinnati Public Schools, 2009-Ohio-4762

Science teacher sought copyrighted standardized tests administered by the district.

Ohio Supreme Court held the testing materials were protected from disclosure as a trade secret.



Trade secrets


What exactly IS a trade secret?

- R.C. 1333.61(D)
- (D) "Trade secret" means information, including ...any scientific or technical information, design, process, procedure... program, device... or improvement, or any business information or plans, financial information...that satisfies both of the following:
 - (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
 - (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.




Public offices and trade secrets

- Don't expect this to have wide applicability, but could be useful in some contexts.
- District-owned copyrighted material purchased from others may be trade secrets and/or exempt from disclosure as a public record in some circumstances.
- Concept of waiver of the secret.




What about the bad news?

- State ex rel. Doe v. Smith
 - Public office gets nailed with post-HB 9 penalties even though the public office was reasonable in its belief it could not release the record.
 - \$1,000.00 statutory damages,
 - \$2,000.00 attorney's fees,
 - \$125.00 costs, plus
 - \$? Attorney's fees of public office




The silver lining

- State ex rel. Doe v. Smith
 - Good Ohio Supreme Court language on attorney's fees and costs.
 - 1. Court ability to award attorney's fees is **DISCRETIONARY**, not mandatory, even after HB 9.
 - "Costs" means actual court costs, not litigation expenses.



Don't trip on HB 9


- Make sure your staff is not:
 - Promising a specific time or date when records will be available if they cannot meet that deadline. Why?
 - Additional damages available under HB 9
- Where are your:
 - Public records policy?
 - Public records request poster?
 - Records retention schedule?
 - They're supposed to be available upon request.



Seneca County Commissioners


Lost a lawsuit- State ex rel Toledo Blade v. Seneca County Commissioners, 2007-Ohio-1694

- Created law that forensic search fees for public records may be assessed against public body
- How are we dealing with e-mail retention of public records?



Individual evaluations public?


- Johnson v. Oberlin City Sch. Dist., 2009-Ohio-3526
- Citizen requested individual evaluations of supt, where bd president used them to compile composite evaluation.
- Citizen filed writ of mandamus.
- Court of appeals affirmed that where the individual evaluations were not "kept", they were not records subject to disclosure and no policy or law required them to be kept.



Kept?

What's the secret, then? Just don't keep anything?


- No. Caution is warranted.
- Suggestions on evaluations and personal notes:
 - Keep them personal.
 - Not required for anyone to fill out.
 - Develop composite as a group.
 - Everyone take own notes home.
 - Composite is the only 'record.'



Executive session


Perennial issues

- Personnel: which is better?
- "I move we go into executive session to discuss personnel."
 - OR
- Read the entire statute subsection. 121.22(G)(1)



Executive session


If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is held, but need not include the same of the person to be considered at the meeting.



YOU figure it out!

Executive session: You phrase the motion using the statute.


1. Consider whether to hire a superintendent.
2. Interview an applicant for a board vacancy.
3. Discuss the expulsion of two students for fighting.
4. Whether to implement a RIF.
5. Discuss a complaint against a teacher.
6. Have a meeting with an administrator on the reasons for considering renewal of his contract. Lawyer is not present.
7. Consider whether to adopt a reprimand of a bus driver pursuant to progressive discipline.



Leakage


...of executive session information...

- May a board member be disciplined?
- Is it illegal?
- Does it violate the board member code of ethics?
- Does it violate Ohio's Ethics laws?
- How do we deal with it?




Minutes

- Drafts
 - Specificity
 - Votes
 - Amendment
 - Correction of minutes
 - Subject of executive session
 - Appending statements of board members, the public
 - Public participation and the minutes
 - When treasurer is absent?



Special meetings


- Notice to public and board members
- Purpose(s) of the meeting in the notice.
- "Any and all other business of the public body."
- Emergency meetings.
 - Reasonable discretion
 - Notice as soon as is reasonably practicable.



Voting


Special voting majorities: 3313.18 and other statutes- Roll call

- Levies
- Employ personnel
- Override supt. recommendation to nonrenew and re-employ
- Purchase or sale of property
- Adopt textbooks
- Elect or appoint an officer
- Pay any debt or claim



Voting

- Majority of those present and voting usually sufficient to pass most other motions.
- Ensure restate motion with any amendments.
- Record votes.



Engaging the public

- Public participation policies
- Accessibility of meeting site
- How do you welcome the public?
- Use and timing of executive session.
- "No further action will be taken."
- Controversial action invites the most scrutiny of a board's compliance with the sunshine law.
- Access to records at the meeting.



Don't forget your training!

HB 9 training requirement

- 1x per term for each individual board member.
- Board may act to appoint a designee to attend the training on behalf of all board members on the board at the time.
 - Who should it be?
 - When should they go?
 - Don't forget your appointed board members and those elected at special elections.



Go ahead....make my day

Throw your sunshine law questions out here!

- OSBA is your member resource!



Life in the sunshine

Flights to Maui from Columbus \$750.....