

# Status as Non-Member of Public Body Insulates Clerk From Open Meetings Act Liability

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Hilary A. Ballentine  
(313) 983-4419  
hballentine@plunkettcooney.com

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Some public servants can sleep a little easier now, knowing that they will not be subject to individual liability under Michigan's Open Meetings Act (OMA), which requires public bodies to make decisions at meetings open to the public and provides a remedy against public officials who intentionally violate the OMA's provisions.

In April 2015, the Michigan Court of Appeals held in *Bitterman v Bolf* that the individual liability provision of the OMA did not extend to the clerk for the Village of Oakley, who did not have voting rights and was not part of the village council.

Taking from a prior decision analyzing the term "public official" in the criminal counterpart of the OMA, the appellate court concluded an individual must be a member of a "public body" to be considered a "public official" subject to individual liability. The Village clerk was undoubtedly not a member of the public body (the Village council), which by statute consisted of the president and trustees only. Accordingly, the clerk was insulated from suit under the OMA.

The appellate court's decision in *Bitterman* is a step in the right direction in that it evidences the court's recognition of the OMA's limits. However, municipalities should not read this case as broadly insulating all non-voting public servants from suit because the legislative structure in a particular city, town, or village often dictates whether the individual in question is a member of a public body and thereby subject to the OMA's requirements. In addition, this case is an unpublished decision and, therefore, not precedentially binding on other panels of the court who may later visit this issue.

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