

## Publications

### **Client Alert: Ohio Supreme Court Rules That Board Communication of Any Kind -- Even Email, Texts, or Tweets -- May Constitute a Meeting, Which Could Violate Ohio Open Meetings Act**

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#### **CLIENT ALERT | 5.16.2016**

The Supreme Court of Ohio recently released its opinion in *White v. King*, Slip Opinion No. 2016-Ohio-2770, expressly expanding the definition of a “meeting” under Ohio’s Open Meetings Act to include discussions that occur “telephonically, by video conference, or electronically by email, text, or other form of communication.” The Ohio Supreme Court has continued to reaffirm the statutory mandate that Ohio’s Sunshine Laws are to be “liberally construed” in favor of transparency.

In *White v. King*, four of the five members of the Olentangy Local School District Board of Education communicated in a series of e-mails a proposed response to a newspaper editorial critical of the board. Following the e-mail exchange, the same four school board members submitted a response for publication to the newspaper.

The fifth member of the school board, omitted from the e-mail exchange, filed the lawsuit claiming that the board had violated Ohio’s Open Meetings Act (Ohio Revised Code 121.22). That same day at a regular board meeting, the other board members voted to ratify the earlier response to the newspaper editorial.

### **Trial and Appellate Courts Rule for the School District Board**

The trial court held no violation of the Open Meetings Act, based upon earlier Supreme Court precedent, because there was no prearranged discussion of public business; the Open Meetings Act did not apply to e-mail; and, at the time of the e-mail exchange, there was no pending resolution before the board. The Fifth District Court of Appeals affirmed.

## Supreme Court Reverses

By a 5-2 decision, the Supreme Court of Ohio reversed. Citing the Open Meetings Act, the majority explained “that ‘[a]ll meetings of any public body are declared to be public meetings open to the public at all times,” that “[a] ‘public body’ includes a board of a school district,” and that “[t]he term ‘meeting’ means ‘any prearranged discussion of the public business of the public body by a majority of its members.” **The Court then held that the Open Meetings Act may be violated “by any private prearranged discussion of public business by a majority of the members of a public body regardless of whether the discussion occurs face to face, telephonically, by video conference, or electronically by e-mail, text, tweet, or other form of communication.”**

The majority relied, in part, on the Court's prior decision in *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 668 N.E.2d 903 (1996). In *Cincinnati Post*, the Court held that a series of nonpublic, back-to-back meetings between Cincinnati's city manager and members of the Cincinnati City Council regarding the construction of new stadiums for the Cincinnati Bengals and Reds, where each meeting was attended by a minority of the council but taken together constituted a majority of the council, violated the Open Meetings Act. The “round robin” actions of the council were found to be a clear circumvention of the Open Meetings Law. That same rationale was then applied in *White* to email communications where public business was being addressed, despite earlier definitions of a “meeting” to imply in-person encounters.

## Ohio's Sunshine Laws Require Transparency

Ohio's “Sunshine Laws” – the Open Meetings Act (R.C. 121.22) and the Public Records Act (R.C. 149.43) – are intended to ensure accountability and transparency in the conduct of public business. Violations of the Open Meetings Act may result in litigation seeking an injunction to enforce the law and/or a finding that improper business is invalidated, an award of court costs, an award of attorney fees and/or statutory damages.

If you have questions about this case or Ohio Sunshine Laws and their practical application, please contact: Rodney Holaday (Columbus; 614.464.5436); Elizabeth T. Smith (Columbus; 614.464.5443); Evelyn Lundberg Stratton (Columbus; 614.464.8210); or your Vorys lawyer.

*Former Ohio Supreme Court Justice Evelyn Lundberg Stratton, while on the Court, joined in the majority in the Cincinnati Post decision.*