



ASSISTANTS
SIOBHONNE K. WARD
JASON M. MILLER
LINDA S. HINTON

INVESTIGATOR
JENNIFER SCOTT

BRADFORD W. BAILEY
PROSECUTING ATTORNEY
HARDIN COUNTY, OHIO
www.hardincountyprosecutor.com

ONE COURTHOUSE SQUARE
SUITE 50
KENTON, OHIO 43326-1575
TELEPHONE: (419) 674-2286
FAX: (419) 674-4767
E-MAIL: juvenilepros@co.hardin.oh.us

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Hardin County Commissioners
One Courthouse Square
Kenton, Ohio 43326

RE: Requested Opinion on Roll Call Procedures
for Executive Sessions

Dear Commissioners:

An executive session is a closed-door conference convened by a public body, after a roll call vote, that is attended by only the members of the public body (and those they invite), that excludes the public. R.C. 121.22(G). The Ohio Revised Code allows for executive sessions in certain limited circumstances. R.C. 121.22(G)(1)-(8) *State ex rel. MORE Bratenahl v. Vill. of Bratenahl*, 2017-Ohio-8484, P27, 2017 Ohio App. LEXIS 4875, *14, 2017 WL 5192041

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." 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."). *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995); 1988 Ohio Op. Att'y Gen. No. 029; *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54,59 (2001). 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. *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, *3 (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. The motion does not need to specify by name the person whom the public body intends to discuss. 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.

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. The vote may not be by acclamation or by show of hands, and the public body should record the vote in its minutes. R.C. 121.22(G); 1988 Ohio Op. Att'y Gen. No. 029.

Although a proper motion is required by law before entering executive session, a motion to end the executive session and return to public session is not necessary and not required by law 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. 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.").

In spite of the fact that the law does not require a motion to come out of executive session I feel a better practice is to have a roll call and vote to leave it. The reasoning is because one commissioner may want to leave it and the other two may not. You must remember you must maintain a majority, your quorum to stay in executive session and it is not apparent who may wish to stay in the executive session and who wishes to leave, especially if the discussion become lively or heated. Any commissioner can walk out but if two wish to remain then you still have a legal quorum to continue the executive session discussions. With an existing motion and second and roll call procedure this reflects who remains there and documents if you have a valid quorum if one public official leaves. There is no problem adopting this policy even though the law does not require this existing procedure.

Respectfully Submitted,

Bradford W. Bailey
Hardin County Prosecuting Attorney