Ohio Supreme Court rules email discussion violates Open Meetings Act

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On May 3, 2016, the Ohio Supreme Court ruled in White v. King [1] that Ohio's Open Meetings Act "prohibits 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 case originated from activity by members of the Olentangy Local School District Board of Education following the publication of a newspaper editorial that criticized several members of the board for the handling of alleged improper expenditures by school district employees and subsequent changes to board policies. In determining a response to the newspaper editorial, several members of the school board, along with the district superintendent and staff members, participated in a series of email exchanges to collaborate on a response. The response was submitted for publication in October 2012 and was ratified by the board during a public meeting six months later.

One of the board members, Adam White, was not involved in the email communication and was at odds with the other board members on the issue. He filed the complaint, alleging that his colleagues had violated Ohio's Open Meetings Act. Mr. White argued that the statute prohibits private deliberations about public business, whether those deliberations occur in face-to-face meetings or by some other means of communication, including email. Further, he argued that the formal vote to ratify the response to the editorial constitutes "official business" under the Open Meetings Act and allowing the discussion of the response to occur in private undermines the purpose of the statute.

In response, the other board members argued that the Open Meetings Act only contemplates in-person meetings and noted that the Ohio General Assembly has amended the act and could have included provisions to prohibit this kind of email correspondence but did not. Further, they argued that discussion about a response to an editorial does not constitute public business under the act and that "public business" means deliberations on pending rules or resolutions before the board.

The Ohio Supreme Court sided with Mr. White and determined that nothing in the Open Meetings Act requires that a meeting occur face-to-face and that any prearranged discussion can qualify as a meeting. Further, the Court determined that allowing these kinds of deliberations to occur by email and out of view of the public would undermine the purpose of the statute, saying: "[t]he statute that exists to shed light on deliberations of public bodies cannot be interpreted in a manner which would result in the public being left in the dark." Citing State ex rel. Cincinnati Post v. Cincinnati, 76 Ohio St.3d 540, 544 (1996).

The Court also cites a portion of the act which requires that the statute be "liberally construed" to require that public bodies take official action and hold all deliberations and discussions in open meetings. In addressing the issue of whether a response to an editorial constitutes "public business" under the act, the Court concluded that public business is commonly understood to include all matters falling under the board's duties and functions within its jurisdiction; because the board ratified its response at an open meeting, the response fell within the board's duties and should be considered public business for purposes of the Open Meetings Act.

The opinion of the Ohio Supreme Court was not unanimous. In her dissent, which was joined by the Chief Justice, Justice Lanzinger concluded that the Open Meetings Act only applies to meetings of public bodies and that the majority opinion goes beyond the enacted statute to include emails in the definition of a "meeting." While she notes that it may be good public policy to limit electronic communications concerning public business by a majority of the members of a public body, she states that modifying the statute to reflect that would be a job for the Ohio General Assembly, rather than the Court.

With the ubiquitous use of email for business and personal matters, public officials should be cautious in their use of electronic communications. Public officials should consider whether matters discussed over email constitute public business and whether the discussion should take place at open meeting, accessible to the public.

[1] White v. King, Slip Opinion No. 2016-Ohio-2770.