

Regular Meeting Day 2 of 2 (Tuesday, November 18, 2014)

Generated by Vanessa Niekamp on Thursday, November 20, 2014

Members present

Linda Betzer, Gregory Boyer, Thomas Fleming, Robert Wasko

Meeting called to order at 9:05 AM

1. Convening of the Board - President

1.01 Call of the Roll

2. Items Continued from 11/17/2014

2.01 Discussion regarding the minutes from October 14, 2014 and associated notice to Linda Betzer

Executive Director, Vanessa Niekamp requested permission to read a statement she had prepared addressing the concerns raised by Linda Betzer the prior day. A copy of the statement was provided to each member of the board.

Statement made by Vanessa Niekamp in the open of the Board on Tuesday, November 18, 2014:

On Tuesday, October 14, 2014, I witnessed you, Linda Betzer, appear in the public meeting of the board in costume with your face concealed by a mask. I heard Board President, Thomas Fleming question you about the appropriateness of the costume, and observed you to continue to wear the costume for the duration of the meeting.

Later the same day I discussed the situation with Board President, Thomas Fleming, and I recommended that we address the situation in writing. I then began to draft the letter to you dated October 15, 2014.

On Tuesday, October 15, 2014, I contacted Robert Wasko and Gregory Boyer by phone to seek information from them, regarding their opinion of the behavior exhibited by you in the meeting the day before. My call to each of them was not announced to them in advance, or prearranged in any fashion. At no time during my phone call with either Mr. Wasko or Mr. Boyer did either of them deliberate.

From my investigation of the incident, I determined a majority of the members did observe you engage in conduct in the public meeting of the board on October 14, 2014, that were in the opinion of the members demeaning, insulting, and inappropriate.

As the Executive Director of the Board, I advised you in the letter of the concerns with your behavior and stated for the record the behavior does not conform to patterns of conduct consistent with the professional character of the Board as a whole.

I further provided notice that should you conduct yourself in a manner unbecoming as a member of this board in the future, I believed the meeting would immediately be adjourned and I would refer the matter to the Office of the Governor for consideration per ORC 4717.02 (C). As you are aware the governor is the only individual who may remove you from the board.

At yesterday's meeting you made accusations regarding violations of the Sunshine Law, and stated you would reconsider your no vote on the approval of the minutes from October 14th, if the items referencing your behavior were removed.

I would like to point out the Open Meeting Act defines a “meeting” as: (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.⁸¹⁷

As previously stated, there was no prearranged gathering, nor was the phone calls I made for the purpose of discussing public business.

In evaluating whether particular gatherings of public officials constituted “meetings,” several courts of appeals have opined that the Open Meetings Act “is intended to apply to situations where there has been actual formal action taken; to wit, formal *deliberation* concerning the public business.”⁸³²

ORC 4717.03 (A) states the concurrence of at least four members is necessary for the board to take any action.

Again, the discussion I had with Mr. Fleming and the phone calls I made to Mr. Wasko and Mr. Boyer do not constitute the concurrence of at least four members. No formal action was taken by the Board, nor formal deliberation concerning public business. I wrote the letter and President Fleming agreed to sign it as well.

Courts have determined that gatherings strictly of an investigative and information-seeking nature that do not involve actual discussion or deliberation of public business are not “meetings” for purposes of the Open Meetings Act.⁸³³

My unannounced conversations were done so in an investigative and information-seeking nature, which did not involve deliberation of public business.

I do not believe the phone calls I made, nor the letter I wrote to you, meet the three required elements of the “meetings” definition as included in the Act.

⁸¹⁷ R.C. 121.22(B)(2).

⁸³² *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).

⁸³³ *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993) (where the majority of members of a public body meet at a prearranged gathering in a “ministerial, fact-gathering capacity,” the third characteristic of a meeting is not satisfied – i.e., there are no discussions or deliberations occurring in which case, no open meeting is required); *Theille v. Harris*, No. C-860103 (1st Dist. 1986) (a prearranged discussion between prosecutor and majority of board was not violation where conducted for investigative and information-seeking purposes); *Piekutowski v. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 379, 2005-Ohio-2868, ¶¶ 14-18 (4th Dist.) (it is permissible for a board to gather information on proposed school district in private, but it cannot deliberate privately in the absence of specifically authorized purposes); *State ex rel. Chrisman v. Clearcreek Twp.*, 12th Dist. No. CA2012-08-076, 2013-Ohio-2396 (Jun. 10, 2013) (while information-gathering and fact finding meetings for ministerial purposes do not violate the Open Meetings Act, whether or not a township’s pre-meeting meetings violated the Open Meetings Act was a question of fact where there was conflicting testimony about whether the meetings were prearranged, what the purpose of the meeting was, and whether deliberations took place).

Motion to approve the minutes from October 14, 2014, with the elimination of the section referencing the letter to Linda Betzer received.

Motion fails with two no votes by Thomas Fleming and Gregory Boyer.

Motion by Robert Wasko, second by Linda Betzer.

Final Resolution: Motion Fails

Yes: Linda Betzer, Robert Wasko

No: Gregory Boyer, Thomas Fleming

The Meeting Minutes for October 14, 2014, remain unapproved and in draft form.

2.02 Requests for Representation to AAG

3. Education Subcommittee Report- Danny Finrock

3.02 Applications from Individuals requesting approval for continuing education hours

Motion to approve applications from individuals requesting approval for continuing education hours.

Motion by Robert Wasko, second by Gregory Boyer.

Final Resolution: Motion Carries

Yes: Linda Betzer, Gregory Boyer, Thomas Fleming, Robert Wasko

3.03 Applications for Exemption of continuing education requirements

Motion to approve applications for exemption of continuing education requirement.

Motion by Gregory Boyer, second by Robert Wasko.

Final Resolution: Motion Carries

Yes: Linda Betzer, Gregory Boyer, Thomas Fleming, Robert Wasko

3.04 Applications for 50 Years Exemption of continuing education requirements

Motion to approve applications for 50 year exemption of continuing education requirement.

Motion by Gregory Boyer, second by Robert Wasko.

Final Resolution: Motion Carries

Yes: Linda Betzer, Gregory Boyer, Thomas Fleming, Robert Wasko

3.05 Applications for Waiver of continuing education requirements

Motion to approve applications from program providers for continuing education hours.

Motion by Gregory Boyer, second by Robert Wasko.

Final Resolution: Motion Carries

Yes: Linda Betzer, Gregory Boyer, Thomas Fleming, Robert Wasko

4. Subcommittee Reports

4.01 Operations Committee Report - Niekamp

5. Training Session

5.01 Sunshine Law Training - Dowling-Fitzpatrick

5.02 The Ohio Ethics Law and Sales to Public Agencies - Video

5.03 The Ohio Ethics Law and Gifts - Video

5.04 Equal Employment Opportunity Web-Based Training

6. Adjournment - President

6.01 Adjourn the Meeting

Motion to adjourn the meet at 11:24 am.

Motion by Gregory Boyer, second by Robert Wasko.