



Ohio Township Association Risk Management Authority

UPDATE

FALL 2021

OPEN MEETINGS – THE PUBLIC’S RIGHTS TO ATTEND AND SPEAK

By Robert J. Gehring, Esq., and Christen M. Steimle, Esq.

In the last edition of this Newsletter, we discussed Ohio’s Open Meetings Act (OMA) and open meetings requirements. This article is directed to practical issues that are encountered as to the conduct of meetings.

I. Notice of Meeting

The OMA requires that a public body provide notice of a meeting.¹ The obligation to provide notice for regular, special and emergency meetings is found in the Ohio Revised Code.²

II. The Agenda

There is no absolute requirement under Ohio law that a public body establish an agenda for a regularly scheduled meeting as defined by the Ohio Revised Code. However, it is recommended an agenda be prepared prior to the meeting. As discussed below, a public body has the right to limit public discussion to those matters contained in an agenda.³

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¹ The audiences for this article are Ohio townships and their officials. Township boards of trustees and other township units are included in the definition of “public bodies.”

² R.C. §121.22.

³ *Kalk v. Village of Woodmere*, (1985), 27 Ohio App.3d 145, 148.

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www.OTARMA.org

Photo courtesy of Canfield Township, Mahoning County.



OPEN MEETING

III. The Public's Right to Participate In an Open Meeting

Public bodies may be subject to a lawsuit where a plaintiff claims that the public entity violated the OMA. Plaintiffs often allege that their First Amendment rights have been violated. Common allegations are that the public was denied the right to speak and that there was discrimination based upon the speaker's viewpoints.

Under a constitutional law analysis, public meetings are considered to be "limited forums." When government intentionally provides the opportunity for public discourse, it has the right to "limit" the public's speech as "the state is not required to allow persons to engage in every type of speech in the forum."⁴ Because a meeting of a public body is a limited public forum, a public entity "can impose reasonable restrictions based on speech content, but cannot engage in viewpoint discrimination."⁵

The courts have described the reasonable restrictions on speech content to be those that are limited to "relevance of the matter before the Board, and time restrictions." In addition, a public body may limit discussion or control the public meeting so as to avoid disruption of the business before the public body.⁶

a. Sign-In Requirements

Meeting participants have filed lawsuits claiming that a public body does not have the authority to require sign-in of those who wish to participate in a meeting. The courts have continually upheld those sign-in requirements.⁷

b. Viewpoint Discrimination

It is unlawful for a public body to impose limits on a speaker based upon the "speaker's viewpoint." Speech cannot be restricted or limited simply because a public body does not agree with the viewpoint of the speaker.⁸

IV. Public Employees and Their Rights to Speak

There are numerous cases involving public employees and their rights to speak. If an employee is speaking as a citizen and not in an official capacity, the employee is to be treated as a member of the public and be provided the same rights as non-employees. If a public employee is speaking as a citizen, the employer cannot prohibit the speech of the employee, nor can it retaliate against the employee for his or her speech.

If an employee's speech is as a policymaker, the employer can control the speech.⁹ Courts employ a balancing test that favors the government when an employee is a policymaker, reasoning that policymaker speech may be restricted as it promotes efficiency in government.¹⁰ Also, a public employer has the right to expect loyalty from employees, especially policymakers.

V. Public Body's Right to Set Reasonable Rules for Participation by the Public

A public body has the authority to set reasonable rules for conduct of its meetings. Those rules should be properly adopted, reviewed, and revised when needed.

⁴ *Youkhanna v. City of Sterling Heights*, 6th Cir. 2019, 934 F.3d 508, internal citations omitted.

⁵ *Id.* at 519.

⁶ See, *Princeton Educ. Assn. v. Princeton Bd. of Educ.*, 480 F. Supp 962, 967 (S.D. Ohio 1979).

⁷ *Paridon v. Trumbull Cty. Services Bd.*, 2013-Ohio-881, (Trumbull Cty. Ct. of Appeals).

⁸ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829, 115 S.Ct. 2510 (1995).

⁹ *Banks v. Wolfe Cty. Bd. of Educ.*, 330 F.3d 888, 893 (6th Cir. 2003), *Connick v. Myers*, 461 U.S. 138, 146 (1983).

¹⁰ *Rose v. Stephens*, 291 F.3d 917, 920 (6th Cir. 2002).

RECOMMENDATIONS

Importantly, those rules should be made available to the public attending a meeting.

a. Time Restrictions

The courts have upheld the imposition of time restrictions on those that wish to speak. Courts have found that time limitations of two to three minutes for individual speakers are reasonable. Courts have also upheld time limits for all speakers.¹¹

b. Personal Conduct Can Be Regulated to Avoid Disruption

The courts have generally been favorable to public bodies when there has been evidence that disruption of a meeting occurred. When there have been general disruptions by the public, the courts have upheld the authority of the governmental entity to remove disruptive individuals or to take other action to prevent disorder.¹²

Often, the public body will have a rule that the courts have described as “a niceness” requirement. (“Everyone present at a meeting must be nice.”) Courts may find fault with such policies because the implementation can be subjective. The question often arises, “Is the government limiting discussion because it does not agree with a viewpoint?” There is not often a bright line between what might be viewpoint discrimination and what might be reasonable control over a meeting.¹³

1. Have an agenda for regularly scheduled meetings.
2. Establish rules for the conduct of public participation. Make them available before the meeting.
3. For special and emergency meetings, discussion must be limited to issues set forth in a required agenda.
4. Require sign-in of those who wish to speak.
5. Establish reasonable time limitations. Enforce those time limitations and do not “play favorites.”
6. Keep discussion and comments limited to the agenda.
7. Be courteous and professional to all.
8. Consider recording meetings.
9. A public body is not required to condone disruptive conduct. However, drastic measures such as removal of an individual from a meeting should be rarely used.
10. Always consult counsel if in doubt as to the conduct of meetings and rights of the public and employees.

VI. When Can the Public Body Take Drastic Measures to Maintain Order?

Occasionally, and hopefully rarely, a public body must take drastic measures to maintain order during an open meeting. Those measures can include the removal of disruptive individuals, cutting off a speaker who “crosses the line” and even adjourning a meeting. Under R.C. §2917.12, it is a misdemeanor of the fourth degree to disturb a lawful meeting.

A public body does not have to tolerate those whose intent is to disrupt a meeting. While there is no precise calculus as to when drastic measures should be employed, it is best to establish the rules of a meeting before a meeting begins. The public body’s presiding officer must be

firm but fair throughout. Often, issues that are discussed can be emotional but the presiding officer must maintain and keep emotions in check. A potentially volatile atmosphere can often be calmed by informing the public that everyone will be provided an orderly chance to speak. Further, a public body should anticipate those issues and situations that may lead to disruption. In those cases, the presence of law enforcement may set the proper tone.

Finally, video and audio recording can serve proactive and preventive purposes. Such recordings can provide notice that the public’s conduct could be viewed by others, including a court. In addition, recording may provide necessary evidence to defend claims that the public body acted illegally.

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¹¹ See, 2007 Ohio Op. Att. Gen. 2-189; *Shero v. City of Oak Grove, Okla.*, 510 F.3d 1196 (10th Cir. 2007).

¹² *Kirkland v. Luken*, 536 F.Supp.2d 857 (S.D. Ohio 2008).

¹³ See, *Leonard v. Robinson*, 447 F.3d 347 (6th Cir. 2007).

MESSAGE FROM WENDY FRENCH, OTARMA CUSTOMER SERVICE

Whether your township has Faithful Performance of Duty coverage or individual Public Official bonds, remember to contact OTARMA Customer Service following the election. Your township's coverage will need to be updated for newly elected or re-elected officials including officers, appointees, and certain employees.

If you currently have Faithful Performance of Duty coverage within your OTARMA certificate:

You can simply contact OTARMA Customer Service with the names of officials who are serving new terms.

If you currently have individual Public Official bonds:

For **newly elected or appointed officials**, we will need a completed application mailed to OTARMA Customer Service. The application can be found at www.OTARMA.org, select *Member Services*.

For **re-elected officials** who are currently bonded, we simply need to be informed to renew their bonds.

FAITHFUL PERFORMANCE APPLICATION Continued
OF ELECTED OFFICIALS REQUIRED TO BE BONDED:
I, Fiscal Officer

FAITHFUL PERFORMANCE APPLICATION

Township: _____ County: _____
Mailing address: _____
Phone: _____ Email: _____

Has a formal resolution been passed authorizing the use of an employee dishonesty and faithful performance of duty policy as required by OAC 3.0617?
YES _____ NO _____ Date it was passed: _____
Date scheduled to be passed: _____

Date of last Audit: _____
Did the Auditor make any Internal Control Recommendations? No _____ Yes _____

Were there any: Finding for Recovery? No _____ Yes _____ Material Weakness? No _____ Yes _____
Material Non-Compliance? No _____ Yes _____ Reportable Conditions? No _____ Yes _____

Any prior bond for faithful performance of duty issued in the past 5 years? No _____ Yes _____
If Yes, please explain: _____

Annual budget range (please circle one):	Required limit
Less than \$50,000	\$100,000
\$50,000 - \$100,000	\$50,000
\$100,000 - \$250,000	\$60,000
\$250,000 - \$500,000	\$85,000
\$500,000 - \$750,000	\$110,000
\$750,000 - \$1,500,000	\$135,000
\$1,500,000 - \$3,000,000	\$160,000
\$3,000,000 - \$6,000,000	\$195,000
\$6,000,000 - \$10,000,000	\$230,000
More than \$10,000,000	\$260,000

- 1 of 2 -

Your township may purchase Faithful Performance of Duty coverage through OTARMA instead of individual surety bonds for officers, employees, and appointees who are required by law to acquire a bond before entering upon the discharge of duties.

For the small number of townships who have not switched from bonds to Faithful Performance of Duty coverage, now is a good time to consider the advantages.

Please contact your OTARMA Representative or OTARMA Customer Service for more information.

Wendy French
OTARMA Customer Service
Phone: (888) 748-7966, ext. 3136
Email: wfrench@bfgroup.com

Mail: OTARMA Customer Service
315 S. Kalamazoo Mall
Kalamazoo, MI 49007



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VII. Conclusion

Public bodies, including townships and their trustees, committees and commissions, are required to abide by the Open Meetings Act. When conducting a meeting, the public body must allow reasonable participation by the public. A public body may not restrict participation based upon a speaker's viewpoint. A public body does have the power to provide reasonable restrictions in order to facilitate the business of the public body and to provide for order while conducting a meeting.

This article is intended to provide general information to townships and their officials regarding issues that are frequently encountered in the open meetings context. The contents should not be considered legal advice as to any particular circumstance or event. Townships and their officials are urged to consult with counsel as to legal issues relating to open meetings and the township's practices and policies.



Robert J. Gehring

Robert J. Gehring is a shareholder with the Cincinnati law firm of Buechner Haffer Meyers & Koenig Co., LPA, and practices in the areas of governmental law, torts, insurance, professional responsibility, and business litigation. A past president of the Cincinnati Bar Association, he is board certified as a civil trial advocate by the National Board of Trial Advocacy.



Christen M. Steimle

Christen M. Steimle is an attorney with the Cincinnati law firm of Buechner Haffer Meyers & Koenig Co., LPA, and practices in the areas of employment, torts, insurance, business litigation, and governmental law. Christen has practiced for ten years, and has clerked for federal judges.

LET'S NOT SLIP, TRIP, OR FALL THIS FALL

Slip, trip, and fall injuries and deaths may be avoided through prevention.

According to the U.S. Bureau of Labor Statistics, slips, trips, and falls are the second most frequent fatal workplace event, accounting for 17 percent of fatal work injuries. Slips, trips, and falls can also result in broken bones, cuts, bruises, strains, and sprains. In addition to employees, visitors can be injured on township premises from slips, trips, and falls. To prevent dangerous and even deadly incidents, consider the following:

Railings - Are there places in your township where handrails should be placed? If someone loses traction, holding a railing may prevent a fall. Handrails should be installed and maintained at the appropriate height, size, and condition to help avoid falls.

Flooring - Are floors flat, clean and free from debris? Secure carpet and rugs to ensure they remain flat. Clean up spills and debris as soon as they happen. If the floor is wet but drying, mark the area with signs and/or cones. Abrasive strips or traction tape may need to be added to slippery floors or stairs.

Lighting - Are walkways well lit? Replace faulty light switches and burned-out lightbulbs. Poor lighting is frequently a cause for a trip and fall because the ability to see and avoid a hazard is more difficult. Keep views unobstructed with proper lighting.

Housekeeping - Are bottom drawers left open or extension cords laying in a walkway? Close cabinets and

drawers. Repair or remove trip hazards from sidewalks and walkways.

Drainage - Is drainage effective? A clogged drain can lead to backups on walking surfaces. Improper drains and gutters can discharge water and debris onto walkways, causing slippery surfaces.

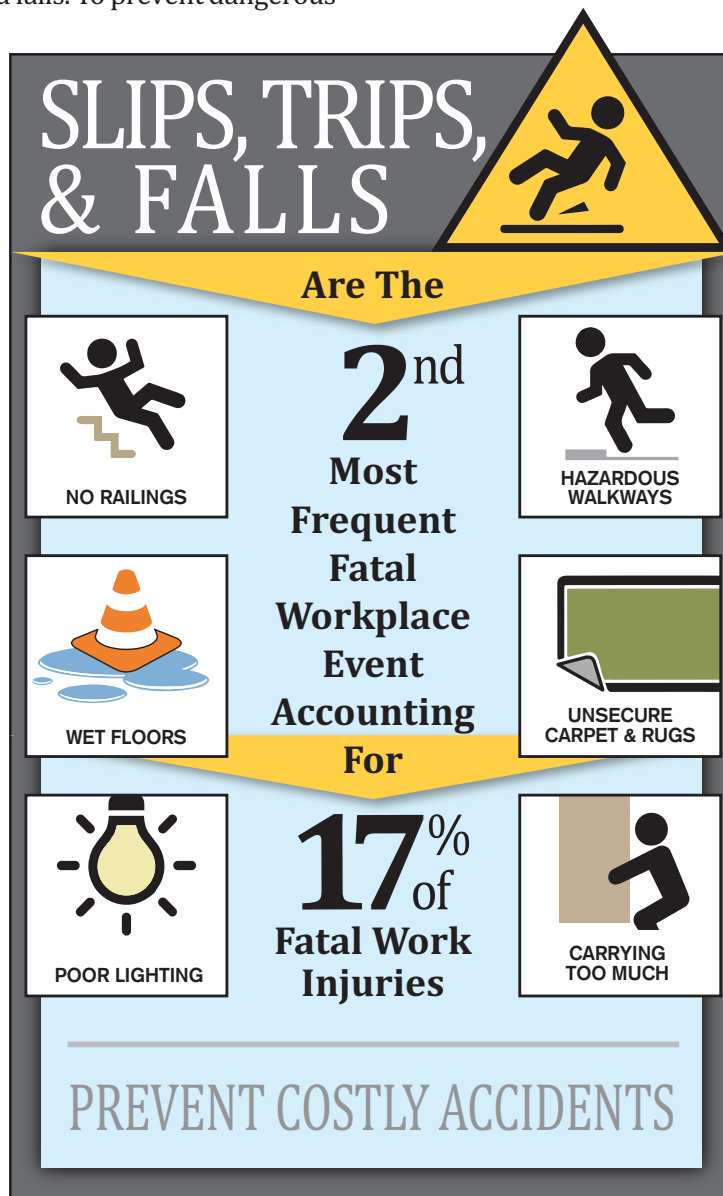
Slippery surfaces - Are there slippery conditions or surfaces, such as polished stone flooring? Ice, wet leaves,

mud, water, and snow should be removed from walking surfaces. Someone entering a public facility or building with wet shoes can easily slip and fall. Install secure, slip-resistant mats, and visible caution signs.

Remain mindful - Are people distracted or carrying too much? Poor awareness, such as the use of cell phones while walking, can lead to slips, trips, and falls. Carrying heavy or awkward items can challenge one's balance. Be mindful and aware and leave hands free to catch or protect oneself in the event of loss of traction or imbalance leading to a fall.

Slip, trip, and fall injuries and deaths may be avoided through prevention. Consider the development of a written housekeeping program and apply surface treatments according to manufacturer's instructions. Regularly conduct documented

inspections and maintenance of premises. Encourage employees and visitors to report spills or slippery areas promptly. Develop reporting procedures for incidents, promptly investigate incidents, and document findings to help prevent falls this fall.



COMMUNICATION WITH YOUR REMOTE TEAM

By Allison Horak and Antoinette Joy

Working remotely has its benefits and challenges. One commonly cited challenge over the last year is communication. This article discusses strategies for improving our virtual meetings and emails with our teams.

Improving Communication

The biggest kind of communication missing from the virtual environment is those in-person, organic conversations. They're quick, easy, informal, unscheduled. It's just not possible to replicate that virtually.

We've got to find other ways to communicate that fit our needs in the moment. Here are the four most common communication channels for virtual employees, along with their pros and cons:

CHANNEL	PROS	CONS
TELEPHONE	<ul style="list-style-type: none">• conveys empathy and authenticity• ensures clarity with tone	<ul style="list-style-type: none">• playing endless phone tag• having prolonged conversations unnecessarily
INSTANT MESSAGING (or texting)	<ul style="list-style-type: none">• is easy and informal• allows for quick responses	<ul style="list-style-type: none">• has limited functionality• may feel invasive
VIRTUAL MEETING	<ul style="list-style-type: none">• see body language• easily share documents	<ul style="list-style-type: none">• may have technical issues• has to be planned
EMAIL	<ul style="list-style-type: none">• creates a written record• is fast and efficient	<ul style="list-style-type: none">• doesn't show empathy well• is less genuine and more censored

As you read that table, you may have been thinking: *I never really think that deeply about the pros and cons of different types of communication. I usually just fire off an email and consider it done. We've done the same thing!* But, the more intentional we can be about the channel we choose, the more likely our message will be read and received properly.

Here's a guideline for choosing which communication channel to use: **The more complex the task, the closer you should be to (virtual) in-person communication.**

We're going to take some time to focus on the last two communication channels in that table above: virtual meetings and email.

Virtual Meetings

I think we can all agree that we strive to present ourselves professionally at work. It's possible we've let some standards drop since being virtual. (There have been so many funny commercials and memes about it; some of it must be true, right?) Let's regroup to make sure we're participating in virtual meetings in the most courteous and professional way possible.

Why does being engaged in meetings matter so much? There are a lot of ways to answer that question. First, being present and engaged in all virtual meetings are matters of personal credibility: You're representing yourself and your department. Second, it's a matter of courtesy. When we fully participate in virtual meetings, we are polite and respectful of the person who called the meeting and all the other participants. Lastly, the most practical reason we should be engaged during all virtual meetings is because if we're not, we could miss something important, like an opportunity or some piece of key information. Seize every chance to make a positive impression.

Here are a few tips to make sure we're bringing our best to virtual meetings.

- Choose business-appropriate clothing
- Arrive on time or a little early
- Turn on your camera
- Remain focused by taking notes and following the agenda
- Keep your other computer applications closed and phone facing down



- Stay muted until you want to make a comment
- Validate contributions by nodding and unmuting to make comments
- Ask clarifying questions to understand intent

If you're looking for a guideline for how much to actively participate in meetings, follow the "take space, make space" rule. **Take space** means to challenge yourself to speak up at least once during a meeting to show you're present, engaged and interested. For instance, make a commitment to ask at least one question during the meeting. **Make space** is the flip side of the coin: refrain from taking up too much time with your questions and comments in the meeting. Be sure to make space (i.e., leave time) in the meeting for other people to participate.

Email Communication

The average worker sends about 40 emails a day, but just because we do something often doesn't mean we're good at it. Follow these three golden rules of email to make the most of this communication channel.

- 1. Always give others the benefit of the doubt.** Recognize that there's a good chance you're misinterpreting the tone of a message. So, before you damage yourself or others in an email, ask tactful questions to understand a situation.
- 2. Copy people on messages only when something positive will result from their involvement.** When a cc'd email will have a negative outcome for someone, find another way to communicate.

3. Be your best in email. Ask yourself whether you'd be pleased to see your message plastered on the evening news. Think beyond the purpose of the email, and ask yourself a big-picture question like, "Am I presenting my best self?" This will help you make the right choice as a writer and a human being.

Here's a final piece of advice for all your emails: If you want to make sure your email gets read, keep it personal (sound like a human), relevant (don't waste people's time with unwanted information), and short (write no more than three paragraphs).

With a little bit of effort, we can maintain and build strong relationships with remote teams through our meetings and emails.



Allison Horak

Allison Horak is a consultant and trainer. She helps organizations work more efficiently through better leadership and communication practices. She's an expert in plain language, technical and business writing, and the process of editing and proofreading. Allison offers relevant and insightful in-person and virtual training for professional development. Her client list includes over 30 state agencies and over 20 California counties, cities, and special districts. Allison is an attorney licensed in both California and Oregon and has a degree in Communication from UC San Diego.



Antoinette Joy

Antoinette Joy is a training consultant with over 20 years' experience creating and maintaining healthy work environments. As an HR Director, she influenced organizational culture, designed training and recognition programs, and partnered with executives on strategic initiatives. Antoinette works with organizations to deliver engaging course content, both in person and virtually. She has a BA in Business Administration and Human Resources from California State University, Sacramento; some of her professional certifications include PHR, SHRM-CP, and DiSC.

OTARMA Calendar Photos Submission Deadline is September 15

OTARMA Members, you are encouraged to submit photos of your townships for the annual calendar.

Work is already underway for the 2022 OTARMA Calendar. Each month will feature an image highlighting an OTARMA Member.

Your township has many reasons to be proud of the people and the work you accomplish together. Please take a moment to share those images. Selected photos will

receive acknowledgement in the calendar.

To be considered for the 2022 OTARMA calendar, photos must be submitted by September 15, 2021.

For details, including submission guidelines, we invite you to visit the OTARMA Website at www.OTARMA.org and select *Member Services*. You may also send an email to OTARMA@bfgroup.com for more information.





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OTARMA WELCOMES NEW MEMBERS

Huntington Township, Ross County

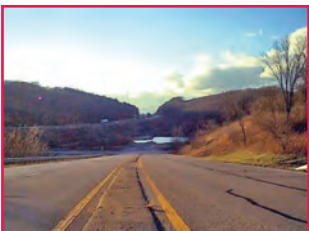


Huntington Township, established in 1811, is one of the 16 townships of Ross County in the Appalachian region of Ohio. There are approximately 6,200 residents who enjoy the

many parks and suburban-rural mix.

The township selected OTARMA for broader coverage and grant opportunities.

Kirkwood Township, Belmont County



Kirkwood Township is one of the 16 townships in Belmont County, which lies on the east side of Ohio and shares its eastern border with West Virginia. Kirkwood Township was named for Robert

Kirkwood, a soldier who fought in the American Revolutionary War. As of the 2018 census, there were nearly 400 residents living in the township.

As a result of Kirkwood Township joining OTARMA, now, 100% of the townships in Ross County are OTARMA Members. The township selected OTARMA for price and coverage.

New Castle Township, Coshocton County



New Castle Township, organized in 1811, is one of the 22 townships of Coshocton County located within the Appalachian region of the state. New Castle, which had also been spelled Newcastle Township, was named after New Castle, Delaware. It has a primarily rural population of approximately 460 residents.

New Castle Township selected OTARMA for coverage, the MORE Grant, and OTARMA's knowledge and specialization in Ohio townships.

Sandy Township, Tuscarawas County



Sandy Township is one of the 22 townships of Tuscarawas County in northeastern Ohio, 35 miles south of Akron. The township is comprised of 24 square miles with approximately 3,400 residents, the majority of whom live in the unincorporated portions of the township. Living in Sandy Township offers residents a suburban and rural feel.

Sandy Township selected OTARMA for improved coverage at a better price and valuable benefits such as the MORE Grant.

If your township is not yet an OTARMA Member, we invite you to consider joining. Please call (800) 748-0554 and ask to speak with an OTARMA Representative or visit www.OTARMA.org. We welcome the opportunity to meet with you, learn more about your township, and discuss how OTARMA can best serve you.