

440
RECORD OF PROCEEDINGS

Minutes of

Meeting

Etna Township Trustee Special

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

October 5, 2006

20

The Etna Township Board of Trustees met on October 5, 2006 at the Etna Township Hall to hold a special meeting. President Burkholder called the meeting to order at 7:00 p.m. and the pledge of allegiance was recited. Roll call showed President Burkholder, Trustee Knapp, and Trustee George present. Fiscal Officer Digel-Barrett arrived at 7:10 p.m.

The motion to adopt the agenda was made by Mr. George and seconded by Knapp and the vote in favor was unanimous

A presentation on open records and public meetings was presented by Holly Deeds Martin, Assistant Attorney General with the State of Ohio Office of the Attorney General.

Mrs. Martin reviewed the Ohio Sunshine Laws, Public Records and Open Meetings Acts Training Manual 2006. This document is on file at the township hall. She stated that the Attorney General's Office does not represent townships personally; often times the township would need to consult the township's attorneys for their perspectives.

The key to public records is keeping the public in the loop. If it will take time to collect the records, she suggested writing the requestor a letter to explain the situation. For example, if the record is off site, it may take longer to provide then one on site. You can request that they pay up front and the Attorney General's Office charges five cents a page. You can also charge for mailing the document.

Mrs. Martin stated you can only charge for the cost of copies. You can work with your requester and explain that during the normal course of business, it may take two weeks to make copies but if you need it quicker, we can take it out to make the copies but it will cost more.

Stan Robinson asked if you can charge for extraction. For example, if you have thirty boxes can you charge for extraction and the time to create a program electronically?

Mrs. Martin explained that you are basically employed by the public for your salary. You are not required to go out and create a public record. You do not have to pull the records but they can come in and review the records.

Mr. Knapp asked if the township could charge for mileage if a township employee would be sent to Kinko's in order to have records copied quicker and was told no, only Kinko's cost.

Mr. George asked what to tell the public if it is something that we can not make copies of, such as maps.

Mrs. Martin replied that you could ask them if they could obtain what they needed by just reviewing the document. But if they want a copy, you are required to provide them with one. You need to be able to document the basis for what you charge for the document and you are required to mail it if they request and charge for the cost of mailing.

President Burkholder asked if the legislative intent was not to discourage the public from requesting the records by making the cost to high and was told he was correct, there are cases were fifty cents was too much for 8 1/2 by 11 paper.

Mr. Robinson asked how court houses get away with charging a couple dollars for copies. Mrs. Martin replied that the public records act is enforced by the public. You can file a mandamus action in your local court or the Supreme Court.

Philip Chew asked if there is a stop gap to prevent the public from capitalizing the resources of the township by making requests that the requestor will never act upon. If you come in and ask for all the township records in zoning from 1983, that would take a lot of the township's effort to provide.

Mrs. Martin replied that the public can not come in and request all records from your office. They must specify a specific record. If they request all the meeting records, that is identifiable but you could ask if they would like to come in and review them and then copy the ones that they need. The request can be written or verbal and the requestor does not have to state his/her name.

David Goll asked if the request has to be on a specific topic. If Mr. Chew came in and asked for all the documents pertaining to the 310 corridor, what does the township have to provide?

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Mrs. Martin replied that this is a public records act and not a public information act. It would be difficult to search for a specific item. If the requestor is asking for information on a topic in the minutes for all of June 1990 you can provide this for them. If they are asking for every Board meeting, then you can tell the requestor that he/she can research the meetings to find them.

Mrs. Martin stated that the Attorney General's office does not enforce the public records act. Mr. Knapp asked if there is any other agency that does enforce. Mrs. Martin explained that the public records act is basically self enforced, it is up to the public to file the action. If passed, House Bill 9 would provide a public access counselor; we currently do not have that. The Attorney General's office can educate the public but does not have enforcement powers.

David Goll wanted to know what happens if you do not provide a public record because the requestor would not provide his name and what amount can he sue for and was told only the attorney's fees.

Stan Robinson asked about the five hundred dollar fee and Mrs. Martin explained that this is for open meeting violations.

President Burkholder said that he had made a public records request to the Licking County Planning Commission and was asked to put it in writing and questioned if a verbal request is enough.

Mrs. Martin stated under the Public Records Act, you can not require it to be in writing. The only requirement is if it is in a statute such as the conceal carry or peace officers. You are allowed to ask them to put it in writing and explain it would help you to provide the records for them but typically you can not require them to put it in writing.

Laura Brown questioned, if when the Board of Zoning Appeals deliberates in private, is that considered a public record. Mrs. Martin stated that the courts look at BZA's differently and the Ohio Revised Code should be checked. Deliberations are most likely not going to be a public record and double check with the township's legal counsel.

Stan Robinson asked if a draft is a record before it is done and was told that drafts can be public records. Mrs. Martin suggested reviewing this with our legal counsel. She suggested noting it was a draft. Laura Brown asked if an uncompleted draft document for one trustee would be considered a public record and was told yes.

Stan Robinson asked what happens if you can not find a record. Mrs. Martin stated the record is still required to kept, as required by the records retention guidelines, and you could be fined for the lost document or for destroying a record.

The zoning inspector said that zoning permits for a property are filed by date, not property address, and asked if would be required to search through all the records for a specific permit and was told that the person requesting the file is permitted to search for the record.

President Burkholder asked if two elected officials could discuss township business as long as they did not make a decision. Mrs. Martin replied that it states "conducting or discussing business" and two make a majority and that would be considered a discussion even if you are not voting. If you go into an executive session then come back into the public meeting and vote on it without discussing it, it is clear the discussion took place in the executive session. It is important to remember as public officials you are hear to serve the public and they should be able to be involved and see what is going on.

Paul George stated he attended schooling on the Sunshine law two years and the presenter stated that trustees could discuss something as long as they did not take action on it and that was legal. An attorney put the school on. Mrs. Martin stated this is what the Attorney General's office has put together. Appendix C on page C-3 in the 2006 Ohio Sunshine Laws Update book the R.C. 121.22 Meetings of public bodies to be public; exceptions. (A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meeting unless the subject matter is specifically excepted by law. The township's legal counsel can be consulted. .

Mrs. Martin said this meeting could be considered an informational meeting but it is better to open the meeting to the public instead of taking a chance of violating the open meeting act.

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President Burkholder asked about the County Commissioners meeting at a site to discuss a road in the county. Mrs. Martin stated it depends on their rules. She has seen commissioners do a site view, they are going to view a particular site and no one is going to discuss anything but typically if you are meeting and deliberating about public business that is an open meeting.

Mr. Knapp discussed a township where two trustees meet to mow grass in the township. Is that a public meeting? Mrs. Martin stated that the public records act is basically one size fits all. Deliberations are to be in public. She recommends talking with our own legal counsel.

Laura Brown asked if the Trustees can talk to call a special meeting. Mrs. Martin said if they are just determining a time for a meeting to discuss the public business, that is permitted. Laura Brown asked if one trustee needs correspondence from another trustee, is that trustee permitted to ask the other trustee for it. Mrs. Martin said the issue is deliberations and actions are to be in public meetings. If they go through the secretary, it is a round robin meeting. To ask if a letter is done is not discussing public business but you can not go the next step to discuss the letter. Stan Robinson asked if they can provide other trustees with information for a meeting, it would be one way correspondence and was told that the key is not to be discussing or deliberating public business.

Laura Brown asked if two trustees could have lunch together if they did not talk about township business and was told yes. There is nothing to prevent socializing but you do not want to be heard discussing township business.

Paul George stated the Board had approved a job and the new trustee and he viewed the project but did not discuss anything about the project. Mrs. Martin said it is better to be as open as possible. If you know you are going to go out to look at a site, you should avoid issues by mentioning this viewing in a public meeting. With regards to meetings with other public entities, both Boards need to open their meeting if business will be discussed. The trustees can attend public meetings but there can be no discussion on business. It was recommended that these issues be discussed with legal counsel. Mrs. Martin suggested talking with the township's legal counsel regarding attending Licking County Planning Commission meetings.

The minutes are a summary of the meeting but should be detailed enough to allow the public to appreciate and understand the substance of the meeting. There is no requirement for minutes to be kept of an executive session. Laura Brown asked what is required regarding public comments and was told that you can summarize as long as the public understands what took place. You do not have to type word for word.

Larry Fugate asked what the form is in regards to an executive session and was told that it must be stated that the Board goes into an executive session but does state whether it is the public or the board that leaves the room.

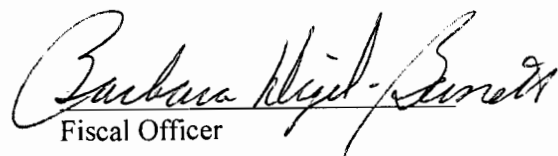
Mrs. Martin said you do not have to allow the public time to speak but if you do allow the public to speak you are allowed to limit the time for comments and you can ask an unruly person to leave.

Claudette Van Dyne asked if the agenda states public comments are limited to three minutes do you have to limit them to the three minutes. Mrs. Martin said she did not know Roberts Rules of Order that is more to the particular body itself.

President Burkholder questioned the rules for Executive Session. Mrs. Martin said that as long as you listed the Executive Session on the agenda and it is specific enough that the public knows what is going on, the deliberation can be in executive session.

At 8:47 p.m., Mr. Knapp moved to adjourn the meeting. George seconded and the vote in favor was unanimous.


President


Fiscal Officer