From: John Travis
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Gallagher Sharp Newsflash: E-mail Exchange Could Violate Open Meetings Statute

On May 3, 2016, the Supreme Court of Ohio in *White v. King*, Slip Op. No. 2016-Ohio-2770, held:

> R.C. 121.22 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.

Adam White, a member of the Olentangy Local School District Board of Education, sued the Board after other members exchanged a series of e-mails regarding a public response to a newspaper editorial that was later ratified at a public meeting. White sued under R.C. 121.22, Ohio's Open Meetings Statute, which provides that "[a]ll meetings of any public body are declared to be public meetings open to the public at all times." Under the statute a "public body" includes a board of a school district, and the term "meeting" means "any prearranged discussion of the public business of the public body by a majority of its members."

The trial court granted the Board's motion for judgment on the pleadings reasoning that the statute does not apply to e-mails, and that the exchange was not prearranged but rather started with an unsolicited e-mail from one member that elicited replies. The Fifth District Court of Appeals affirmed, adding that the mere discussion of an issue of public concern does not mean there were deliberations under the statute.

The Supreme Court reversed and remanded, concluding: "As demonstrated in this case, serial e-mail communications by a majority of board members regarding a response to public criticism of the board may constitute a private, prearranged discussion of public business in violation of R.C. 121.22 if they meet the requirements of the statute." They found that: "Nothing in the plain language of the statute expressly mandates that a 'meeting' occur face to face. To the contrary, it provides that *any* prearranged discussion can qualify as a meeting." There should be no distinction between in-person communications and those via e-mail because discussions of public bodies are to be conducted in a public forum.

In a dissenting opinion, Justice Lanzinger argued that e-mails are not encompassed within the statutory definition of "meeting," noting that three Ohio appellate courts previously refused to extend the statute to e-mails. She reasoned that meetings "differ from other types of communication because they are events or gatherings at which real-time communication can occur." She imagined a scenario where e-mails could constitute a "meeting," but that would only be if the board members prearranged to be available to send and receive e-mails at a specific day and time, which would amount to a real-time discussion. Chief Justice O'Connor concurred in the dissent.

The opinion can be found at: http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-2770.pdf.

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