

**IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO**

DENNIS CAUCHON  
935 River Road, Suite G  
Granville, OH 40323,

*Plaintiff,*

v.

GRANVILLE EXEMPTED VILLAGE  
SCHOOL DISTRICT BOARD OF  
EDUCATION AND BOARD MEMBERS  
RUSS GINISE, THOMAS MILLER, JEN  
CORNMAN AND AMY DEEDS  
130 N. Granger Street  
Granville, OH 43023,

*Defendant*

) Case No.: \_\_\_\_\_  
)  
) GENERAL CIVIL COMPLAINT  
) (OPEN MEETINGS ACT)  
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**COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF**

1. On March 19, 2018, the Granville Exempted Village School District Board of Education violated the Ohio Open Meetings Act by selecting a replacement school board member in a closed executive session.
2. After the executive session, held in the morning, the board president phoned the winner and losers to tell them of the board’s decision and that a formal vote would be held at that evening’s regularly scheduled public meeting.
3. A similar process and violation occurred March 15 when the board chose four finalists from the pool of 10 applicants.
4. Decisions in executive session, by consensus or otherwise, are considered “decision-making” and a “formal action” under the Open Meetings Act, even if the formal vote is delayed until a later public meeting.

5. The remedy for an Open Meetings Act violation is invalidation of the decision made outside of an open meeting and for the process to be repeated *ab initio* (from the beginning). The statute names Common Pleas Court as the venue to seek an injunction to cure a violation.

### **JURISDICTION AND VENUE**

6. Plaintiff Dennis Cauchon, having reasonable cause to believe violations of the Open Meetings Act has occurred, brings this action under R.C. 121.22.
7. The actions of Defendants Granville Village Exempted School District Board of Education, and board members Russ Ginise, Thomas Miller, Jen Cornman and Amy Deeds took place in Licking County.
8. Jurisdiction over this matter lies with this Court pursuant to the Open Meetings Act, R.C. 121.22(I)(1).
9. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), as Defendants' conduct giving rise to the claims for relief occurred in this county.

### **DEFENDANTS**

10. Defendant Granville Exempted Village School District Board of Education ("the Board") is a board of education organized pursuant to R.C. 3313.01, *et seq.*
11. Defendant Russ Ginise ("Ginise") is a member of the Board and serves as its President.
12. Defendant Thomas Miller ("Miller") is a member of the Board and serves as its Vice President.
13. Defendant Jen Cornman ("Cornman") is a member of the Board.
14. Defendant Amy Deeds ("Deeds") is a member of the Board.

## FACTS OF CASE

15. Granville Board of Education member Andrew Kohn resigned from the five-member board effective February 28th. Eleven applicants applied to take his place. One applicant withdrew, leaving ten candidates.
16. On March 19th at a regularly scheduled 6:30 p.m. public board meeting, Board President Russ Ginise announced the board had picked its replacement member. He described when and how the board had chosen its new member: in executive session at a special 9 a.m. board meeting, Defendant Ginise said, “we arrived at what I believe is a consensus on the nominee to the board and that person is, as Ms. Deed has indicated, is Fred Wolf.”
17. After the board had reached its consensus in the morning executive session, Ginise called Wolf to tell him that he had been selected by the board to fill the vacancy. Ginise also phoned the three other finalists to tell them they had not been chosen.
18. Wolf, the selected candidate, was the only applicant in attendance at the public meeting that evening. The board quickly and unanimously approved his appointment at the start of the meeting. He was sworn in, given a name plate that district staff had made before the meeting and posed for a group board photo posted on the school district’s web site.
19. The video and transcript of the meeting shows that no decision-making or substantive discussion occurred at the public session. The board’s 4-0 vote merely ratified the decision it had made that morning in a closed executive session.
20. It is well-established under Ohio law that “reaching a consensus” constitutes decision-making and a formal act under the Ohio Open Meetings Act. The Ohio Open Meetings Act permits appointments to be discussed and deliberated upon in executive sessions. However,

decision-making may not occur during executive sessions and, for the needs of this case, the distinctions between discussion, deliberation and decision-making are well-defined under open meetings law.

21. The Granville Board of Education conducted nearly the entirety of its board member selection process in executive session, returning only briefly to public session (often with no members of the public actually present) to announce its consensus decisions.
22. Ten candidates were interviewed in executive sessions lasting more than five hours on March 5 and March 15. Interviews in executive sessions are permissible under the Ohio Open Meetings Act, as are discussions and deliberations. However, the board did, by its own admission, extend its conduct into actual decision-making at two executive sessions during special meetings on March 15 and March 19.
23. On March 15, after interviewing candidates, the Board of Education continued in executive session for another hour and a half. During this executive session, the board winnowed ten candidates to four finalists. After doing so, it returned for a six-minute public session to announce the finalists.
24. At the brief public session, board member Jen Cornman said: “We came to a consensus on four that we thought were the top, (that) rose to the top four for a number of reasons.”
25. Board President Russ Ginise added: “I’ll identify the four candidates that I think are still under consideration. I’m going to identify them not in any rank order but, frankly, just in the order with which they interviewed with us, and those persons are Fred Wolf, Ceciel Shaw, Mark Bruce and Don Haven.”
26. Ginise continued: “Our plan is to meet again on Monday, the 19th, in executive session and further consider these applicants, further discuss them, and then to be able to make...to

put ourselves in a position where we can vote on the person to take the board slot in the regularly scheduled board meeting on Monday, the 19th at 6:30 p.m.”

27. Ginise then personally phoned all ten candidates to inform them whether or not the board has chosen them as a finalist for the vacant board position.
28. Board members’ own language and actions provide clear evidence that the board was making decisions in private executive sessions and that the process had been designed for decisions to be made in closed meetings. The Open Meetings Act requires that decisions be made in public, not just that they be announced in public.
29. On March 19th at 9 a.m., the Board of Education reconvened for an executive session to choose the replacement board member from the pool of four finalists selected March 15. The March 19th executive session lasted 90 minutes and was followed by a public meeting that lasted less than three minutes. At the public meeting, the board announced that a “consensus candidate” had been chosen.
30. Board President Ginise said: “The board has concluded over five hours of interviews, three hours of discussions and contemplations with respect to candidates for the open board position. I believe we’ve reached a consensus, and, at the meeting this evening at 6:30 p.m., we will accept a motion to nominate that consensus candidate for a vote for approval and appointment to the school board.”
31. The scripted public vote occurred in the manner Ginise said it would. The selected candidate, Fred Wolf, was approved 4-0, sworn in, given a name plate that had been prepared in advance and posed for a group board member photo that was posted on the district’s web site. No evidence of decision-making can be found anywhere in the video or

audio record of any of the board's public meetings because, in fact, all decisions were made in executive sessions.

**PLAINTIFF'S FIRST CAUSE OF ACTION:**

**OPEN MEETINGS ACT**

*"The public body may not vote or make any decisions in executive session."*

*-- Ohio Attorney General Sunshine Laws 2018*

32. The Granville Board of Education conducted more than eight hours of executive sessions on its decision to choose a new school board member. It spent a total of thirteen minutes in three public sessions dedicated to announcing its decisions.
33. Open meetings law is "liberally construed" in favor of openness and the public body has the burden of providing evidence that complied with the law. The board's public meetings were recorded and contain no evidence whatsoever of decision-making behavior or meaningful discussion on its decision.
34. Appointments are a permissible topic for discussion or deliberation in executive session. However, this authority is limited: "executive session exemptions are to be strictly construed." The Ohio Attorney General states: "(N)o vote or other decision-making on the matter(s) discussed may take place during the executive session."
35. For the needs of this case, the lines between discussion, deliberation and decision are well-drawn in Ohio law. The Ohio Attorney General's *Ohio Sunshine Laws 2018: An Open Government Resource Manual* defines the concepts as follows: "'Discussion' is the exchange of words, comments and ideas by the members of a public body. 'Deliberation' is the act of weighing or examining reasons for and against a choice."

36. The Attorney General defines decision-making as: “(A) public body may not take any formal action, such as voting *or otherwise reaching a collective decision, in an executive session* – any formal action taken in an executive session is invalid.” (Emphasis added.) “Reaching a consensus” is an example of “reaching a collective decision.” Ohio courts have ruled reaching a consensus violates the law even if it’s a consensus to not act and the collective decision is reached without a vote or a confirmatory vote is scheduled for later.
37. Courts weigh the totality of circumstances and the governing body’s behavior – not the public body’s timing of formal votes – to determine when decisions have been made for the purposes of the Open Meetings Act. Public bodies are not allowed to dodge the Open Meetings Act by claiming their decisions are merely “informal” or not decisions until formal votes are taken. “Even a decision in executive session not to take action (on a request made to the public body) has been held to be ‘formal action’ that should have been made in open session, and thus, was deemed invalid,” states the Attorney General’s manual, *Ohio Sunshine Laws 2018*.
38. The school board twice took formal action illegally in executive session: on March 15 (when it chose four finalists from ten applicants) and on March 19 (when it chose the winning candidate). Board member statements and actions confirm that these consensus agreements during executive session were intended as decisions, were treated as decisions by all involved (board members, school district staff and applicants), and were, in fact, decisions and formal acts as defined by the Open Meetings Act.

## **RELIEF REQUESTED**

WHEREFORE, the plaintiff requests the court provide relief allowed under the Open Meetings Act:

1. An injunction that invalidates the appointment of Fred Wolf as a new board member because his March 19 selection was made in executive session, closed to the public.
2. An injunction issued prior to the board's next regular board meeting, on April 16, to minimize disruption to school district business and uncertainty resulting from an improperly appointed board member acting on official business.
3. An order requiring the public body violating open meetings law to correct its actions by starting the selection process anew.
4. An order for the school board to pay court costs, a fine of \$500 and reasonable attorney fees.

Dated this 27th of March, 2018

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