[Cite as *Keystone Commt. v. Switzerland of Ohio Sch. Dist. Bd. of Edn.*, 2016-Ohio-4663.]

STATE OF OHIO, MONROE COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

KEYSTONE COMMITTEE, et al. PLAINTIFFS-APPELLEES VS. THE SWITZERLAND OF OHIO SCHOOL DISTRICT BOARD OF EDUCATION DEFENDANT-APPELLANT	)	CASE NO. 15 MO 0011 OPINION

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Monroe County, Ohio Case No. CVH 2015-121

JUDGMENT: Affirmed.

APPEARANCES:

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JUDGES:
Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: June 13, 2016

[Cite as *Keystone Commt. v. Switzerland of Ohio Sch. Dist. Bd. of Edn.*, 2016-Ohio-4663.]
WAITE, J.

{¶1} Appellant, The Switzerland of Ohio Local School District Board of Education, (hereinafter "Board"), appeals a May 28, 2015, trial court judgment entry granting an injunction sought by the Keystone Committee and Lou Bedford, (collectively referred to as "Appellees"). Appellees sought injunctive relief based on violations of R.C. 122.22, also known as the Ohio Open Meetings Act. Specifically, Appellees alleged in their complaint that the Board: (1) failed to adhere to the stated purpose of a special meeting in violation of R.C. 121.22(F); and (2) held improper and illegal discussions and deliberations during executive sessions in violation of R.C. 121.22(G).

{¶2} The Switzerland of Ohio Local School District (hereinafter "District"), is the largest geographical school district in the State of Ohio, at 546 square miles. It encompasses all of Monroe County and portions of Belmont and Noble Counties. Its facilities include three high schools, a career center and five elementary schools. Approximately 2,120 students make up the student body of the District. The District is operated by the Board and its administrators.

{¶3} Appellee Keystone Committee is an unincorporated organization comprised of residents in and around Beallsville, Ohio and is actively involved with the issue of the potential closure of Beallsville High School, one of the three high schools in the District. Appellee Lou Bedford is a resident and has one daughter who graduated from Beallsville High School and a second daughter who is currently enrolled as a student at the school.

{¶4} Appellees filed a complaint in the Monroe County Court of Common Pleas on April 6, 2015, alleging three violations of the Open Meetings Act by the Board as follows: (1) the Board's February 26, 2015, special meeting violated R.C. 121.22(F); (2) the Board's March 19, 2015, executive session violated R.C. 121.22; and (3) the Board's May 6, 2014, executive session violated R.C. 121.22. Appellees filed a motion for preliminary injunction on April 13, 2015. The Board filed an answer on April 24, 2015, and a brief in opposition to the motion for preliminary injunction on April 27, 2015. A hearing was held on April 29, 2015, at the conclusion of which the court ordered both parties to file proposed findings of fact and conclusions of law. The Board filed a post hearing brief on May 11, 2015, and Appellees filed proposed findings of fact and conclusions of law in support of their motion for injunction on May 11, 2015.

{¶5} Although it was noted by the trial court at the outset that the hearing was purportedly held on Appellees' motion for preliminary injunction, the court issued a final judgment entry, in accordance with Civ.R. 54, on May 28, 2015, granting an injunction to Appellees. The Board filed a motion to stay execution of judgment with the trial court on June 26, 2015, which was denied by the trial court in a judgment entry dated June 30, 2015. The Board subsequently filed a motion to stay execution of judgment with this Court on July 13, 2015. Appellees filed a memorandum in response. This Court issued a judgment entry on July 24, 2015, denying the Board's motion for stay of execution of judgment and preserving the status quo.

{¶6} A thorough review of the record, including testimony of the Board Superintendent, John Hall; Board President, Justin Isaly; Board Vice President, Ron Winkler and District Treasurer, Lance Erlwein; as well as an examination of the exhibits of record, supports the trial court's findings that violations of R.C. 121.22(F) and R.C. 121.22(G) occurred. The trial court properly granted an injunction in the instant case and the judgment is affirmed.

Facts

{¶7} The Board is comprised of five members. During the relevant time period, the members were: Justin Isaly, President; Ron Winkler, Vice President; Jacki Hupp, Dave Matz and Edward Carleton. The Board hired Superintendent John Hall in August of 2013.

{¶8} The Board holds regular monthly meetings and occasional special meetings. Superintendent Hall and his staff regularly prepare meeting agendas and notices. The minutes, both for monthly and special meetings, are prepared by Mr. Erlwein, District Treasurer. As with many school districts, the District has experienced a loss of revenue due to local business closures and population decline, among other factors, over the past several years. This loss in revenue has caused the District to be placed in fiscal caution status by the State Superintendent. R.C. 3316.031(B)(1) states:

> If the state superintendent determines from a school district's five-year forecast submitted under section 5705.391 of the Revised Code that a district is engaging in any of those practices or that any of those

> conditions exist within the district, after consulting with the district board of education concerning the practices or conditions, the state superintendent may declare the district to be under a fiscal caution.

{¶9} Moreover, the District has garnered poor ratings on academic achievement from the Ohio Department of Education. As a result, the Board has utilized various means to assure fiscal sustainability and academic improvement. One of those has been to introduce the possibility of closing Beallsville High School, which is the basis of the instant case.

{¶10} On May 6, 2014, at 5:30 p.m., the Board held a special meeting. The notice issued prior to the meeting stated that the purpose of the meeting was, "District staffing and matters to be kept confidential by federal law or regulations or state statues [sic]. The Board of Education may also consider any other business deemed necessary." (Tr., Exh. 5.) The minutes of the meeting, admitted into the trial record, reflect that the entire meeting consisted of an executive session which lasted from 5:37 p.m. until 8:08 p.m. Superintendent Hall testified at the hearing that during the executive session he presented the Board with information regarding additional course offerings that could result from a closure of Beallsville High School and used a white board to describe curriculum "opportunities" for the 2014-2015 academic year for the two remaining high schools. He also testified that there were no deliberations between the council members about the closure during the executive session and that it was for informational purposes only.

{¶11} After that meeting, from conversations held at various times with council members individually, Superintendent Hall felt that closing Beallsville High School would not be prudent. He decided the issue would be revisited depending on the outcome of a school funding issue placed on the ballot for the November 2014 general election. That school issue failed.

{¶12} On February 18, 2015, during a regular monthly meeting, the Board voted to go into executive session. A review of the minutes from that session reveal that there were several reasons given for going into executive session, including: (1) to discuss matters relating to the employment, dismissal, discipline, promotion and demotion of a public employee or official; (2) to consider the investigation of charges or complaints against a public employee; and, (3) to consider matters required to be kept confidential by statute or regulation (although no specific statute or regulation was listed). Immediately upon reconvening in open session, the Board voted on a resolution to close Beallsville High School. The vote was tied at 2-2 as Mr. Winkler was not present. Therefore, the motion did not pass, although the meeting minutes do indicate passage of this motion.

{¶13} Mr. Winkler testified that he had been contacted multiple times after the meeting by members of the community about the closure, which prompted him to contact Board president Justin Isaly to call a special meeting on the issue. A special meeting was called. Written notice was provided which stated that a special meeting would be held on February 26, 2015, which purpose was "[t]o discuss the 2015-2016 school year." The notice also stated that "[t]here will be no public participation."

(Emphasis deleted.) (Tr., Exh. 8.) Treasurer Erlwein testified that the only topic discussed at this special meeting was closure of Beallsville High School and that the very brief meeting consisted only of a vote on the resolution to close the school. The minutes of the meeting reflect that it was highly contentious, with shouting between council and members of the public that were present. Because attendance exceeded the capacity of the usual meeting location at the Central District Office, it was decided to reconvene at nearby Woodsfield Elementary. The closure was discussed by the council members with no comments permitted by the public. A motion was brought to vote on the resolution to close Beallsville High School. The resolution also provided that those students from Beallsville would have the option of attending either of the two other District high schools. The motion passed on a 3-2 vote.

{¶14} On March 19, 2015, the Board held its regular monthly meeting. The Board again voted to go into executive session. An agenda for that meeting entered into evidence at trial indicates the executive session lasted from 7:45 p.m. until 10:07 p.m. (Tr., Exh. 10.) Also admitted into evidence was a document entitled, "CONFIDENTIAL –DRAFT Board of Education Executive Session 3/19/15" which Superintendent Hall testified he had drafted. (Tr., Exh. 9.) It contains information on academic course improvement, course offerings and issues relating to athletics, security, administrative personnel hiring as well as buildings and grounds issues. The agenda for the executive session lists as reasons to enter executive session that the Board was to consider the appointment, employment, or discipline of a public employee or official; consider charges or complaints against a public employee,

official, licensee or student; consider matters confidential by statute or regulation; and, finally, to discuss security arrangements and emergency response protocol. Superintendent Hall testified that only five to ten minutes were spent discussing academic course offerings. The majority of this session was spent interviewing candidates for a position as school principal.

{¶15} After the March 19, 2015 meeting, counsel for Appellees attempted multiple times to contact the Board's legal counsel to discuss the Beallsville closing. Appellees finally received word that no further discussions would take place. Appellees subsequently filed the instant suit on April 6, 2015.

{¶16} On April 16, 2015, the Board held its regular monthly meeting. During the meeting the Board voted to go into executive session once again, this time with their legal counsel in attendance. Following the executive session, the Board voted to rescind the February 26, 2015, resolution. (Tr., Exh. L.) The Board then immediately voted on a resolution entitled, "RESOLUTION TO REASSIGN AND OR TRANSFER BEALLSVILLE STUDENTS" which included, "Section 1: Upon the conclusion of the 2014-2015 school year, the educational program at Beallsville for students in grades nine through twelve shall be terminated." (Tr., Exh. M.) The 2014-2015 date is a clerical error, as all parties acknowledge the resolution was not intended to be effective until the 2015-2016 academic year. The resolution passed with a majority vote.

{¶17} In their complaint Appellees sought a permanent injunction, pursuant to R.C. 121.22. On April 13, 2015, Appellees filed a motion for a preliminary injunction.

The trial court held a hearing on the matter on April 29, 2015. A final judgment entry was issued on May 28, 2015, which states in pertinent part:

> Based on all of the above findings, and pursuant to Ohio Revised Code §121.22(I)(1), this Court hereby grants Plaintiff's Request for an Injunction. The Board is hereby ORDERED to comply with the provisions of the Open Meetings Act and to undergo a decision making process that is fully compliant with the OMA.
>
> The Court further finds that there is no just reason for delay, and that this "Judgment Entry Incorporating Findings of Fact and Conclusions of Law" is a final appealable order, as defined under Civil Rule 54.

(5/28/15 J.E., p. 14.)

{¶18} The Board was unsuccessful in seeking a stay of execution of judgment with both the trial court and this Court. To preserve the status quo pending review of matter, we issued an entry denying the motion for stay of execution of judgment. Beallsville High School remains open and no further steps to close the school or reassign the students have occurred, nor has the Board rescinded its most recent resolution on the matter.

{¶19} Seven assignments of error are presented for review.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ERRED WHEN IT CONSOLIDATED THE HEARING ON APPELLEES' MOTION FOR A PRELIMINARY

INJUNCTION UNDER CIV.R. 65 WITH THE TRIAL ON THE MERITS, WITHOUT ISSUING AN ORDER PROVIDING NOTICE TO THE PARTIES AS REQUIRED BY CIV.R. 65(B)(2). (TR.P.3; J.E.)

Standard of Review for Injunction

{¶20} "An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law. It is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot." *Garano v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988); *W. Branch Local School Dist. Bd. of Edn. v. W. Branch Edn. Assn.,* 2015-Ohio-2753, 35 N.E.3d 551, ¶ 11 (7th Dist.). The decision to grant or deny an injunction is solely within the trial court's discretion and, therefore, a reviewing court should not disturb the judgment of the trial court absent a showing of a clear abuse of discretion. *Perkins v. Quaker City*, 165 Ohio St. 120, 125, 133 N.E.2d 595 (1956). In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio St.3d 481, 450 N.E.2d 1140 (1983).

{¶21} The Board contends the trial court erred when it issued a final judgment entry in favor of Appellees after the April 29, 2015, hearing, as it combined the preliminary injunction hearing with a trial on the merits without first providing notice to the parties.

{¶22} Civ.R. 65(B)(2) states:

> Before *or after the commencement of the hearing* of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (B)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury. (Emphasis added.)

{¶23} Civ.R. 65(B)(2) states that a court may consolidate a hearing on a motion for preliminary injunction with a trial on the merits with knowledge of the parties that the case is being heard on the merits. *Turoff v. Stefanac*, 16 Ohio App.3d 227, 228, 475 N.E.2d 189 (1984). In the instant case, the Board was present and participated in the hearing with a number of witnesses. On May 11, 2015, plaintiffs filed an unopposed motion to admit the deposition testimony of an absent board member, taken approximately one week later, as trial testimony. Moreover, Appellees' complaint ultimately sought permanent injunction in the instant matter and Appellees did not object to the proceedings. Additionally, the Board never objected or discussed the subject of consolidation of the hearings either during the April 29, 2015, hearing, one week later when the additional testimony was obtained with counsel for both parties present, or in its post hearing brief. This record reflects that, in light of all the proceedings, the parties understood that the

trial court was undertaking a full merit determination. Thus, we cannot say that the trial court abused its discretion, here. The first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> THE TRIAL COURT ERRED WHEN IT DETERMINED THE BOARD IMPROPERLY DISCUSSED TOPICS NOT PERMITTED UNDER R.C. 121.22 DURING ITS MAY 6, 2014 AND MARCH 19, 2015 EXECUTIVE SESSIONS, WHEN THERE WAS NO EVIDENCE THAT THE BOARD ENGAGED IN ILLEGAL DELIBERATIONS DURING EITHER EXECUTIVE SESSION. (J.E., ¶¶(O), (T).)

{¶24} R.C. 121.22 requires public bodies in Ohio to take official action and conduct all deliberations on official business only in open meetings where the public can attend and observe such deliberations. Public bodies must provide advance notice to the public, indicating where and when the meetings will occur and, in the case of special meetings, state the specific topics the body will discuss. R.C. 121.22(F).

{¶25} An executive session is a closed-door conference convened by a public body, after a roll call vote, that is attended by only the members of the public body (and those they invite), that excludes the public. R.C. 121.22(G). The Open Meetings Act allows for executive sessions for only certain limited purposes, and those are to be strictly construed. R.C. 121.22(G); *see also, State ex rel. Long v. Cardington Village Council,* 92 Ohio St.3d 54, 59, 748 N.E.2d 58 (2001). A public

body may only discuss the matters specifically enumerated in R.C. 121.22(G) during executive session. Finally, a public body may not take any formal action, such as voting or reaching any collective decision, during an executive session and any formal action taken in an executive session is invalid. R.C. 121.22(H); *State ex rel. Kinsley v. Berea Bd. of Edn.,* 64 Ohio App.3d 659, 664, 582 N.E.2d 653 (8th Dist.1990).

{¶26} A party seeking injunctive relief has the burden of proof by clear and convincing evidence. *State ex rel. Stern v. Butler,* 7th Dist. No. 98JE54, 2001 WL 1155821 (Sep. 26, 2001); *see also, Paridon v. Trumbull Cty. Childrens Servs. Bd.,* 2013-Ohio-881, 988 N.E.2d 904, ¶ 18 (11th Dist.). R.C. 121.11(I)(1) provides, in pertinent part, "[a]ny person may bring an action to enforce this section. * * * Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions." Therefore, the party alleging a violation of the Open Meetings Act must establish that the public body held a meeting with a majority of its members and that the meeting improperly excluded the public. *State ex rel. Hardin v. Clermont Cty. Bd. of Elections,* 2012-Ohio-2569, 972 N.E.2d 115, ¶ 20-27 (12th Dist.). The burden then shifts to the public body to produce evidence demonstrating that the meeting at issue properly fell within one of the statutory exceptions. *Id.* The stated purpose of the executive session must be one of the limited permissible topics as set forth in the statute. R.C. 121.22(G)(1)-(8). Moreover, the public body must "specify, in detail, the stated purpose for holding an

executive session, although the law does not require that the specific nature of the matter to be considered be disclosed." *In re Removal of Kuehnle*, 161 Ohio App.3d 399, 2005-Ohio-2373, 830 N.E.2d 1173, ¶ 93 (12th Dist.).

{¶27} The Board essentially argues in its second assignment of error that the trial court erred in determining that it went outside the scope of the permissible topics for executive session because the record contains no evidence the Board engaged in impermissible deliberations during either the May 6, 2014, or March 19, 2015, executive sessions. Their contention conflates two separate issues contained within the Open Meetings Act. The first is whether the Board went into executive session for a legally permissible purpose. The second is whether any impermissible deliberations on public topics took place during executive sessions.

{¶28} Regarding the May 6, 2014, executive session, the stated purpose of the meeting was listed as "District staffing and matters to be kept confidential by federal law or regulations or state statues [sic]." (Tr., Exh. 5.) On its face, this notice is problematic. First, "District staffing" does not qualify under any of the statutory exemptions. Any personnel matters must be particularly named in the motion. Merely using general terms like "personnel," "staffing" and "finances" are not sufficient and amount to a violation of R.C.121.22(G); *see also State ex rel. Long*, at 59. Further, Superintendent Hall testified that during that session, which lasted from 5:37 p.m. until 8:08 p.m., he utilized a white board to list "opportunities" and that there was "a long talk about staffing on my part, but I reminded the Board as we went in, that that was the purpose we were going in for as it related to the reassignment of

students." (Tr., pp. 69-70.) Superintendent Hall's testimony, combined with the stated purpose of the executive session, evidence that the executive session held on May 6, 2014, violated R.C. 121.22(G). The Board impermissibly conducted public business, which should have been conducted in an open meeting, behind closed doors during this executive session.

{¶29} The notice for the March 19, 2015, executive session states as its reasons: considering the appointment, employment, discipline of a public employee or official; considering charges or complaints against a public employee, official, licensee or student; to consider matters confidential by statute or regulation; and, finally, to discuss security arrangements and emergency response protocol. While this language mirrors some language in the statute, the Board never specifically states in the notice the specific or actual purpose for the executive session. Superintendent Hall testified that he attended this executive session and discussed items included on a document admitted into evidence entitled, "CONFIDENTIAL DRAFT Board of Education Executive Session 3/19/15." (Tr., Exh. 9.) That document includes the headings: Academic Course Improvement, Course Offerings, Athletics, Safety and Security, Administrative and Buildings and Grounds. However, with the exception of Safety and Security, none of these subjects are permissible topics for an executive session pursuant to R.C. 121.22(G). Therefore, the trial court was correct in determining that the executive sessions held on May 6, 2014, and March 19, 2015, were outside the statutorily permissible scope and, thus, held in violation of R.C. 121.22(G).

{¶30} The Board also contends that the trial court erred because there was no evidence that it engaged in illegal deliberations during the executive sessions. Again, a school board, as a public body, is not permitted to conduct public business during executive session. Public business must be conducted during an open, public meeting, before or after executive session. *In re Removal of Kuehnle,* 161 Ohio App.3d 399, 2005-Ohio-2373, 830 N.E.2d 1173, ¶ 93 (12th Dist.). Even if the executive sessions were not invalidly called, any discussions and deliberations the Board improperly had while in these sessions and which clearly resulted in Board action were invalid. R.C. 121.22(H) provides:

> A resolution, rule or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section.

{¶31} The record reflects that the discussions held in the executive sessions included topics such as staffing, administrative and curriculum; matters solely related to the closing of Beallsville High School. It is important to note that Superintendent Hall testified that the Board has "almost on every agenda" an executive session. (Tr., p. 66.) We note that this frequent and liberal use of executive session by a public body is in direct contravention of the statute. Both Board resolutions to close

Beallsville High School were offered immediately after the Board adjourned both executive sessions. This record shows the trial court's determination that the invalid executive sessions contained illegal deliberations is not in error. The Board's second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

> THE TRIAL COURT ERRED WHEN IT INVALIDATED THE BOARD'S FEBRUARY 26, 2015 AND APRIL 16, 2015 RESOLUTIONS, WITHOUT FINDING THE RESOLUTIONS RESULTED FROM ILLEGAL NONPUBLIC DELIBERATIONS AS REQUIRED BY R.C. 121.22. (J.E., ¶¶(O), (T).)

{¶32} In its third assignment of error, the Board contends the trial court erred when it invalidated the resolutions to close Beallsville High School which were passed initially at the February 26, 2015, special meeting and subsequently at the April 16, 2015, regular meeting. Although the Board discusses both of these resolutions together, the trial court held that each resolution was invalid for separate and distinct reasons.

{¶33} Again, regarding special meetings held by a public body, R.C. 121.22(F) states, "[e]very public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and *purpose* of all special meetings." (Emphasis added.)

{¶34} Moreover, when a public body holds a special meeting, intending to discuss particular issues, the notice of meeting must specifically state those issues. *Jones v. Brookfield Twp. Trustees,* 11th Dist. No. 92-T-4692, 1995 WL 411842, (Jun. 30, 1995).

{¶35} A motion on the resolution to close Beallsville High School was first made at the February 18, 2015 regular school board meeting. The vote resulted in a 2-2 tie, as one board member, Mr. Winkler, was absent from the meeting. Mr. Winkler testified that he called the Board president to request a special meeting because he wanted to "put it to rest." (Tr., p. 213.) The special meeting was called for February 26, 2015. As stipulated by the parties, the purpose of the meeting stated in the notice was "[t]o discuss the 2015-2016 school year." (Emphasis deleted.) (Tr., Exh. 8.) During his testimony, Superintendent Hall acknowledged he had drafted the notice for the special meeting. District Treasurer Erlwein testified that he was present at the meeting, it was very short in duration, and the only matter discussed was the Beallsville High School closure issue. The trial court held that the Board violated R.C. 121.22(F) by exceeding the scope of the noticed purpose of the February 26, 2015 meeting.

{¶36} The Board correctly argues that a special meeting can be held for more than one purpose. However, the stated purpose must conform to the actual subject matter of the meeting so as to give the public actual notice. *Jones, supra*. In the case *sub judice,* the special meeting was called by the Board president at the behest of Mr. Winkler, who testified that he wanted the Beallsville matter to be "settled." The

treasurer testified that closure of this school was the only matter discussed and the Board voted to pass a resolution to close Beallsville High School at the meeting. Thus, the Board and its agents knew the meeting was about a very specific topic: the closing of Beallsville High School. The stated purpose in the notice of the special meeting, "[t]o discuss the 2015-2016 school year," did not serve to inform the public of the true purpose of the meeting. As the notice did not provide the specific subject matter of the meeting, the Board violated R.C. 121.22(F). Pursuant to R.C. 121.22(H), any formal action taken by a public body in a meeting for which it did not properly give notice is invalid.

{¶37} The trial court also held that the April 16, 2015, majority vote on the resolution to close Beallsville High School held in a regular meeting was invalid. As earlier discussed, the Board voted to close Beallsville High School at the special meeting on February 26, 2015, and then, immediately after yet another executive session at the April 16, 2015 regular meeting, the Board voted to rescind this resolution. Immediately thereafter, as the next item on the agenda, the Board once again voted and passed a resolution to close Beallsville High School. The trial court held that the Board's attempt to "cure" the open meetings violations by a subsequent adoption of the resolution at an open meeting was also not valid.

{¶38} A basic tenet of the Open Meetings Act is the requirement that a public body take official or formal action in a public meeting. R.C. 121.22(A), (C) and (H). An official or formal action taken in an open session is invalid if it results from

discussions that improperly occurred outside of an open meeting. R.C. 121.22(H); *State ex rel. Delph v. Barr,* 44 Ohio St.3d 77, 81, 541 N.E.2d 59 (1989).

{¶39} The stated purpose for the executive session called during the April 16, 2015, regular meeting was, "[c]onferences with its attorneys concerning disputes involving the Board that are the subject of pending or imminent court action." (Tr., Exh. 11.) After returning to regular session, the Board immediately took two actions: a vote to rescind the previous resolution to close Beallsville High School and then a second vote on a new resolution to close Beallsville High School. As the trial court accurately found, this attempt to "cure" the violation of the Open Meetings Act with an open vote that immediately followed presentations and discussions held behind closed doors in executive sessions is exactly the type of conduct the Act seeks to prohibit. Taking public, formal action as contemplated by R.C. 121.22, *et seq.*, involves more than merely tallying final votes on an issue. It involves all of the discussions and deliberations on that issue be held in open, public meetings that lead to the final vote. The deliberative process leading up to the action must be transparent to the public. This process ensures that a public body remains fully accountable to the public which it serves. *See, e.g., Gannett Satellite Information Network, Inc. v. Chillicothe Bd. of Edn.,* 41 Ohio App.3d 218, 221, 534 N.E.2d 1239 (4th Dist.1988). The trial court did not err when it concluded that neither the February 26 nor the April 16, 2015 resolutions to close Beallsville High School were valid pursuant to R.C. 121.22. Appellant's third assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 4

THE TRIAL COURT ERRED IN FINDING THAT THE BOARD VIOLATED R.C. 121.22 BY EXCEEDING THE NOTICED PURPOSE OF THE FEBRUARY 26, 2015 SPECIAL MEETING, AS THE EVIDENCE DEMONSTRATED THE BOARD PROVIDED SUFFICIENT NOTICE OF THE MEETING'S PURPOSE. (J.E., ¶¶(M)-(N), (P), (T).)

{¶40} In its fourth assignment of error, the Board contends the trial court erred in finding the Board exceeded the stated purpose of the February 26, 2015, meeting because the evidence introduced at hearing demonstrated otherwise. The Board claims that the issue as to the closing of Beallsville High School fits within the stated purpose in the notice, which was "[t]o discuss the 2015-2016 school year"; and the large attendance at the meeting is proof that the public received adequate notice.

{¶41} The requirements for proper notice of a special meeting have already been addressed in our analysis of the Board's third assignment of error, and we have affirmed the trial court's determination that this notice fell well short of the statutory requirement. Thus, we turn to the Board's second contention. Hearing testimony reveals the audience for the February 26, 2015, special meeting was large; so large that the meeting had to be relocated to a nearby elementary school. The audience included residents as well as multiple media outlets. The Board essentially contends that the large turnout for the meeting provides direct evidence of the sufficiency of the notice. In its brief, the Board contends that Appellees did not present a single witness who could testify that they would have attended had they not known the

purpose. Their argument here, misconstrues the Board's obligations under the Open Meetings Act. A public body is charged with properly notifying the public of public meetings. R.C. 121.22(F). For regular meetings, the public body must hold them at prescheduled intervals and must have rules in place that provide a reasonable method for the public to determine the time and place of these regular meetings. *Id.*

{¶42} For special meetings, the public body must establish, by rule, a reasonable method that allows the public to determine the time, place and purpose of any special meeting, including 24 hours advance notice to all media outlets that have requested such notification (except in an emergency); and, when the meeting is called in order to address particular issues, the notice of meeting must clearly state those issues. R.C. 121.22(F); *Jones v. Brookfield Twp. Trustees,* 11th Dist. No. 92-T-4692, 1995 WL 411842, (Jun. 30, 1995).

{¶43} The Board has an ongoing obligation under the Open Meetings Act to provide proper notice of all meetings of the public body. Attendance levels at any given meeting provide no relief from the Board's legal obligations in this regard. The fourth assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 5

THE TRIAL COURT ERRED WHEN IT INVALIDATED THE BOARD'S APRIL 16, 2015 RESOLUTION, WHEN THERE WAS NO EVIDENCE THE BOARD VIOLATED R.C. 121.22 WHEN IT ADOPTED THE APRIL 16, 2015 RESOLUTION, AND OHIO LAW IS CLEAR THAT A

PUBLIC ENTITY MAY TAKE SUBSEQUENT ACTION TO REMEDY AN ALLEGED VIOLATION OF R.C. 121.22. (J.E., ¶¶(S)-(T).)

{¶44} In the fifth assignment of error, the Board asserts the trial court erred when it invalidated the Board's resolution to close Beallsville High School at a regular meeting as this subsequent action served to "cure" any previous Open Meetings Act violations.

{¶45} In *Biesel v. Monroe Cty. Bd. of Edn.,* 7th Dist. No. CA-672, 1990 WL 125485, (Aug. 29, 1990), this Court held that a public body could cure a previous violation of the Open Meetings Act in a subsequent open meeting. *Biesel* dealt with, "a matter which would have been properly discussed in executive session had the Board specifically stated at the regular meeting that that matter was to be discussed." *Id*. at *2. The Board's reliance on *Biesel* is clearly misplaced. In the instant case, the Open Meetings violation consists of discussion in executive session, in violation of R.C. 121.22(G), of matters that should have been discussed in regular, open meetings. As noted in *Gannett,* "[a] violation of the Sunshine Law cannot be 'cured' by subsequent open meetings if the public body initially discussed matters in executive session that should have been discussed before the public." *Id*. at 221.

{¶46} The Board held multiple, impermissible executive sessions which were closed to the public that contained discussions and information required to be discussed and disseminated publicly, in violation of R.C.121.22(G). To simply bypass the requirement that these discussions must be public by being able to rescind a resolution and simply vote again on the same resolution based on the same

improperly obtained information would render hollow the underlying principles of the Open Meetings Act. Based on the foregoing, the fifth assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 6

> THE TRIAL COURT ERRED WHEN IT ISSUED AN ORDER PREVENTING THE SUPERINTENDENT FROM REASSIGNING THE BEALLSVILLE HIGH SCHOOL STUDENTS, WHEN THE SUPERINTENDENT WAS NOT A PARTY TO THE COMPLAINT. (J.E., ¶(T).)

{¶47} In their sixth assignment of error the Board contends the trial court erred in issuing its order that Superintendent Hall could not "reassign" the Beallsville High School students, because he was not a party to the complaint.

{¶48} Superintendent Hall was hired by the Board in August of 2013 and reports directly to the Board pursuant to R.C. 3319.01, which states, "[t]he superintendent shall be the executive officer for the board." Civ.R. 65(D), regarding the scope of an injunction, provides that "[e]very order granting an injunction * * * is binding upon the parties to the action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise." Therefore, as the superintendent is a statutory officer of the Board, he is equally bound by the trial court's injunction. The Board's sixth assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 7

> THE TRIAL COURT ERRED WHEN IT FOUND A PUBLIC SCHOOL DISTRICT SUPERINTENDENT DID NOT HAVE THE ABILITY TO REASSIGN STUDENTS TO A SCHOOL WITHIN THE SCHOOL DISTRICT. (J.E., ¶(T).)

{¶49} In its seventh assignment of error, the Board asserts the trial court erred when it held Superintendent Hall did not have the statutory authority to "reassign" students to a school within a school district. This argument is based on certain underlying presumptions the Board has maintained throughout these proceedings. Both the Board and Superintendent Hall refer to the closure of Beallsville High School as a "reassignment" of the students to other schools rather than a closure of the school.

{¶50} The relevant statute, R.C. 3319.01 states, in pertinent part:

> The superintendent shall assign the pupils to the proper schools and grades, provided that the assignment of a pupil to a school outside of the pupil's district of residence is approved by the board of the district of residence of such pupil. The superintendent shall perform such other duties as the board determines.

{¶51} "Reassigning" students to a different building and "closing" a high school present a semantic difference with a clear distinction. Both the Board and Superintendent Hall contend that it is permissible under Ohio law for Superintendent

Hall to "reassign" all Beallsville High School students to one of the other two high schools without any Board approval.

{¶52} At the outset, the Board appears to lack faith in their own argument, as the record reflects and the Board acknowledges in their brief that the Board voted at least three times on closure of Beallsville High School. Were this not a closure but merely a "reassignment" as the Board asserts, a single vote, let alone multiple votes, would be unnecessary. The Board argued below that these multiple votes were brought to them only because the matter was one of such community importance. However, this begs the question as to whether such a matter is under the purview of the superintendent alone or whether the entire Board must approve.

{¶53} The dictionary defines "reassign" as "appoint (someone) to a different job or task." OED Online (Dec. 2015) http//www.oxforddictionaries.com/us/definition/american_english/reassign. The dictionary defines "close" as "[b]ring or come to an end." OED Online (Dec. 2015), http://www.oxforddictionaries.com/us/definition/american_english/close#close-2 (All internet materials as visited December 3, 2015). The distinction lies in the temporal nature of each activity, with a closure connoting the permanent end of the school as opposed to the temporary nature of a reassignment. A review of the record reveals that Superintendent Hall was conducting a multitude of activities relating to the complete closure of Beallsville High School, including reviewing a potential contract with an area college to lease the space; anticipating hiring and relocating staff to other buildings in the school system, providing guided tours to students and families to the other two high schools in the

system; and reconstructing curriculum and course offerings within the other high schools in the district. All of these preparations speak to a permanent closing of the high school and not to a less permanent and drastic temporary reassignment of students.

{¶54} R.C. 3319.01 does contemplate a partial or temporary reassignment of pupils but not complete closure of a school, which is the activity contemplated in the instant case. Therefore, the seventh assignment of error is without merit and is overruled.

Conclusion

{¶55} The Board presents seven assignments of error on appeal. The Board incorrectly asserts the trial court improperly consolidated a preliminary injunction hearing with a trial on the merits. The Board also contends that it did not violate R.C. 121.22 by discussing public topics in executive session and that the resulting resolution to close Beallsville High School is not invalid as it did not result from improper nonpublic deliberations, despite clear evidence in the record to the contrary. It also contends that proper notice was given for the special meeting held on February 26, 2015 despite evidence to the contrary. The Board also claims that any potential violation was cured by a subsequent public vote, contrary to the caselaw. Finally, the Board incorrectly contends the trial court erred in including the actions of Superintendent Hall in its injunction and in concluding a superintendent cannot close a school without authority from the school board. Based on the foregoing, the

Board's assignments of error are overruled and the judgment of the trial court is affirmed.

DeGenaro, J., concurs.

Robb, J., concurs.