[Cite as *Ames v. Geauga Cty. Invest. Advisory Commt.*, 2023-Ohio-2252.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY

BRIAN M. AMES, Plaintiff-Appellant, - vs - GEAUGA COUNTY INVESTMENT ADVISORY COMMITTEE, Defendant-Appellee.	**CASE NO. 2022-G-0035** Civil Appeal from the Court of Common Pleas Trial Court No. 2022 M 000036

O P I N I O N

Decided: June 30, 2023
Judgment: Affirmed

Brain M. Ames, pro se, 2632 Ranfield Road, Mogadore, OH 44260 (Plaintiff-Appellant).

James R. Flaiz, Geauga County Prosecutor, and *Kristen Rine*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Suite 3A, Chardon, OH 44024 (For Defendant-Appellee).

JOHN J. EKLUND, P.J.

{¶1} Appellant, Brian Ames, appeals from the Geauga County Court of Common Pleas after the court granted summary judgment in favor of appellee, the Geauga County Investment Advisory Committee ("Committee" or appellee). Appellant has raised five assignments of error arguing the trial court erred by granting summary judgment in favor of appellee and by not striking all exhibits that appellant sought to be stricken.

{¶2} After review of the record and the applicable caselaw, we find appellant's assignments of error are without merit because the trial court did not err in finding that the

Committee complied with the notice rule requirement of R.C. 121.22(F) and that the Committee sent notice for each of the eight Committee meetings during the period in question. Further, the trial court did not abuse its discretion by denying appellant's motion to strike exhibits from appellee's motion for summary judgment where that evidence was supported by a sworn affidavit and was relevant to appellant's claims.

{¶3} Therefore, we affirm the judgment of the Geauga County Court of Common Pleas.

Substantive and Procedural History

The Geauga County Investment Advisory Committee:

{¶4} Appellee is a three-member committee composed of two members of the Geauga County Board of Commissioners (Board) and the County Treasurer. The Committee held eight meetings during the period in question. On January 7, 2020, the Board appointed Commissioners Tim Lennon and Ralph Spidalieri to the Committee for the year. At the same meeting, the Board established its meeting schedule for 2020. The meeting schedule provided:

> 1. Sessions will be held in the Geauga County Commissioners' chambers, or alternate location as necessary, with legally-required notice of changed locations provided:
>
> 2. Every Tuesday at 9:00 a.m., except for the second Tuesday of the Month that will start at 9:30 a.m. to accommodate for the Planning Commission meetings,
>
> 3. Adjustments made to add a Thursday meeting at 9:00 a.m. due to Holidays, or to schedule any additional regular meetings as needed to meet the required number of meetings for the year.
>
> 4. Requests for reasonable advance notification of all **Commissioners meetings at which any specific type of public business is to be discussed may be requested of the Commissioners' Clerk, provisions for advance notification**

may include, but are not limited to, emailing the agenda of meetings to all subscribers on a distribution list or by self-addressed stamped envelope provided by the person requesting the information.

5. The Board may have additional meetings as required, at the time and place designated.

6. Any meetings called by Geauga County Officeholders, department heads, County Administrator or the County's legal counsel.

7. Any meetings of the Geauga County Township Association

8. Any meetings of the County Commissioners' Association of Ohio (CCAO).

9. Any regular or special meetings of the following Boards or Councils at which a quorum of the Board of Commissioners is or may be present:

    * * *

    k. Investment Advisory Committee

    * * *

(Bold added).

{¶5} The Committee held four regular meetings in 2020.

{¶6} On January 5, 2021, the Board similarly established a meeting schedule for 2021 with identical language. The Board appointed Commissioners James Dvoarak and Tim Lennon to the Committee for 2021. The Committee held four regular meetings in 2021.

{¶7} At each of the Committee meetings, the Committee's meeting minutes state that the following quarterly meeting "will be scheduled by Christine Blair [Clerk of the Board] and Caroline Mansfield [Chief Deputy Treasurer]." Before each of the Committee's eight meetings, Christine Blair sent an email to a subscriber list with the upcoming agenda

for the Board's next meeting. The Board's agenda included setting various commission and committee meetings for the month, including the time and location of the upcoming Committee meetings.

Appellant's Lawsuit:

{¶8} On January 18, 2022, Appellant filed a Complaint in Declaratory Judgment and Injunction for Enforcement of R.C. 121.22 against Appellee. Appellant claimed that appellee held eight meetings during the two-year period and failed to provide public notice for each of those eight meetings in violation of R.C. 121.22. Appellant further claimed that appellee failed to establish a rule compliant with R.C. 121.22(F), which requires public bodies to establish a rule by which any person may determine the time and place of regular and special meetings.

{¶9} On June 1, 2022, appellant filed a Motion for Summary Judgment. Appellee responded and appellant filed a reply.

{¶10} August 1, 2022, appellee filed a Motion for Summary Judgment.

{¶11} On August 8, 2022, appellant filed a "Motion to Strike Inadmissible Evidence Attached to Defendant's Brief in Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment." His motion sought to strike portions of Exhibits A (select pages of the January 7, 2020 Geauga County Board of Commissioners' Journal), portions of Exhibit F (select pages of the January 5, 2021 Geauga County Board of Commissioners' Journal), and the entirety of Exhibits K, L, M, N, O, P, Q, and R (emails sent to a subscriber list with attached agendas for eight Geauga County Commissioner's meetings).

{¶12} Appellant's Motion to Strike asserted that the relevancy of Exhibits A and F were limited to the establishment of the Board's meeting schedule for 2020 and 2021. He therefore argued the non-relevant portions of the Board's Journal should be struck. He similarly argued that the Board's meeting agendas were not relevant because they were not created by the Committee. However, Exhibits K through R do contain the upcoming county meeting schedule, which included the Committee's next scheduled meeting.

{¶13} Appellee's response to the Motion to Strike indicated that the attached materials served to establish the creation of a compliant meetings rule and constituted the notices to the public of its meetings. Therefore, appellee argued the documents were relevant. Appellant filed a reply reiterating that the documents generated by the Board were not relevant because they were not Committee documents.

{¶14} On August 14, 2022, appellant filed his response to appellee's Motion for Summary Judgment. Appellee filed a reply.

{¶15} On August 29, 2022, the trial court ruled on the outstanding motions for summary judgment and on appellant's motion to strike.

{¶16} As to the competing summary judgment motions, the trial court concluded that appellant had only claimed a violation of R.C. 121.22(F).

{¶17} The court said that there was no question of fact that the "nonparty, the Board of County Commissioners adopted a meeting notice rule at its first meeting in January of 2020 and 2021." The court noted that the Committee is comprised of two members of the Board and that the Board "logically addresses the Defendant's requirements [under R.C. 121.22(F)] at the first yearly meeting, [and] incorporates said information into its minutes which are published on its website * * *." The court observed

that the Board's notice rule was "taken straight from R.C. § 121.22(F) * * *" which can leave "no doubt but that the [rule] complies with the requirements of R.C. § 121.22(F)."

{¶18} Therefore, the court concluded that appellant failed to meet his burden and that appellee had met its burden to establish the existence of a public notice rule that complied with R.C. 121.22(F).

{¶19} The court also found the Board had established that it did provide notice of the Committee's meetings "consistent with the public notice rule established."

{¶20} As to the Motion to Strike, the court found that exhibits A and F were the complete Commissioner's Journal for the time period at issue and that Exhibits K through R were email notifications with attached meeting agendas. The court concluded that these Exhibits were relevant to the issue of whether appellee failed to establish a rule that complied with R.C. 121.22(F) and were therefore admissible. The court also found that appellee properly authenticated the records through affidavit for purposes of Evid.R. 902 and Civ.R. 56(C).

{¶21} On September 14, 2022, appellant timely appealed raising five assignments of error.

Assignments of Error and Analysis

{¶22} Appellant's assignments of error state:

{¶23} "[1.] The trial court erred by ruling that "Defendant has met its burden to prove the existence of a public notice requirement that complies with R.C. § 121.22(F)."

{¶24} "[2.] The trial court erred by failing to rule on the claimed violations of R.C. 121.22, the Open Meetings Act, set forth in Counts 1 through 8 of the Complaint."

{¶25} "[3.] The trial court erred by holding that "the actual emails sent by the Commissioner's Clerk to the undisclosed recipients on the mailing list * * * provide advance notice of the upcoming meetings referenced therein."

{¶26} "[4.] The trial court erred by failing to strike the inadmissible evidence attached to Defendant's Brief in Opposition to Plaintiffs [sic] Motion for Summary Judgment and Defendant's Motion for Summary Judgment."

{¶27} "[5.] The trial court erred by granting summary judgment in favor of the Committee and denying it for Mr. Ames."

{¶28} Appellant's claims relate to R.C. 121.22 – the Ohio Open Meetings Act. The purpose of the OMA is to prevent public officials from meeting secretly to deliberate on public issues without accountability to the public. *Ames v. Portage Cnty. Budget Commission*, 11th Dist. Portage No. 2021-P-0074, 2022-Ohio-1905, ¶ 41, *appeal allowed sub nom. Ames v. Portage Cty. Budget Comm.,* 167 Ohio St.3d 1526, 2022-Ohio-3322, 195 N.E.3d 155, and *appeal dismissed as improvidently allowed*, 2022-Ohio-4666, citing *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544, 668 N.E.2d 903 (1996); R.C. 121.22(A).

{¶29} R.C. 121.22(C) states: "[a]ll meetings of any public body are declared to be public meetings open to the public at all times."

{¶30} R.C. 121.22(B)(1) defines a "public body" as any of the following:

> (a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;
>
> **(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section** * * *. (Bold added).

{¶31} Division (H) provides that "[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 is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section."

{¶32} R.C. 121.22(F) imposes notification requirements on a public body's meetings. R.C. 121.22(F) provides in pertinent part:

> Every 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. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

{¶33} "Any person may bring an action to enforce" the provisions of R.C. 121.22 "within two years after the date of the alleged violation or threatened violation." R.C. 121.22(I). Upon proof of a violation, the common pleas court "shall issue an injunction to compel the members of the public body to comply with its provisions." *Id.*

{¶34} In summary, the requirements of the OMA as applied to this case are as follows:

- All meetings of any public body are open to the public. R.C. 121.22(C).
- A public body is any decision-making body of a county, township, or other political subdivision, or a committee/subcommittee of that body. R.C. 121.22(B)(1).
- Any formal action taken by the public body is invalid unless adopted in an open meeting which complied with appropriate notice requirements. R.C. 121.22(H).

- All public bodies must establish a rule setting forth a reasonable method for any person to determine the time and place of regular meetings. R.C. 121.22(F).

- Any person may enforce the provisions of R.C. 121.22 within two years of the violation and where there is a violation, a court shall issue an injunction to compel a public body to comply. R.C. 121.22(I).

{¶35} Appellant's first and fifth assignments of error involve appellant's argument that the trial court erred in granting summary judgment in favor of appellee and denying appellant's motion for summary judgment. We therefore analyze these assignments together.

{¶36} We review a trial court's summary judgment de novo. *Hapgood v. Conrad*, 11th Dist. Trumbull No. 2000–T–0058, 2002–Ohio–3363, ¶ 13, citing *Cole v. Am. Industries & Resources Corp.*, 128 Ohio App.3d 546, 715 N.E.2d 1179 (7th Dist.1998). "We review the trial court's decision independently and without deference, pursuant to the standards in Civ.R. 56(C)." *Allen v. 5125 Peno, LLC*, 2017- Ohio-8941, 101 N.E.3d 484 (11th Dist.), ¶ 6, citing *Brown v. Scioto Cty. Bd. of Commrs*., 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (4th Dist.1993).

{¶37} Summary judgment is appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and it is adverse to the nonmoving party. *Holliman v. Allstate Ins. Co.,* 86 Ohio St.3d 414, 415, 715 N.E.2d 532 (1999). "The initial burden is on the moving party to set forth specific facts demonstrating that no issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Dresher v. Burt*, 75 Ohio St.3d 280, 292–293, 662 N.E.2d 264 (1996). If the movant meets

this burden, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id*.

{¶38} Appellant's complaint essentially alleged two claims: (1) the Committee failed to establish a rule compliant with R.C. 121.22(F); and (2) the Committee failed to provide public notice of the eight meetings held in the period in question.

{¶39} The Board is a public body within the meaning of R.C. 121.22(B). In addition, R.C. 121.22(B)(1)(b) provides that "[a]ny committee or subcommittee of a body described in division (B)(1)(a) of this section" is a public body.

{¶40} Appellant argues that the Board could not establish a rule compliant with R.C. 121.22(F) on behalf of the Committee. Appellee maintains that the Committee is a "committee or subcommittee" of the Board pursuant to R.C. 121.22(B)(1)(b). Therefore, the Board, as a public body, had the authority to establish a rule compliant with R.C. 121.22(F) on behalf of the Committee.

{¶41} The statutory framework establishing county investment advisory committees supports appellee's position. R.C. 135.341(A) mandates that investment advisory committees be composed of "two county commissioners to be designated by the board of county commissioners, and the county treasurer." Further, at the discretion of a board of county commissioners, the commissioners may "declare that all three county commissioners shall serve on the county investment advisory committee" and the committee shall consist of five members. *Id.*

{¶42} The statutory purpose of the investment advisory committee is to "establish written county investment policies * * * and to advise the investing authority on the county's investments in order to ensure the best and safest return of funds available to

the county for deposit or investment." R.C. 135.31(C) defines "investing authority" as the county treasurer except as provided by R.C. 135.34," which proves that a board of county commissioners may replace the treasurer as the investing authority for disregarding the advice or written policies of the investment advisory committee.

{¶43} Whether composed of two or three county commissioners, an investment advisory committee is a county committee with a majority of its members being county commissioners. *See* R.C. 135.341(A); *See also Wheeling Corp. v. Columbus & Ohio River RR. Co.,* 147 Ohio App.3d 460, 472, 771 N.E.2d 263 (10th Dist. 2001); *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commers*., 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 43. In addition, where the county treasurer, a member of an investment advisory committee, fails to follow the advice or written policies of the committee, the board of county commissioners is empowered to replace the treasurer as the investing authority. *Id.*

{¶44} In addition to the above statutory support for the conclusion that appellee is a committee of the Board, the Office of the Attorney General has rendered an opinion suggesting a similar conclusion. The Attorney General addressed the General Assembly's authorization of investment advisory committees and the "dual roles played by * * * members of the board of county commissioners." 2014 Ohio Atty.Gen.Ops. No. 2014-039, at *6. The Attorney General advised that the members of an investment advisory committee may invest inactive moneys of the county into a bond issued by the board of county commissioners. The opinion concluded that there would be no conflict of interest in taking such action, even where the investment advisory committee is

comprised of two county commissioners and the committee has to amend its investment policies to do so. *Id.*

{¶45} The lack of any conflict where board of county commissioner members are engaged in a "dual role" on an investment advisory committee, in conjunction with the above statutory framework, demonstrates that appellee is a committee of the Board for purposes of R.C. 121.22(B)(1)(b).

{¶46} Here, the Board, acting on behalf of appellee and in accordance with R.C. 121.22(B)(1)(b), established a meeting schedule for both the Board and the Committee in 2020 and 2021. That meeting schedule included a provision that said, "reasonable advance notification of all Commissioners meetings at which any specific type of public business is to be discussed may be requested of the Commissioners' Clerk, provisions for advance notification may include, but are not limited to, emailing the agenda of meetings to all subscribers on a distribution list or by self-addressed stamped envelope provided by the person requesting the information."

{¶47} The Dissent suggests that the Committee is an independent public body under R.C. 121.22(B)(1)(b) and therefore was responsible for establishing its own meeting rule compliant with R.C. 121.22(F). However, the Committee's subordinate status to the Board does not support this conclusion. *See State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commers*., *supra*, at ¶ 43 ("'committee' is a 'subordinate group to which a deliberative assembly or other organization refers business for consideration, investigation, oversight, or action,' Black's Law Dictionary (9th Ed.2009) 309.") For example, Committee members signed Committee meeting minutes as

"commissioner" and "treasurer." Indeed, any Committee meeting with both of its Board members present constituted a quorum of the Board. *See* R.C. 305.08.

{¶48} As such, Committee meetings constituted a public meeting of the Board under R.C. 121.22(B)(2). In the regular course, any given Committee meeting was also a meeting of the Board and, having two-thirds of its members originate from the Board, was logically subordinate to the meeting rules the Board established. Therefore, the Board established a meeting schedule providing that a meeting of the Board occurred at "[a]ny regular or special meetings of the following Boards or Councils at which a quorum of the Board of Commissioners is or may be present: * * * k. Investment Advisory Committee * * *."

{¶49} The Committee, as both a creature of statute and its subordinate nature to the Board, has no individual autonomy as to its composition, purpose, or function. Because the Committee is subordinate to the Board, the meeting schedule the Board established was not established on behalf of the Committee, as though the Committee, if it so chose, could establish other meeting rules to meet its own interests or preferences. The meeting rule the Board established was the Board rule imposed on the Committee, not a rule to which the Committee acquiesced. The Committee, as a subordinate entity, could not override the rule established by the superior Board.

{¶50} The rule the Board established provided that Committee meetings were considered meetings "at which any specific type of public business is to be discussed." The rule further provided that notice of such meetings "may be requested of the Commissioners' Clerk" and that those requesting advance notice could receive notice through email or self-addressed stamped envelope.

{¶51} Appellee's Exhibits K through R establish that for each of the eight meetings in question, the Board sent agendas with advance notice of the upcoming Committee meeting to an email subscriber list. In addition, the Committee meeting minutes each reflect that the next Committee meeting would be scheduled by Christine Blair and Caroline Mansfield.

{¶52} Viewing the evidence most strongly in favor of appellant, reasonable minds can reach only one conclusion that is adverse to appellant. The Board established a rule compliant with R.C. 121.22(F). The Board's meeting schedule for 2020 and 2021 was a method of notice which reasonably allowed any person to determine the time and place of all regularly scheduled Committee meetings. *See* R.C. 121.22(F). Further, in accordance with the Board's rule, notice was provided via the email subscriber list. Appellee provided evidence that notice was sent for each of the eight Committee meetings during the period in question. The trial court did not err in denying appellant's motion for summary judgment and in granting appellee's motion for summary judgment.

{¶53} Accordingly, appellant's first and fifth assignments of error are without merit.

{¶54} Appellant's second and third assignment of error are related. We therefore address these assignments together.

{¶55} In his second assignment of error, appellant argues that the trial court erred by failing to rule on his claimed violations of R.C. 121.22, set forth in his complaint. Specifically, he claims that the trial court mischaracterized the nature of counts one through eight and thereby failed to rule on his claim that the Committee "failed to provide notice of the meeting[s] to the public * * *."

{¶56} The court's judgment entry identified that appellant had claimed two separate violations of R.C. 121.22, that appellee: (1) failed to provide notice of eight public meetings; and (2) appellee failed to establish a rule compliant with R.C. 121.22(F).

{¶57} The trial court cited *Ames v. Portage Cty. Budget Comm.*, 11th Dist. Portage 2021-P-0074, 2022-Ohio-1905, where we recently held that a public body does not violate R.C. 121.22(F) by failing to provide public notice of its meetings, but rather by failing to adopt a rule. *Id.*, at ¶ 50. Thus, the court determined that its "inquiry is limited to determining whether a rule consistent with R.C. § 121.22(F) was established."

{¶58} Because of the above language, appellant argues the trial court failed to rule on his claim the Committee failed to provide notice of its meetings to the public. Related to this argument is appellant's third assignment of error, which argues that "[t]he trial court erred by holding that 'the actual emails sent by the Commissioner's Clerk to the undisclosed recipients on the mailing list * * * provide advance notice of the upcoming meetings referenced therein.'"

{¶59} We do not agree with appellant. The trial court's judgment entry appropriately characterized his two central claims. The trial court concluded that its inquiry was limited to determining whether the Committee had established a rule consistent with R.C. 121.22(F). However, the entry did rule on all of appellant's claims and the entry states that the Committee "did provide notice consistent with the public notice rule established."

{¶60} As to appellant's contention that the email notices to undisclosed recipients did not constitute advance notice is similarly misplaced. As discussed above, in our de novo review of this question, we have already determined that appellee's Exhibits K

through R establish that for each of the eight meetings in question, appellee complied with the notice rule requirement of R.C. 121.22(F) and that the Committee did in fact send notice of each of its eight meetings during the period in question.

{¶61} Accordingly, appellant's second and third assignments of error are without merit.

{¶62} In his fourth assignment of error, appellant contends that the trial court erred by failing to strike inadmissible evidence attached to appellee's brief in opposition to summary judgment. Appellant's motion referenced Civ.R. 12(F) as the legal basis for his motion to strike. However, Civ.R. 12(F) reads in pertinent part: "the court may order stricken from any pleading an insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter."

{¶63} Civ.R. 7(A) defines a pleading provides:

> "Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Civ.R. 14 and a third-party answer, if a third-party complaint is served. ***No other pleading shall be allowed*** * * *." (Bold added.)

{¶64} A Civ.R. 12(F) motion to strike seeking to strike "portions of a motion for summary judgment is a nullity * * *." *Tate v. Ruth*, 11th Dist. Trumbull No. 94-T-5157, 1995 WL 787444, *4 (Sept. 8, 1995). On this basis, appellant's motion to strike pursuant to Civ.R. 12(F) is a nullity.

{¶65} However, a trial court does have the broad discretion to strike improperly submitted evidence that does not fall within the parameters of Civ.R. 56(C). *Martin v. Wandling*, 4th Dist. No. 15CA4, 2016-Ohio-3032, 65 N.E.3d 103, ¶ 51; *State ex rel. Dawson v. Bloom-Carroll Local School Dist.,* 131 Ohio St.3d 10, 2011-Ohio-6009, 959

N.E.2d 524, ¶ 23. Absent an abuse of discretion, we will not disturb the trial court's ruling regarding a motion to strike. *State ex rel. Mora v. Wilkinson,* 105 Ohio St.3d 272, 2005-Ohio-1509, 824 N.E.2d 1000, ¶ 10.

{¶66} "'The term "abuse of discretion" is one of art, connoting judgment exercised by a court which neither comports with reason, nor the record.' *State v. Underwood*, 11th 12 Case No. 2022-A-0040 Dist. Lake No. 2008-L-113, 2009-Ohio-208, ¶ 30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 [148 N.E. 362] (1925)." *State v. Raia*, 11th Dist. Portage No. 2013-P-0020, 2014-Ohio-2707, ¶ 9. Stated differently, an abuse of discretion is "the trial court's 'failure to exercise sound, reasonable, and legal decision-making.'" Id., quoting *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting Black's Law Dictionary 11 (8th Ed.Rev.2004). "When an appellate court is reviewing a pure issue of law, 'the mere fact that the reviewing court would decide the issue differently is enough to find error[.] * * * By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.'" *Id.*, quoting *Beechler* at ¶ 67.

{¶67} Civ.R. 56(C) sets forth an exclusive list of evidentiary materials that a trial court may rely on in a motion for summary judgment. *DelleCurti v. Fetty,* 11th Dist. Trumbull No. 2017-T-0001, 2017-Ohio-7965, ¶ 15. Civ.R. 56(C) provides in pertinent part:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.

{¶68} Civ.R. 56(E) provides that evidentiary materials not listed in Civ.R. 56(C) may be introduced by reference in an affidavit.

{¶69} In this case, appellee filed an affidavit which authenticated the evidentiary materials attached to its motion for summary judgment. Therefore, the evidence was properly submitted pursuant to Civ.R. 56(C) and (E).

{¶70} The next issue is whether the evidence itself was relevant evidence. Evid.R. 402 provides that "[a]ll relevant evidence is admissible, except as otherwise provided * * *." Evid.R. 401 provides that relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

{¶71} The documents appellant sought to strike were portions of the Board's Journal for January 2020 and 2021 and notifications of meetings for the period in question. The trial court determined that the evidence was relevant evidence because those documents concerned the question of whether appellee "failed to establish a rule that complies with R.C. § 121.22(F) such as to provide notice of meetings to the public." In coming to this conclusion, the trial court showed sound, reasonable, and legal decision-making. We find no abuse of discretion.

{¶72} Accordingly, appellant's fourth assignment of error is without merit.

{¶73} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas is affirmed.

MARY JANE TRAPP, J., concurs,

MATT LYNCH, J., concurs in part and dissents in part, with a Dissenting Opinion.

MATT LYNCH, J., concurs in part and dissents in part, with a Dissenting Opinion.

{¶74} I concur with the majority's disposition of the fourth assignment of error in relation to the trial court's decision to strike certain documents provided by Ames. I dissent, however, from the majority's holding in the remaining assignments of error that there was compliance with the notice rule requirement of R.C. 121.22(F). As the statute requires every "public body" to create a rule advising the public of its meeting times and the Geauga County Investment Advisory Committee is such an entity, its failure to establish its own rule warrants reversal.

{¶75} R.C. 121.22(B)(1) establishes what constitutes a "public body" and includes "(a) [a]ny board, commission, committee, * * * or similar decision-making body of any county" or "(b) [a]ny committee or subcommittee of a body described in division (B)(1)(a) of this section." An entity under either (a) or (b) is a public body for the purposes of the provisions of this statute.

{¶76} The majority, after performing a substantial analysis of the characteristics of the Advisory Committee, concludes that it is a "committee of the Board for purposes of R.C. 121.22(B)(1)(b)." Supra at ¶ 45. Such a conclusion, however, is not determinative

as to whether the Committee was required to establish its own rule providing for notice of its meetings. Pursuant to R.C. 121.22(B)(1), boards or committees under (B)(1)(a) as well as committees or subcommittees of such entities are considered "public bodies." It has been observed that an entity which is "[a] committee * * * of [a body under R.C. 121.22(B)(1)(a)] * * * is also a "'public body' pursuant to the Sunshine Law and [is] required to comply with its mandates." Berner v. Woods, 9th Dist. Lorain No. 07CA009132, 2007-Ohio-6207, ¶ 14; State ex rel. Maynard v. Medina Cty. Facilities Taskforce Subcommittee, 9th Dist. Medina No. 19CA0083-M, 2020-Ohio-5561, ¶ 19 (observing that even if an entity was not a body under (B)(1)(a), "the definition in R.C. 121.22(B)(1)(b) applies to 'any committee or subcommittee'" of such body thereby requiring compliance with Open Meetings requirements). Whether it is a separate entity or a committee of the Board of Commissioners, the Advisory Committee is independently subject to those rules applying to "public bodies."

{¶77} R.C. 121.22(F) requires that "[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." In the present matter, there is no dispute that the Advisory Committee did not create a rule but, instead, only the Board of Commissioners did so. The majority concludes that the Board properly established the rule "on behalf of" the Committee. R.C. 121.22 does not discuss a procedure for public bodies adopting rules on behalf of other public bodies and no authority is cited for such a proposition. The plain language of the statute states that "every public body," which includes subcommittees of other bodies as outlined above,

shall create a rule establishing notice procedures for its meetings. Here, the Advisory Committee established no rule and thus did not comply with R.C. 121.22(F).

{¶78} Even presuming this requirement was open to multiple interpretations, the foregoing conclusion is consistent with the statute's mandate that "[t]his section shall be liberally construed to require public officials to take official action." R.C. 121.22(A); see State ex rel. MORE Bratenahl v. Bratenahl, 157 Ohio St.3d 309, 2019-Ohio-3233, 136 N.E.3d 447, ¶ 14 ("[w]hen we consider the full text of the act, its structure, and the legislative purpose as derived from the text of the act, we think it clear that the broader reading must carry the day"). Courts have consistently emphasized this liberal interpretation when determining what entities constitute public bodies. Thomas v. White, 85 Ohio App.3d 410, 412, 620 N.E.2d 85 (9th Dist.1992) (a strict reading of R.C. 121.22(B)(1) leads to the conclusion that a committee need not be a decision-making body); Cincinnati Enquirer v. Cincinnati, 145 Ohio App.3d 335, 338-339, 762 N.E.2d 1057 (1st Dist.2001). Such liberal construction principles must also apply to the provision requiring "every public body" to develop rules, rather than reading in an allowance that a different public body may do so on behalf of another.

{¶79} It must be emphasized that in cases involving violations of the Open Meetings Act provisions, courts cannot adopt an approach of "no harm, no foul." Whether a violation warranting judicial relief occurs relates not to the prejudice to the plaintiff but to the failure to comply with the statutory provisions. "Irreparable harm and prejudice" are "conclusively and irrebuttably presumed upon proof of a violation or threatened violation of [the Open Meetings Act]." R.C. 121.22(I)(3). In the present matter, while the rule adopted by the Board may have apprised the public of the Advisory Committee meeting

times, the Board was not the party required to adopt such rule. We cannot rewrite the terms of the statute even if there is no apparent benefit to the public from a particular requirement.

{¶80} Since the Open Meetings Act requires that every public body establish a rule setting forth the procedure for notice of meetings, the Advisory Committee, as a public body, was required to do so. The Committee did not comply with the requirement to establish such a rule. For these reasons, I dissent as to the determination that the Board's rule was sufficient to comply with R.C. 121.22(F) and would reverse the lower court's ruling that there was no violation of the Open Meetings Act.