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

State ex rel. Sarah Thomas Kovoor	:	Case No. 2022-TR-0101
Relator-Appellant,	:	
v.	:	
Trumbull County Board of Elections,	:	DECISION AND JUDGMENT ENTRY
Respondent-Appellee,	:	

APPEARANCES:

Sarah Thomas Kovoor, Warren, Ohio, pro se relator-appellant.

John T. McLandrich and Frank H. Scialdone, Mazanec, Raskin & Ryder Co., L.P.A. Cleveland, Ohio, for respondent-appellee.

Hess, J.

{¶1} Sarah Thomas Kovoor appeals the trial court's judgment denying her a writ of mandamus in which she sought a declaration that the Trumbull County Board of Elections' actions were invalid and an injunction requiring the Board to comply with the Open Meetings Act. Kovoor contends that the trial court erred when it: (1) found that the Board's actions were "information gathering," rather than "official action"; (2) relied on inapplicable law to reach its determination; and (3) denied her relief and granted it to the Board.

{¶2} We find that the Board was engaged in information gathering when it sought a legal opinion from the prosecutor, which is an activity that does not constitute a "meeting" for purposes of the Open Meetings Act. Public officers have the right to seek

and receive advice and opinions from their legal advisor. The request for a legal opinion was not an ”official action” under the Open Meetings Act because it was not part of the Board’s enumerated statutory duties, but rather was an information-gathering activity. We overrule Kovoor’s assignments of error and affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL BACKGROUND

{¶3} On August 22, 2022, Kovoor filed a complaint for a writ of mandamus, declaratory judgment, and injunction for the enforcement of R.C. 121.11 (the Open Meetings Act requiring the meetings of public bodies to be open to the public). Kovoor was selected by the Trumbull County Republican Central Committee as a candidate for the November 2022 general election to fill a vacant seat on the Trumbull County Common Pleas Court. The Board’s responsibilities included a duty to review and certify the sufficiency and validity of petitions and nomination papers for candidates for the Trumbull County Court of Common Pleas, including Kovoor’s nomination. The Board held a public meeting on August 19, 2022 to discuss, deliberate, and vote on Kovoor’s nomination, among other items. At the meeting, Kovoor learned that several days earlier the Board had requested advice from its legal counsel, the county prosecutor, concerning Kovoor’s eligibility as a candidate. She alleged “a majority of the Board took official action outside an open meeting by requesting an opinion from the prosecutor’s office.” She alleged that the Board’s request for a legal opinion was in violation of R.C. 121.22 and that the action, the results of it, the opinion, the Board’s consideration, and the vote taken were all “invalid by operation of R.C. 121.22(H).”

{¶4} The prosecutor had provided the Board with a legal opinion that Kovoor was disqualified under R.C. 3513.04 from being a candidate for the Trumbull County Common

Pleas Court bench because she had been an unsuccessful candidate in another office in the May 2022 primary. Kovoor had run unsuccessfully in the May 2022 primary as a candidate for a seat on the Eleventh District Court of Appeals. After the prosecutor provided his legal opinion, the Board held a meeting on August 19, 2022 to certify the candidates and issues that would appear on the November general election ballot. Two of the Board members voted against certifying her on the ballot and two voted in favor, which resulted in a tie. Secretary of State Frank LaRose cast the tie-breaking vote against certifying Kovoor as a candidate. Secretary LaRose explained that R.C. 3513.04 prohibited her from being a candidate because she unsuccessfully ran for office in the preceding May 2022 primary. Thus, both the county prosecutor and Secretary LaRose reached the same interpretation of R.C. 3513.04 – Kovoor was ineligible to be a common pleas court judicial candidate in the November 2022 general election because she had been an unsuccessful candidate in the May 2022 primary.

{¶5} In addition to challenging the Board's request for a legal opinion in this action, Kovoor filed a separate lawsuit challenging the merits of the prosecutor's legal opinion. That lawsuit was ultimately decided against Kovoor by the Supreme Court of Ohio in *State ex rel. Trumbull Cty. Republican Cent. Commt. v. Trumbull Cty. Bd. of Elections*, 170 Ohio St.3d 29, 2022-Ohio-3268, 208 N.E.3d 775. The Court held that R.C. 3513.04 applied to Kovoor's candidacy and rendered her ineligible to be a candidate for the common pleas court in the November 2022 general election. *Id*. at ¶ 19. Thus, the county prosecutor, the Secretary of State, and the Ohio Supreme Court have all reached the same interpretation of R.C. 3513.04. Kovoor did not have a right to appear as a

candidate for Trumbull County Court of Common Pleas judge on the November general election ballot. *Id*. at 29.

{¶6} The primary relief Kovoor sought in her mandamus action brought against the Board was to have "the results, the opinions, the consideration of them by the Board and the vote taken" declared invalid. She also sought an injunction to enforce the Open Meetings Act and the sum of $500 under R.C. 121.22(I)(2)(a), which provides "a civil forfeiture of five hundred dollars to the party that sought the injunction" if the court grants one. Kovoor argued that the Board should have called a special meeting to publicly discuss whether to engage in an information-gathering activity. In other words, the Board could not seek legal advice without a public discussion and vote. She argues that they should have provided the public with notice of the meeting, kept a record of the discussions, and prepared and posted meeting minutes. Because the Board members asked for a legal decision without holding a public meeting to decide whether to do so, Kovoor argues that they violated the Open Meetings Act.

{¶7} The Board filed an answer and opposed Kovoor's mandamus action. It argued that its request for a legal opinion was not a "meeting" as defined by statute and interpreted by case law. The Board contended that Kovoor's ability to appear on the ballot was in question and it sought legal advice from its counsel, the county prosecutor. At the August 19, 2022 special meeting, which was open to the public, the Board openly discussed and deliberated Kovoor's certification. The Board asked for a legal opinion from its attorney several days before the meeting and in preparation for the meeting where Kovoor's candidacy would be publicly discussed and deliberated. The Board contends that requesting a legal opinion was "essential to sound governmental decision making"

and was proper. The Board stated that it did not "deliberate" until the public meeting on August 19, 2022.

{¶8} The trial court held that the Board had not violated the Open Meetings Act by asking for a legal opinion because that was an investigative and information-gathering exercise and did not constitute deliberations. "The county prosecutor was legal counsel to the Board. The Board was entitled to seek and receive advice from their counsel. The Court finds that [the Board] has committed no violation of 121.22 and [Kovoor's] claims regarding any potential violation of the OMA are without merit."

{¶9} Kovoor appealed.

II. ASSIGNMENTS OF ERROR

{¶10} Kovoor identifies three assignments of error for review:

> I. The trial court erred by holding that R.C. 121.22 applies only if a public body deliberates. (T.d. 11)
>
> II. The trial court erred by relying on inapplicable rather than applicable case law. (T.d. 11)
>
> III. The trial court erred by denying summary judgment to Relator Kovoor and granting summary judgment to Respondent Board of Elections. (T.d.11)

{¶11} For ease of analysis, we will address Kovoor's assignments of error together.

III. LEGAL ANALYSIS

A. Standard of Review & Mandamus Requirements

{¶12} Although Kovoor's underlying trial motion was not captioned a "summary judgment motion," the contents of her trial brief set forth the summary judgment standard of review, alleged that there were no material facts in dispute, and requested judgment as a matter of law. The Board similarly raised no material factual disputes and focused

on the legal merits of Kovoor's lawsuit. There are no factual disputes and the parties relied on the same evidentiary materials in support of their legal arguments. Therefore, despite the Board's contention that "neither party requested summary judgment," we treat the trial court's judgment as a summary judgment under Civ.R. 56. We review de novo a trial court's grant of summary judgment in a mandamus action. *State ex rel. Ames v. Portage Cty. Bd. of Commrs*., 165 Ohio St.3d 292, 2021-Ohio-2374, 178 N.E.3d 492, ¶ 11, citing *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, 31 N.E.3d 608, ¶ 17 (because the lower court granted summary judgment, "this court reviews the decision de novo, notwithstanding the general rule that the standard of review in a mandamus case is abuse of discretion.")

{¶13} Summary judgment is appropriate only when the following have been established: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *DIRECTV, Inc. v. Levin*, 128 Ohio St.3d 68, 2010-Ohio-6279, 941 N.E.2d 1187, ¶ 15. In ruling on a motion for summary judgment, the court must construe the record and all inferences therefrom in the nonmoving party's favor. Civ.R. 56(C). The party moving for summary judgment bears the initial burden to demonstrate that no genuine issues of material fact exist and that they are entitled to judgment in their favor as a matter of law. *Dresher v. Burt,* 75 Ohio St.3d 280, 292–293, 662 N.E.2d 264 (1996). To meet its burden, the moving party must specifically refer to "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action," that affirmatively demonstrate that the

nonmoving party has no evidence to support the nonmoving party's claims. Civ.R. 56(C); *Dresher* at 293, 662 N.E.2d 264. Moreover, the trial court may consider evidence not expressly mentioned in Civ.R. 56(C) if such evidence is incorporated by reference in a properly framed affidavit pursuant to Civ.R. 56(E). *Discover Bank v. Combs*, 4th Dist. Pickaway No. 11CA25, 2012-Ohio-3150, ¶ 17; *Wagner v. Young*, 4th Dist. Athens No. CA1435, 1990 WL 119247, *4 (Aug. 8, 1990). Once that burden is met, the nonmoving party then has a reciprocal burden to set forth specific facts to show that there is a genuine issue for trial. *Dresher* at 293, 662 N.E.2d 264; Civ.R. 56(E). *Am. Express Bank, FSB v. Olsman*, 2018-Ohio-481, 105 N.E.3d 369, ¶ 10-11 (4th Dist.).

{¶14} To prevail on her claim for mandamus relief under the Open Meetings Act, Kovoor must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the Board to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Ames v. Portage Cty. Bd. of Commrs*., 165 Ohio St.3d 292, 2021-Ohio-2374, 178 N.E.3d 492, ¶ 12, citing *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 22.

B. Mootness Where Relief Cannot be Granted

{¶15} First, we must address whether this case is moot because the primary relief requested by Kovoor cannot be granted. However, even if the primary form of relief is no longer available, the relator may still be entitled to other forms of relief afforded by the statute, including statutory damages, costs, or attorney fees. *State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 13.

{¶16} A " 'case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979), quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969). "It is not the duty of the court to answer moot questions, and when pending proceedings * * *, an event occurs, without the fault of either party, which renders it impossible for the court to grant any relief, it will dismiss the petition * * *." *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910), syllabus; *see also Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133, 566 N.E.2d 655 (1991) ("Ohio courts have long exercised judicial restraint in cases which are not actual controversies. No actual controversy exists where a case has been rendered moot by an outside event.") "Conversely, if an actual controversy exists because it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted." *State ex rel. Gaylor v. Goodenow,* 125 Ohio St.3d 407, 2010-Ohio-1844, 928 N.E.2d 728, ¶ 11; *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 7; *Heartland of Portsmouth, OH, LLC v. McHugh Fuller Law Group, PLLC,* 2017-Ohio-666, 85 N.E.3d 191, ¶ 16 (4th Dist.).

{¶17} For her relief, Kovoor sought to have "the results, the opinions, the consideration of them by the Board and the vote taken," declared invalid. We find that this element of her request for relief is moot. The county prosecutor's opinion was that Kovoor was ineligible under R.C. 3513.04 to be a candidate for office in the November 2022 general election, the Board and Secretary LaRose voted not to certify her as a candidate because she was ineligible under R.C. 3513.04, and the Supreme Court of Ohio determined Kovoor was ineligible as a candidate in the November 2022 general

election under R.C. 3513.04. Thus, to the extent she seeks a declaration that those "results" and "opinions" are invalid, we are bound by the decision that held that they are valid, *State ex rel. Trumbull Cty Republican Cent. Commt. v. Trumbull Cty. Bd. of Elections, supra.* Kovoor did not have a clear legal right to appear as a candidate on the November 2022 ballot; we cannot declare those actions taken by the Board to keep her off the ballot "invalid."

{¶18} However, Kovoor also sought an injunction to enforce the Open Meetings Act. Under R.C. 121.22(I)(1), any person may bring an action to enforce the Open Meetings Act within two years after the date of the alleged violation. And, R.C. 121.22(I)(2)(a) provides "a civil forfeiture of five hundred dollars to the party that sought the injunction" if the court issues one. The Supreme Court of Ohio's opinion in *State ex rel. Trumbull Cty Republican Cent. Commt. v. Trumbull Cty. Bd. of Elections* did not address whether the Board violated the Open Meetings Act when it sought a legal opinion from the prosecutor's office before deciding the validity of Kovoor's candidacy. *State ex rel. Trumbull Cty Republican Cent. Commt.* at ¶ 29. Thus, there is still a judiciable controversy concerning whether the Board's request for a legal opinion violated the Open Meetings Act and whether Kovoor is entitled to $500. *See State ex rel. MORE Bratenahl v. Village of Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233, 136 N.E.3d 447, ¶ 22 (because R.C. 121.22(I) allows for an injunction and civil forfeiture of $500, the action was not moot even though the disputed elected official's term, which was the center of the controversy, had expired during the litigation.)

C. The Board's Request for a Legal Opinion

{¶19} The Open Meetings Act is set forth in R.C. 121.22 and "shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically exempted by law." R.C. 121.22(A). The purpose of the Open Meetings Act is "to assure accountability of elected officials by prohibiting their secret deliberations on public issues." *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544, 668 N.E.2d 903, 906 (1996). The parties do not dispute that the Board is a public body as defined in R.C. 121.22(B)(1). A majority of the Board members cannot discuss public business in private, prearranged discussions that are later ratified at a public meeting. *White v. King*, 147 Ohio St.3d 74, 2016-Ohio-2770, 60 N.E.3d 1234, ¶ 15, 24-25. "One of the strengths of American government is the right of the public to know and understand the actions of their elected representatives. This includes not merely the right to know a government body's final decision on a matter, but the ways and means by which those decisions were reached." *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 419, 667 N.E.2d 1223 (1996).

{¶20} "The elements of the statutory definition of a meeting are (1) a prearranged discussion, (2) a discussion of the public business of the public body, and (3) the presence at the discussion of a majority of the members of the public body." *State ex rel. Cincinnati Post,* 76 Ohio St.3d at 543; R.C.121.22(B)(2) ("'Meeting' means any prearranged discussion of the public business of the public body by a majority of its members.")

> The following activities do not constitute a "meeting": (a) information-gathering, fact-finding, or the gathering of facts and information for ministerial purposes, unless there is also a discussion of public business between the members of the public body during the activity; or (b) a majority

> of a public body being in the same room and answering questions or making statements to other persons who are not public officials, even if those statements relate to the public business.

Bode v. Concord Twp., 2019-Ohio-5062, 137 N.E.3d 1245, ¶ 8 (11th Dist.).

{¶21} Deliberations is not defined by the statute; however, courts have defined it as:

> " 'Deliberations' involve more than information-gathering, investigation, or fact-finding." Deliberations involve the weighing and examining of reasons for and against a course of action. * * * "Deliberations involve a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision." While it is permissible for a public body to gather information in private, a public body cannot deliberate privately in the absence of specifically authorized purposes. (Citations omitted.)

Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce, 185 Ohio App.3d 707, 2009-Ohio-6993, 925 N.E.2d 641, ¶ 72 (10th Dist.). "Question-and-answer sessions between board members and other persons who are not public officials do not constitute 'deliberations' unless a majority of the board members also entertain a discussion of public business with one another." *Springfield Local School Dist. Bd. of Edn. v. Ohio Assoc. of Public School Emps., Local 530*, 106 Ohio App.3d 855, 864, 667 N.E.2d 458 (9th Dist.). "[A] public body 'deliberates' by thoroughly discussing all of the factors involved in a decision, carefully weighing the positive factors against the negative factors, cautiously considering the ramifications of its proposed action, and gradually arriving at a proper decision which reflects the legislative process." *Ames v. Rootstown Twp. Bd. of Trustees,* 2019-Ohio-5412, 151 N.E.3d 37, ¶ 30 (11th Dist.), quoting *Bode v. Concord Twp*., 2019-Ohio-5062, ¶ 12.

{¶22} Kovoor, as the party alleging a violation of the Open Meetings Act, has the burden to prove that the Open Meetings Act was violated by the relevant public body. If

a violation is established, the burden shifts to the Board to show that the meeting fell under one of the Open Meeting Act exceptions. *Ames v. Rootstown Twp. Bd. of Trustees*, 2019-Ohio-5412, ¶ 21 (11th Dist.).

{¶23} Kovoor alleges that the Board violated the Open Meetings Act when it requested an opinion from its legal counsel, the county prosecutor. According to the pleadings and evidence submitted with the parties' briefs, on August 16, 2022, three days before the Board meeting, the Board's director asked the county prosecutor for legal advice after a reporter contacted the Board with questions about Kovoor's eligibility. The prosecutor responded by asking the director to confirm that this was a legal opinion the majority of the Board wanted. The director stated that she "individually confirmed with three of the four Board Members that a legal opinion was desired and conveyed that to [the prosecutor's office]." She was unable to reach the fourth member. Kovoor argues, "Rather than calling a meeting of the Board to take the official action required, Director Penrose contacted 3 of the 4 board members and obtained three 'yeas.'" Kovoor contends that the Board's decision to seek a legal opinion was "official action" of the Board that required a public meeting for a "roll call vote." However, she provides no legal authority for her contention that the Board's decision to seek a legal opinion is an "official action" that required an official vote.

{¶24} We reject her argument. We find that the Board's request for a legal opinion was not an "official action." The Board is a county board of elections established under R.C. 3501.06. Board members take an oath set forth in R.C. 3501.08 to "enforce the election laws" and "protect and preserve the records and property pertaining to elections." The Board votes for the replacement of the chairman or director as appropriate under

R.C. 3501.091 and maintain offices under R.C. 3501.10. *See State ex rel. MORE Bratenahl v. Village of Bratenahl*, 157 Ohio St.3d 309, 2019-Ohio-3233, 136 N.E.3d 447, ¶2, 9 (a village legislative authority's election of a president pro tempore to serve as acting mayor is an "official action" of the village legislative authority under R.C. 731.10). The Board's official election duties are in R.C. 3501.11. Nowhere in R.C. 3501.11 does the Board have a duty to seek the legal opinion of the county prosecutor. The only duty the Board has to communicate with the county prosecutor is in R.C. 3501.11(J), which requires the Board to investigate election irregularities and report the facts to either the prosecuting attorney or the secretary of state.

{¶25} Kovoor argues that the Board's decision to engage in information gathering is itself an "official action" that required a meeting notice, public meeting, public discussion, deliberation and vote, and the recording and publication of meeting minutes before the Board could seek legal advice. Kovoor places great significance on the fact that the prosecutor asked for confirmation that a majority of the Board members wanted his opinion. The prosecutor's "majority precondition" does not alter the nature of the Board's activity – this was an information-gathering exercise regardless of the prosecutor's precondition that a majority of the Board request it before he would do it. We do not believe "information gathering" is transformed into "official action" simply because an outside party – here the prosecutor – refuses to do something unless the majority wants it.

{¶26} In her complaint, Kovoor alleges that the Board's duties include reviewing petition and nomination papers for candidates in Trumbull County under R.C. 3501.11(K)(1), which states that the Board shall:

> Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board[.]

These are the "official actions" the Board undertook with respect to Kovoor's nomination. Kovoor does not allege that any of these actions occurred outside of a public meeting. To the contrary, on August 19, 2022, the Board held a public meeting and deliberated and voted on Kovoor's nomination. She provided the YouTube meeting link in her complaint.

{¶27} The Board sought the legal opinion of the county prosecutor as a prudent information-gathering exercise. Kovoor does not allege nor does she provide evidence that the Board discussed her nomination papers, discussed the legal opinion, or arrived at a decision prior to the public meeting on August 19, 2022. The facts of this case are similar to – but even more favorable to the Board than – those in *Theile v. Harris*, 1st Dist. Hamilton App. No. C-860103, 1986 WL 6514 (June 11, 1986).

{¶28} In *Theile,* the township trustees were facing a budget crisis and were considering dissolving their police department. As they considered alternatives to reduce township expenses, they set a meeting with the county prosecutor to discuss the legal ramifications of abolishing the police department. Although they discussed several budget reduction measures with the prosecutor, no decision about any measure was reached. One of the trustees explained that their primary concern was obtaining legal advice regarding the return of police-issued weapons and chain of custody of evidence in criminal investigations. A township resident brought an action alleging that the trustees violated the Open Meetings Act when they met with the county prosecutor. The appellate court rejected this contention and held that the prearranged meeting with the prosecutor

was "strictly of an investigative and information seeking nature." *Id*. at *6. The court held that public officers have a right in times of uncertainty "to seek and receive legal advice and opinions from their duly constituted legal advisors." *Id.* The court further determined that the trustees did not "deliberate upon public business" at the meeting with the prosecutor, but instead "they investigated and sought facts." Therefore, no violation of the Open Meetings Act had occurred. *Id.*

{¶29} Here, as in *Theile*, the Board was confronted with uncertainty and sought the opinion of the prosecutor to assist in understanding a statutory provision. Unlike *Theile*, the Board members here were not even alleged to have joined together in an in-person session with the prosecutor so there was no possibility that the Board engaged in deliberations during a meeting with the prosecutor.

{¶30} Even if the Board had met with the prosecutor, there would have been no violation of the Open Meetings Act if the Board met with legal counsel and asked questions but did not engage in deliberation with each other, made no decisions, and took no action. There would be no violation because "information-gathering, fact-finding, or the gathering of facts and information for ministerial purposes" is not a "meeting" and "the OMA applies to a 'meeting.' " *Bode v. Concord Township,* 2019-Ohio-5062, ¶ 8, 10.

{¶31} Additionally, there are no allegations or evidence that the Board held a public meeting and then went into executive session to engage in legal information-gathering. Therefore, this case is distinguishable from *Ames v. Rootstown Twp. Board of Trustees*, 2019-Ohio-5412, 151 N.E.3d 37 (11th Dist.). In *Ames,* a board held a public meeting and then went into an "executive session" to engage in fact-finding on legal issues with an attorney. However, the "executive session" was not authorized by statute

because there were no statutory exemptions under RC. 121.22(G) for an "informational-gathering session" with an attorney. *Id*. at ¶ 36. Therefore, the court found a violation of the Open Meetings Act. The court held that although fact-finding sessions themselves do not constitute meetings, "if an information-gathering and fact-finding session is held during a meeting, it must be done in a manner open to the public. Any non-public, nonexempt session held during a meeting violates the OMA." *Id.* at ¶ 37.

{¶32} Here the Board sought the legal opinion of the prosecutor, which they have every right to do as part of their information-gathering activities. They could have held an in-person session with the prosecutor like the township trustees in *Theile* did and it would not have been a "meeting" under the Open Meetings Act as explained in *Bode, supra*, as long as there were no discussions of public business between the Board members during the session. *Bode* at ¶ 8. The Board did not interrupt a public meeting to hold a private, information-gathering session to discuss legal matters with the prosecutor that was incorrectly termed an "executive session," so there was no violation of the Open Meetings Act here like there was in *Ames*. *Ames v. Rootstown Twp. Bd. of Trustees,* 2019-Ohio-5412, at ¶ 43.

{¶33} The trial court correctly determined that the Open Meetings Act had no application here because the Board's request for a legal opinion was not a "meeting" or a "deliberation" as contemplated by the Open Meetings Act but was an information-gathering activity. The trial court also correctly determined that the Open Meetings Act does not prohibit the Board from seeking legal advice from their legal counsel. For this proposition, the trial court correctly cited *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 192 Ohio App.3d 566, 2011-Ohio-703, 949 N.E.2d 1032 (1st Dist.). Kovoor argues that

Cincinnati Enquirer was improperly relied upon by the trial court because it was rejected by the Eleventh District in *Ames v. Rootstown, supra*. However, her argument misses the key distinction between the two cases. The First District in *Cincinnati Enquirer* permitted the public body to go into a private "information-gathering session" with an attorney *in the middle of a public meeting*. The Eleventh District in *Ames v. Rootstown* did not agree with this and held that if an information-gathering session is held during a public meeting, the information-gathering session must be kept open to the public. Conversely, if a public body goes into an "executive session" during a public meeting, that private session must fit within the list of executive session exemptions in R.C. 121.22(G). The Eleventh District did not reject the general proposition that a public body may hold a private information-gathering session with its legal counsel. To the contrary, the Eleventh District reiterated its approval of it: "the OMA 'does not prevent public officials from privately seeking and receiving advice from their legal counsel.' " *Ames v. Rootstown* at ¶ 39, *quoting Cincinnati Enquirer* at ¶13. Rather, the court simply held that such meeting does not qualify as an executive session under R.C. 121.22(G) and therefore cannot occur privately in the middle of an otherwise public meeting.

IV. CONCLUSION

{¶34} Based upon our de novo review of the record, we find that the trial court properly denied Kovoor's request for a writ of mandamus. Kovoor failed to establish, by clear and convincing evidence, a clear legal right to the requested relief. We overrule Kovoor's assignments of error and sustain the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trumbull County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & Wilkin, J.: Concur in Judgment and Opinion.
Sitting by assignment in the Eleventh Appellate District.

For the Court

BY: 
Judge Michael D. Hess, of the Fourth Appellate District, sitting by assignment in the Eleventh Appellate District

NOTICE TO COUNSEL

Pursuant to Local Rule No. 3(D), this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.