"Woke" Ohio Department of Education President Laura Kohler Tries to Limit Public Access to Tuesday's Meeting--Read Attorney Curt Hartman's Response

This Note is from Board President Kohler about reducing access to Tuesday's Meeting:

"Covid case numbers are rising again so we will go back to our earlier protocols with increased distance between board members and a request that all board members do as ODE staff are required to do. We recommend that you wear a mask while inside the ODE building to keep yourself and others and families safe. We will again be limiting the number of people permitted in the board room as capacity limits must be adjusted to accommodate social distancing. As before, there will be an overflow room for individuals who want to watch the stream of the Board's business meeting." **-- Board President Laura Kohler**

This note is from Attorney Curt Hartman in response to Kohler's attempt to limit live access to the meeting--the same day as the planned protest at the Board.

Ms. Singh - (Ohio Department of Education Attorney)

It has come to my attention that, in advance of a protest planned in Columbus in advance of the forthcoming State Board of Education meeting this coming Tuesday (and the reasonable expected large crowd at the ensuing meeting itself), State Board President Kohler has decreed, once again through nothing more than her unilateral fiat, that the State Board of Education will suddenly reinstitute social distancing requirements with the acknowledged result being "limiting the number of people permitted in the board room". The acknowledged result of such an action is to exclude a large segment of the general public from personally

viewing all of the actions and processes of the public meeting of the State Board of Education (and the exclusion of such a large segment is further exasperated, based upon past experience, as staff of the Ohio Department of Education who are not directly involved in the meeting itself are afforded the few seats in the room to the exclusion of the general public). And the default of providing a viewing room is inadequate and not consistent with the letter or spirit of the Open Meetings Act, especially in the context of the limited size of the meeting room itself to start with, then coupled with Ms. Kohler's unilateral decree so as to force her critics elsewhere (and insulate the meeting for the direct and personal oversight of people in attendance_.

Naturally, the timing of such an unilateral decree by Ms. Kohler to relegate her critics out of the meeting room is highly suspect in light of the significant crowd anticipated at the meeting and Ms. Kohler' already-demonstrated hostility towards those who might be critical of her political agenda. Furthermore, and most significantly, such a unilateral decree by Ms. Kohler by which the general public is not afforded an opportunity to be physically present at the meeting (and by their presence itself engage in core political speech), constitutes a real and imminent threat of a violation of both the Open Meetings Act and the First Amendment. I would note, specifically with respect to the Open Meetings Act, that injunctive relief is appropriate not only for a violation of the Act, but simply for a "threatened violation" of the Act. See R.C. 121.22(I)(1).

By electing to hold the forthcoming meeting at a venue wherein the imposition of severe limitations on the public's direct access to the venue does not comport with the letter or spirit of the Open Meetings Act and the requirement that the meeting be open to the public. And while closed-circuit replay to an overflow room may accommodate an unusually large crowd, it is not an adequate substitute for the ability of the general public to be physically present in the meeting room itself and able to observe all members of a 19 member board (as opposed to a single person being presented on a closed-circuit reply controlled by the government itself).

While the Act specifically does not provide where a meeting of a public body must take place or that such a place must accommodate an unusually large crown, precedent of the Ohio Supreme Court addressing the concept of what it means for a meeting to be "open" to the public undermines the current effort of Ms. Kohler's decree whereby nearly the entire (if not the entire) public will be excluded from the meeting room itself. In State ex rel. More Bratenahl v. Bratenahl, 157 Ohio St.3d 309, 2019-Ohio-3233, the Ohio Supreme Court addressed the undefined terms of "open", "open to the public" and "open meetings" in the context of the Open Meetings Act. Initially recognizing that the term "open" varies from a more broad concept of "completely free from concealment: exposed to general or particular perception or knowledge" to a more narrow concept of "free to be entered, visited, or used" or "in a state which permits access, entrance, or exit". Id. ¶13.

Ultimately, the Supreme Court concluded that, "[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", id. ¶14, and that "when the text of a statute makes its purpose clear, and we must choose between two permissible readings of the statutory text, an interpretation that advances the purpose of the statute is to be preferred

over one that would thwart that purpose. The text of the act makes clear its purpose: to require that public business be conducted in a manner that is accessible to the public." Id. ¶13.

Thus, the Ohio Supreme Court clearly concluded that "an open meeting requires that the public have meaningful access to the deliberations that take place among members of the public body." Id. ¶19. While relegating the general public to closed-circuit reply to view the discussions and votes may arguendo satisfy some of the purposes behind the Open Meetings Act, it does not satisfy all of them. Also prohibited by the Open Meetings Act are whispers amongst members of a public body, note passing or texting between members of a public body during the course of the meeting, etc. Such oversight by the general public of the conduct of the public body and its members cannot occur when but a few members of the general public, at best, have physical access to a meeting room. Yet, by her unilateral decree to exclude most, if not all, of the general public from the forthcoming meeting, Ms. Kohler is undertaking action to thwart the letter and spirit of the Open Meetings Act.

In order to comply with the letter and spirit of the Open Meetings Act, it is imperative that the State Board of Education either allow for the full use and access of its meeting room by the general public to observe such proceedings and the conduct of the individual members during the meeting or find an alternative location that can be accommodative the unilateral decree and fiat of Ms. Kohler while also complying with its legal duties and obligations under the Open Meetings Act.

I'd appreciate your prompt response as to whether Ms. Kohler and the State Board of Education will at its forthcoming meeting comply with their legal duties and obligations under the Open Meetings Act and allow a significant physical presence of the general public at the meeting and not relegate to the noblesse oblige of Ms. Kohler.

Sincerely,
Curt Hartman
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230
(513) 379-2923