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Question Submitted by: The Honorable Paul Smith, Oklahoma District Attorney, District 22

2022 OK AG 2

Decided: 01/20/2022

Oklahoma Attorney General Opinions

Cite as: 2022 OK AG 2, __ __

¶0 This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Does the Oklahoma Open Meeting Act permit a county board of equalization to enter into executive session, as contemplated by 25 O.S.2021, § 307(B)(3), to discuss the valuation of property by the county assessor in a protest proceeding provided for by 68 O.S.2021, § 2877?

I.

BACKGROUND

A. Valuation Appeals before the County Board of Equalization.

¶1 Under Oklahoma law, most real property is subject to ad valorem taxation based on the property's fair cash value, as determined by the county assessor. See generally 68 O.S.2021, §§ 2817, 2819. Each county also has a three-member¹ board of equalization ("board") that meets between April 1 and May 31² "for the purpose of correcting and adjusting the assessment rolls in [the] count[y] to conform to the fair cash value of the property assessed, as defined by law." *Id.* § 2863(A). The board also serves as the appellate body that hears taxpayer appeals of actions taken by the county assessor, as provided in Title 68, Section 2877 of the Oklahoma Statutes. See *id.* § 2863(B).

¶2 Upon receipt of a taxpayer appeal, Section 2877 requires the board's secretary to set a hearing at which the board "shall be authorized and empowered to take evidence pertinent to said appeal; . . . and to confirm, correct, or adjust the valuation of real or personal property" *Id.* § 2877(A). The board is required to make a record of such proceedings, either by transcription or audio recording. *Id.* Additionally, Section 2877 provides that "[i]n order to increase taxpayer transparency, a member of the board of equalization shall not directly or indirectly communicate with the county assessor or any deputy assessor or designated agent on any matter relating to any pending appeal before the board of equalization prior to the actual hearing." *Id.* § 2877(E)(1).

B. The Open Meeting Act & Executive Session.

¶3 When the Legislature passed the Oklahoma Open Meeting Act, 25 O.S.2021, §§ 301--314 (the "Act"), it declared that "[i]t is the public policy of the State of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems." *Id.* § 302. Consistent with this policy, the Act generally requires any

"public body" to, among other things, hold its meetings at specified times and places that are convenient to the public and are preceded by advance public notice, cast public votes, and have such votes recorded, and keep minutes of its proceedings. See *id.* §§ 303, 305, 312. The Act defines a "meeting" to mean "the conduct of business of a public body by a majority of its members being personally together or, as authorized by [the Act], together pursuant to a video conference." *Id.* § 304(2).

¶4 Notwithstanding the Act's requirement that a public body conduct its business at an open meeting, the Act allows certain matters to be addressed in executive session. See *id.* § 307.³ Relevant to your question, a public body may enter into executive session for the purpose of "[d]iscussing the purchase or appraisal of real property[.]" *Id.* § 307(B)(3). With respect to these matters, the Act provides as follows:

Except as otherwise specified in this subsection, an executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session, unless they are operating under an existing agreement to represent the public body.

Id. § 307(D).

¶5 You have asked whether, in the context of a taxpayer appeal before the board pursuant to Title 68, Section 2877, the board may enter into executive session to discuss the appraisal of the taxpayer's property.⁴

II.

DISCUSSION

¶6 From the outset, it is clear that a county board of equalization is a "public body" to which the Open Meeting Act applies. See *id.* § 304(1) (defining "public body" to include "boards . . . supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property . . ."). Likewise, a taxpayer appeal hearing before the board is a "meeting" for purposes of the Act. See *id.* § 304(2). Thus, the default is that all parts of the hearing must be open to the public unless specifically exempt. See *id.* § 303; see generally *Lafalier v. Lead-Impacted Comtys. Relocation Assistance Tr.*, 2010 OK 48, ¶ 37, 237 P.3d 181, 195 ("Because it was enacted for the public's benefit, the Open Meeting Act 'is to be construed liberally in favor of the public[]" (quoting *Int'l Assn of Firefighters Local 2479 v. Thorpe*, 1981 OK 95, ¶ 17, 632 P.2d 408, 411)).

¶7 In examining any statute our goal is to determine the Legislature's intent, which we do by resorting to the plain and ordinary meaning of the language chosen by the Legislature. *Kohler v. Chambers*, 2019 OK 2, ¶ 6, 435 P.3d 109, 111. "Words and phrases of a statute are to be understood and used not in an abstract sense, but with due regard for context and they must harmonize with other sections of the act to determine the purpose and intent of the legislature." *McNeill v. City of Tulsa*, 1998 OK 2, ¶ 11, 953 P.2d 329, 332. Indeed, "[t]he subject matter and purpose of a statute are material to ascertaining the meaning of a word or phrase used and that language should be construed to be harmonious with the purpose of the act, rather than in a way which will defeat it." *Id.*

¶8 Turning to the language at issue here, the Open Meeting Act permits a public body to use executive sessions only as "specifically provided in" Section 307 of the Act. 25 O.S.2021, § 307(A). Section 307(B)(3) specifically provides that a public body may use executive session to "[d]iscuss[] the purchase or appraisal of real property[.]" To be sure, the board is likely to discuss appraisals of property in an appeal proceeding under Title 68, Section 2877, but our analysis does not end there. Rather, Section 307(D) provides important context as to the use of executive sessions under Section 307(B)(3). It provides that attendance at such executive sessions "shall be limited to members of the public body, the attorney for the public body and the immediate staff of the public body." *Id.* § 307(D). Further, "[n]o landowner, real estate salesperson, broker, developer or any other person who may profit directly or indirectly by a **proposed transaction concerning real property which is under consideration** may be present or participate in the executive session, unless they are operating under an existing agreement to represent the public body." *Id.* (emphasis added).

¶9 This language "sets out the restrictions placed on executive sessions held for the purpose of purchasing or appraising real property." *Lafalier*, 2010 OK 48, ¶ 38, 237 P.3d at 195. Section 307(D) specifies (i) who may and may not attend an executive session at which the transaction of real property is being discussed and (ii) makes clear that such executive sessions are intended for matters involving proposed transactions in real property. This context suggests that Section 307(B)(3) does not allow for executive session for the purpose of discussing appraisals or other valuations of real property that are unrelated to the public body's acquisition or potential acquisition of such property.

¶10 This interpretation finds further support in past opinions of this office and the Oklahoma Court of Civil Appeals. For instance, in *City of Kingfisher v. State*, 1998 OK CIV APP 39, 958 P.2d 170, the court reviewed several provisions of Section 307(B) and explained their rationale. With regard to Section 307(B)(3), its purpose was to protect a public body's bargaining position and public funds:

A review of the areas of statutorily permissible executive sessions indicates clear intent to protect public and private interests. Non-public discussion regarding matters of employment, a specific child with a disability, and information protected by confidentiality laws insures protection for the reputations of private individuals, which might be affected by public discussion and comment. Aside from this individual protection, a clear public benefit accrues from avoidance of possible costly litigation that might result from open expression on these sensitive matters.

Private discussions regarding collective bargaining and purchase or appraisal of real property safeguards municipalities' bargaining position and insures sound application of public funds. Likewise, allowance of confidential communications between a public body and its attorney protects the public interest by insuring there is no impairment of the ability of a public officer or agency to process a claim or conduct pending investigation and/or litigation, or to proceed in the public interest. 12 O.S.1991 § 2502(A)(2).

Kingfisher, 1998 OK CIV APP 39, ¶¶ 18--19, 958 P.2d at 173 (emphasis added and omitted).

¶11 In a 2007 opinion, this office found that Section 307(B)(3) permitted executive session for discussing the purchase--but not the sale--of real property. In reaching this conclusion, the opinion quoted approvingly the Kansas Attorney General's interpretation of a similar exception:

Many states have adopted similar provisions to protect against adverse effects of publicity when public knowledge of a governmental land purchase would increase prices to the taxpayer's detriment. This reduces the scope of the [open meeting law's] exceptions to those situations in which the government is the purchaser.

2007 OK AG 32, ¶ 5 (alteration in original) (quoting Bradley J. Smoot & Louis M. Clothier, *Open Meetings Profile: The Prosecutor's View*, 20 WASHBURN L.J. 241, 278 (1981)). By contrast, taxpayer appeals before the board do not put in jeopardy the board's bargaining position or the use of public funds as no property is being purchased.

¶12 In sum, the reasoning in our 2007 opinion and in *City of Kingfisher* is consistent with the contextual evidence found in the Act's executive session provisions. Section 307(B)(3) permits a public body to enter into executive session to discuss property valuation or appraisal that is tied to the governmental purchase or potential purchase of real property. Because appraisals of real property that come before the board in the context of taxpayer appeals do not involve that situation, they may not be discussed in executive session.

¶13 Finally, as noted above, the appeal procedures set forth in Title 68, Section 2877 provide that "**[i]n order to increase taxpayer transparency**, a member of the board of equalization shall not directly or indirectly communicate with the county assessor or any deputy assessor or designated agent on any matter relating to any pending appeal before the board of equalization **prior to the actual hearing**." 68 O.S.2021, § 2877(E)(1) (emphasis added). This language is supportive of the conclusion that protest hearings are intended to be a transparent process, open to taxpayer scrutiny and in line with the purpose of the Open Meeting Act. See *Lafalier*, 2010 OK 48, ¶ 37, 237 P.3d at 195. An interpretation of the Open Meeting Act that would allow board discussions to be held out of public view defeats not only this intent, but that of the Act itself.

¶14 It is, therefore, the official Opinion of the Attorney General that:

A county board of equalization is not authorized to enter into executive session under 25 O.S.2021, § 307(B)(3) in the context of a protest proceeding under 68 O.S.2021, § 2877 to discuss the county assessor's valuation of the property at issue. Rather, 25 O.S.2021, § 307(B)(3) permits a governmental entity to enter into executive session to discuss the valuation or appraisal of real property and the potential purchase or purchase of such property. *City of Kingfisher v. State*, 1998 OK CIV APP 39, 958 P.2d 170; 2007 OK AG 32.

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FOOTNOTES

¹ One member of the Board is appointed by each of (1) the Oklahoma Tax Commission, (2) the Board of County Commissioners, and (3) the county's district judge(s). 68 O.S.2021, § 2861.

² In larger counties, the Board meets beginning on the fourth Monday of January instead of April 1. 68 O.S.2021, § 2863(A).

³ An executive session is the portion of a public body's meeting that is closed to the public. *Rabin v. Bartlesville Redevelopment Tr. Auth.*, 2013 OK CIV APP 72, ¶ 10, 308 P.3d 191, 193.

⁴ In your request, you ask only whether executive session would be permitted under Section 307(B)(3) of the Act, which allows a public body to enter into executive session for the purpose of "[d]iscussing the purchase or appraisal of real property." Accordingly, our analysis is limited to that provision.

Citationizer[®] Summary of Documents Citing This Document**Cite Name Level**

None Found.

Citationizer: Table of Authority**Cite Name****Level****Oklahoma Attorney General's Opinions**

Cite	Name	Level
2007 OK AG 32,	Question Submitted by: The Honorable Brian Renegar, DVM, State Representative, District 17	Discussed

Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
2013 OK CIV APP 72, 308 P.3d 191,	RABIN v. BARTLESVILLE REDEVELOPMENT TRUST AUTHORITY	Discussed
1998 OK CIV APP 39, 958 P.2d 170,	KINGFISHER v. OKLAHOMA	Discussed at Length
69 OBJ 1435,		

Oklahoma Supreme Court Cases

Cite	Name	Level
2010 OK 48, 237 P.3d 181,	LAFALIER v. THE LEAD-IMPACTED COMMUNITIES RELOCATION ASSISTANCE TRUST	Discussed at Length
2019 OK 2, 435 P.3d 109,	KOHLER v. CHAMBERS	Discussed
1981 OK 95, 632 P.2d 408,	International Ass'n of Firefighters, Local 2479 v. Thorpe	Discussed
1998 OK 2, 953 P.2d 329, 69 OBJ 208,	McNEILL v. CITY OF TULSA	Discussed

Title 12. Civil Procedure

Cite	Name	Level
12 O.S. 2502,	Attorney-Client Privilege	Cited

Title 25. Definitions and General Provisions

Cite	Name	Level
25 O.S. 301,	Short Title	Cited
25 O.S. 307,	Executive Sessions	Discussed at Length

Title 68. Revenue and Taxation

Cite	Name	Level
68 O.S. 2877,	Appeal	Discussed at Length
68 O.S. 2817,	Listing and Assessment of Taxable Personal Property and Real Property	Cited
68 O.S. 2861,	Creation of County Board of Equalization for Each County - Appointment of Members - Tenure of Office - Qualifications - Violations - Penalties	Cited
68 O.S. 2863,	County Boards of Equalization Sessions - Duty of Boards - Appointment of Hearing Officers	Cited

