



## Ohio Revised Code

### Section 1121.38 Administrative hearing.

Effective: January 1, 2018

Legislation: House Bill 49 - 132nd General Assembly

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(A)(1) An administrative hearing provided for in section 1121.32, 1121.33, 1121.35, or 1121.41 of the Revised Code shall be held in the county in which the principal place of business of the bank or trust company or residence of the regulated person is located, unless the bank, trust company, or regulated person requesting the hearing consents to another place. Within ninety days after the hearing, the superintendent of financial institutions shall render a decision, which shall include findings of fact upon which the decision is predicated, and shall issue and serve on the bank, trust company, or regulated person the decision and an order consistent with the decision. Judicial review of the order is exclusively as provided in division (B) of this section. Unless a notice of appeal is filed in a court of common pleas within thirty days after service of the superintendent's order as provided in division (B) of this section, and until the record of the administrative hearing has been filed, the superintendent may, at anytime, upon the notice and in the manner the superintendent considers proper, modify, terminate, or set aside the superintendent's order. After filing the record, the superintendent may modify, terminate, or set aside the superintendent's order with permission of the court.

(a) A hearing provided for in section 1121.32, 1121.35, or 1121.41 of the Revised Code shall be confidential, unless the superintendent determines that holding an open hearing would be in the public interest. Within twenty days after service of the notice of a hearing, a respondent may file a written request for a public hearing with the superintendent. A respondent's failure to file such a request constitutes a waiver of any objections to a confidential hearing.

(b) A hearing provided for in section 1121.33 of the Revised Code shall be an open hearing. Within twenty days after service of the notice of a hearing, a respondent may file a written request for a confidential hearing with the superintendent. If such a request is received by the superintendent, the hearing shall be confidential unless the superintendent determines that holding an open hearing would be in the public interest.

(2) In the course of, or in connection with, an administrative hearing governed by this section, the



superintendent, or a person designated by the superintendent to conduct the hearing, may administer oaths and affirmations, take or cause depositions to be taken, and issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. At any administrative hearing required by section 1121.32, 1121.33, 1121.35, or 1121.41 of the Revised Code, the record of which may be the basis of an appeal to court, a stenographic record of the testimony and other evidence submitted shall be taken at the expense of the division of financial institutions. The record shall include all of the testimony and other evidence, and any rulings on the admissibility thereof, presented at the hearing. The superintendent may adopt rules regarding these hearings. The attendance of witnesses and the production of documents provided for in this section may be required from any place within or outside the state. A party to a hearing governed by this section may apply to the court of common pleas of Franklin county, or the court of common pleas of the county in which the hearing is being conducted or the witness resides or carries on business, for enforcement of a subpoena or subpoena duces tecum issued pursuant to this section, and the courts have jurisdiction and power to order and require compliance with the subpoena. Witnesses subpoenaed under this section shall be paid the fees and mileage provided for under section 119.094 of the Revised Code.

(B)(1) A bank, trust company, or regulated person against whom the superintendent issues an order upon the record of a hearing under the authority of section 1121.32, 1121.33, 1121.35, or 1121.41 of the Revised Code may obtain a review of the order by filing a notice of appeal in the court of common pleas in the county in which the principal place of business of the bank, trust company, or regulated person, or residence of the regulated person, is located, or in the court of common pleas of Franklin county, within thirty days after the date of service of the superintendent's order. The clerk of the court shall promptly transmit a copy of the notice of appeal to the superintendent. Within thirty days after receiving the notice of appeal, the superintendent shall file a certified copy of the record of the administrative hearing with the clerk of the court. In the event of a private hearing, the record of the administrative hearing shall be filed under seal with the clerk of the court. Upon the filing of the notice of appeal, the court has jurisdiction, which upon the filing of the record of the administrative hearing is exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the superintendent's order.

(2) The commencement of proceedings for judicial review pursuant to division (B) of this section does not, unless specifically ordered by the court, operate as a stay of any order issued by the superintendent. If it appears to the court an unusual hardship to the appellant bank, trust company, or



regulated person will result from the execution of the superintendent's order pending determination of the appeal, and the interests of depositors and the public will not be threatened by a stay of the order, the court may grant a stay and fix its terms.

(C) The superintendent may, in the sole discretion of the superintendent, apply to the court of common pleas of the county in which the principal place of business of the bank, trust company, or regulated person, or residence of the regulated person, is located, or the court of common pleas of Franklin county, for the enforcement of an effective and outstanding superintendent's order issued under section 1121.32, 1121.33, 1121.34, 1121.35, or 1121.41 of the Revised Code, and the court has jurisdiction and power to order and require compliance with the superintendent's order. In an action by the superintendent pursuant to this division to enforce an order assessing a civil penalty issued under section 1121.35 of the Revised Code, the validity and appropriateness of the civil penalty is not subject to review.

(D) No court has jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of an order issued under section 1121.32, 1121.33, 1121.34, 1121.35, or 1121.41 of the Revised Code or to review, modify, suspend, terminate, or set aside an order issued under section 1121.32, 1121.33, 1121.34, 1121.35, or 1121.41 of the Revised Code, except as provided in this section, in division (G) of section 1121.32 of the Revised Code for an order issued pursuant to division (C)(3) or (4) of section 1121.32 of the Revised Code, or in division (A)(3) of section 1121.34 of the Revised Code for an order issued pursuant to division (A)(1) of section 1121.34 of the Revised Code.

(E) Nothing in this section or in any other section of the Revised Code or rules implementing this or any other section of the Revised Code shall prohibit or limit the superintendent from doing any of the following:

- (1) Issuing orders pursuant to section 1121.32, 1121.33, 1121.34, 1121.35, or 1121.41 of the Revised Code;
- (2) Individually or contemporaneously taking any other action provided by law or rule with respect to a bank, trust company, or regulated person;
- (3) Taking any action provided by law or rule with respect to a bank, trust company, or regulated



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person, whether alone or in conjunction with another regulatory agency or authority.