



STATE OF INDIANA

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October 16, 2013

Laura K. Bailey
1727 W. West Win Rd S
Winamac, IN 46996

Re: Formal Complaint 13-FC-275; Alleged Violation of the Open Door Law by the Indiana State Board of Education

Dear Ms. Bailey,

This advisory opinion is in response to your formal complaint alleging the Indiana State Board of Education ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board, by Michelle McKeown, Esq., responded to your complaint. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 16, 2013.

BACKGROUND

Your complaint alleges the Indiana State Board of Education violated the Open Door Law by failing to give proper notice of a meeting when the Board took final action on a matter not listed in the meeting's agenda.

You allege that on or about September 4, 2013, the Board met pursuant to a properly posted notice. Attached to the notice was an agenda for the meeting. Toward the end of the meeting the Board voted to create a subcommittee to establish policy for the State Board of Education. From the agenda exhibit you submitted along with your complaint filed on September 6, 2013, it appears that the vote deviated from the set agenda.

On October 1, 2013 the Board submitted a response to your complaint, wherein the Board reasoned that the deviation from the agenda is not a violation of the Open Door Law.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind.Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* Ind. Code § 5-14-1.5-3(a). The Board of Education is a public agency for the purposes of the Open Door Law.

You allege taking final action on an item unpublished on a posted agenda would be a violation of the Open Door Law. Nothing in the ODL requires a public agency utilizing an agenda to hold strictly to that agenda during the open meeting. I have held in the past (*See Op. of the Public Access Counselor 13-FC-256*), agendas are an important part of notifying interested members of the public of discussion items, but the very nature of open meetings often requires a departure from scheduled deliberations. Particularly when soliciting comments or input from the public, discussions can take any number of divergent turns.

The legislature has crafted Ind. Code § 5-14-1.5-4(a) to require only those agencies regularly utilizing agendas to post one. In fact, if the Board of Education did not regularly use one, then they would not have to post one at all. Public agencies who post agendas are extending a courtesy to interested parties as to what may or may not be discussed during the open meeting.

From the materials submitted, it does not appear the Board was attempting to subvert the purpose of the meeting or to skirt transparency considerations when forming the subcommittee. The Public Access Counselor is not a finder of fact; and therefore, I cannot accurately qualify the ramifications of the formation of that particular committee. With that caveat aside, it appears unlikely the digression from the set agenda is attempting to undermine the spirit of open access.

If it were foreseeable that the creation of the subcommittee would substantially alter the operations of the Board or would impact the public to a significant extent, then I would caution the Board to consider tabling the meeting until a future date when the vote could be listed as an agenda item. Even if that were the case, it would still not be a violation. However, the creation of a strategic planning committee is generally administrative in nature and it does not look as if any substantive educational policy matters were further discussed at the meeting. Please note the new delegation is also subject to the Open Door Law.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the State Board of Education has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Michelle McKeown