



STATE OF INDIANA

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November 27, 2013

Christine Scales
5133 Plantation Drive
Indianapolis, IN 46250

Re: Formal Complaint 13-FC-316; Alleged Violation of the Open Door Law by the Indianapolis Republican City County Council Caucus¹

Dear Ms. Scales,

This advisory opinion is in response to your formal complaint alleging the Indianapolis Republican City County Council Caucus ("Caucus") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board responded to your complaint via Mr. Robert Elrod, Caucus General Counsel. His 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 October 29, 2013.

BACKGROUND

Your complaint alleges the Indianapolis Republican City County Council Caucus violated the Open Door Law by excluding you from the meeting and by taking a final action.

The Indianapolis City County Council is a public board comprised of 29 Councilors. It is important to note that of the 29, 14 members identify as Republican making them the minority affiliation represented on the Council. It is unclear how often the party holds caucus, however, on or about September 9, 2013, you allege the Caucus met to expel you and vote you out.

Your contention is the gathering did not meet the statutory definition of caucus under the Open Door Law. Additionally, when they voted to expel you from the caucus, they did not follow the traditional Robert's Rules of Order for parliamentary procedures.

The Caucus responded on November 12, 2013, arguing caucuses are exempt from the requirements of the Open Door Law. Furthermore, the Caucus asserts any action taken during

¹ Your informal inquiry processed as 13-FC-60 is substantively identical to your formal complaint and will be consolidated under this cause number for convenience.

the gathering was legal and appropriate under the fundamental Constitutional right to associate.

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).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

Ind. Code 5-14-1.5-2(c)(4) specifically excludes a caucus from the definition of meeting as intended by the Open Door Law. Subsection (h) states that "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action. A caucus alone does not exercise any portion of the municipality's executive, legislative or judicial powers. A caucus of a majority party may be more closely scrutinized because it would technically be a quorum of a governing body.

Neither is a caucus a delegation of the public agency to take any enumerated action. A caucus is a meeting of like minds, a think tank, a roundtable, and a differentiation from the Council to discuss matters of political importance. It is not a delegation or a sub-committee of the Council body. The Caucus is merely an informal association of its members. Both parties concede the group is comprised exclusively of members of the Republican Party. If Democrat councilors were invited, it would cease to be a caucus and would simply become a Council meeting.

Because a minority caucus is not a meeting, the ODL does not apply. Consider the following from former Public Access Counselor Hoage:

Another factor to consider is that the caucus must first constitute a "meeting" pursuant to the ODL before the exemption is analyzed. If less than a majority of the members of the governing body were to caucus, one would not need to analyze the caucus exemption, as the ODL would not apply to such a gathering... For example, if two republican members of a five-member

council met to discuss issues before the council, the ODL would not be applicable as such a gathering would not be considered a “meeting.”

Op. of the Public Access Counselor 12-INF-03.

In regard to the parliamentary procedures employed by the Caucus, I am not aware of any authority obligating a caucus to abide by Robert’s Rules of Order or any other procedural process. In fact, unless stated in an agency’s by-laws, set procedures are merely a formality.

You take exception to certain actions taken toward you during the September 9, 2013 Caucus meeting. The Public Access Counselor cannot comment on matters such as your expulsion from the Caucus. This would be an issue which can only be addressed by the Caucus itself. From the information provided, however, it is an association that may include or exclude members at will. Because it doesn’t rise to the level of a public agency necessitating a public meeting, it does not fall under the purview of open access laws.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Republican Caucus of the Indianapolis City-County Council did not violate the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Robert Elrod