



STATE OF INDIANA

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March 18, 2014

Mr. Joseph T. Bradley
645 E. North Shore Dr.
Brownstown, IN 47220

Re: Formal Complaint 14-FC-28; Alleged Violation of the Open Door Law by the Jackson County Commissioners

Dear Mr. Bradley,

This advisory opinion is in response to your formal complaint alleging the Jackson County Commissioners ("Commissioners") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Commissioners have not responded to your complaint despite an invitation to do so on February 19, 2014. 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 February 17, 2014.

BACKGROUND

Your complaint dated February 17, 2014, alleges the Jackson County Commissioners violated the Open Door Law by discussing a draft ordinance not included on the meeting's agenda.

You allege the Commissioners were to hold a meeting on February 4, 2014. In order to facilitate public comment during the meeting, the Commissioners required individuals to arrange to be placed on the meeting's agenda. Four individuals did so and were placed on the agenda. Additionally, there is no specific agenda item announcing any discussion or action regarding the ordinance other than the four individuals listed to speak. As the County was experiencing inclement weather, the four individuals did not attend the meeting. Despite the ordinance not appearing on the agenda, the discussion of the ordinance took place. It is your contention the discussion of the ordinance should not have taken place, because it was not officially placed on the agenda as a discussion item.

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).

I have held in the past the protocol and procedures of local government meetings are not under the purview of the Public Access Counselors Office. How a public agency runs its meetings is up to the agency as long as it meets the requirements of notice and openness. As such, Indiana law only requires public meetings be open; it does not require the public be given the opportunity to speak. See *Opinion of the Public Access Counselor 08-FC-149*, citing *Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), trans. denied, 2003. I encourage public agencies to solicit public input and to structure the comment forum in an orderly and efficient way, but there is no requirement as to how this is effectuated.

You further suggest the Commissioners misrepresented the purpose of the meeting by not placing the discussion of the ordinance on the agenda. Consider the language of this Opinion from 2013:

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 [public agency] 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.

I wrote this to place both agencies and the public on notice that agendas are a worthwhile endeavor, but its purpose is not to strictly bind an agency to the items listed on the schedule. In fact, if the discussion topic is of such a nature to generate an extraordinary amount of public interest, it should be posted on the agenda and, if it is not, to table those discussions until a later date. This is especially true when a vote is involved. There have been instances when a public agency will pull a “bait and switch” by advertising a non-divisive issue on an agenda and then switching gears during the meeting and voting on a controversial topic. This is done in order that the audience will not consist of members of the public who are outspoken on the contentious issue.

I do not find the current case to be one of those instances. The agenda clearly listed the ordinance as a public input topic. This puts all who read it on notice the issue may be discussed. Additionally, you state a vote was not taken on the ordinance during the meeting; only deliberations took place. The meeting was open and the public was allowed to observe and/or record. There have been no allegations of notice deficiencies. I also cannot conclude the agenda or the discussion was meant to mislead the public. Therefore, the Commissioners did not violate the Open Door Law.

As an interesting side note, you do mention the February 4, 2014 meeting took place in inclement weather. I have fielded several calls during the winter when the weather was particularly inclement asking if a meeting should be rescheduled or if it should resume as advertised. My advice to public agencies from an open access position is, when faced with inclement weather, to only hold meetings critical to the ongoing operations of the agency. If it can be rescheduled at a later date when the public has a greater ability to attend, it should be. This is especially true when travel advisories are in effect. Votes and final actions should also be delayed in those circumstances if it is practicable to do so. I have no evidence before me; however, to suggest the Commissioners were harming public access and transparency by holding the February 4, 2014 meeting.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Jackson County Commissioners did not violate the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor