



STATE OF INDIANA

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May 23, 2014

Ms. Barbara Klein
407 N. Lamport St.
Osceola, IN 46561

Re: Formal Complaint 14-FC-88; Alleged Violation of the Open Door Law by the Osceola Town Council

Dear Ms. Klein,

This advisory opinion is in response to your formal complaint alleging the Osceola Town Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded via Clerk-Treasurer Denise Thornburg and Robert Schrock, Council President. 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 April 22, 2014.

BACKGROUND

Your complaint dated April 22, 2014, alleges the Osceola Town Council violated the Open Door Law by providing improper notice of public meetings and potential discussions behind closed doors.

The facts you allege in your formal complaint are not necessarily in dispute. The Town Council, at a number of past public meetings, has not considered any new or old business during their proceedings. An exception to this was on February 19, 2014 the Council approved the use of the Town's parking lot sign by the local order of the Lion's Club.

You contention mainly regards the lack of any discussion or deliberation at the meeting and you speculate all non-final official action is taken during a "work session" held one half-hour before the public meeting begins. The Town concedes this work session indeed takes place although no votes are taken and it is referred to as a Department Head meeting. The council, the department heads and the Clerk-Treasurer is present.

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).

The Office of the Public Access Counselor does not generally scrutinize the procedure and protocol of public agencies as long as the agency follows the Open Door Law. Rules of procedure and similar formalities are outside the scope of the PAC Office. There will inevitably be instances when public agencies do not have business to discuss but nevertheless convene pursuant to their usual course of business. The lack of discussion itself does not indicate an Open Door violation.

Much more troubling is the Council's practice of holding a "Department Head" meeting before each public meeting to receive information from the Clerk-Treasurer and department heads. This is clearly a meeting under the Open Door Law as official action on public business is taken (receiving information is clearly defined as official action under Ind. Code § 5-14-1.5-2(i)). The Council states the public is "able and welcome" to attend, but this does not give me confidence they are in strict compliance with the ODL. Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. See Ind. Code § 5-14-1.5-5(a).

These types of informal "work sessions" are not in compliance with access laws unless the public is able to observe and record *and* notice is given regardless if final action is taken. While the lack of notice may seem inconsequential as long as the meeting is held conspicuously, it is of utmost importance the interested public is notified of the exact date and time when a majority of a governing body is taking official action on public business.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Osceola Town Council has acted contrary to the Open Door Law by holding meetings before regularly scheduled public meetings without notice. They are not in violation for failing to discuss any business at those particular open public meetings.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Robert Schrock; Ms. Denise Thornburg