



STATE OF INDIANA

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August 8, 2016

Joseph J. Slacian Jr.
606 North State Road 13
Wabash, Indiana 46992

Re: Formal Complaint 16-FC-179; Alleged Violation of the Open Door Law by the Metropolitan School District of Wabash County School Board

Dear Mr. Slacian:

This advisory opinion is in response to your formal complaint alleging the Metropolitan School District of Wabash County School Board ("Board") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Board has responded via Mr. Stephen H. Downs, Esq., legal counsel. His response is enclosed for your review. This Opinion has been granted priority status. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 28, 2016.

BACKGROUND

Your complaint dated July 28, 2016, alleges the Metropolitan School District of Wabash County School Board violated the Open Door Law by taking official action at an improper executive session.

On July 12, the Board voted to reconfigure its school district. You allege two school board members and the superintendent acknowledged the plans were formulated during a series of executive sessions held on June 8, June 14, and July 7. In the executive session notices posted for each of these meetings, the Board listed I.C. § 5-14-1.5-6.1(5) (to receive information about and interview prospective employees) as the item to be discussed.

In its response, the School Board concedes that the discussions regarding the reconfiguration took place at an executive session originally intended to address personnel issues. Legal counsel for the Board suggests that the superintendent of the School has consulted with the Board to rescind its vote in favor of a public discussion and re-vote of the issue in the near future.

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 Indiana Code § 5-14-1.5-1.* Section 6.1 provides an exception, allowing public agencies to conduct executive sessions which are closed to the public in order to discuss strategies with respect to certain specified topics.

The exceptions to this policy are called executive sessions. Executive sessions are subject-matter-contingent scenarios, which have heightened sensitivity above and beyond regular public business. The Indiana General Assembly has recognized the need for privacy when it comes to these very narrow situations and has carved out executive sessions as instances when it is appropriate for a governing body to meet behind closed doors.

These subject-matter justifications for holding a closed-door meeting is outlined in Section 6.1 of the Open Door Law. While it does include exceptions for certain personnel discussions, it does not allow for discussion of school reconfiguration. Even if the law did allow for such discussions, any executive session would need be specifically noticed accordingly.

This Office scrutinizes executive sessions closely due to their very nature of opaqueness. While there are certainly justifications for having sensitive discussions behind closed doors, they should be invoked judiciously and notice requirements be followed to the exact letter of the law. Holding unauthorized private discussions behind closed door as a majority of a governing body only serves to erode the public trust and cast doubts on the transparency of the public agency. When votes are taken with no public discussion, the public is left in the dark as to public official's decision-making processes. This can cause confusion and suspicion and often leads to the perception that the official is not being a good steward of the public's trust and resources. Governmental representatives should be particularly mindful that the government is the servant of the people and not its master.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor that the Wabash County School Board has violated the Open Door Law, however, they have been afforded an opportunity to correct non-compliance going forward. It is my sincere hope that they take the advice of their legal counsel and superintendent in remedying the situation.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Stephen H. Downs, Esq.