



STATE OF INDIANA

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May 4, 2016

Mr. Ernest R. Frazo
4848 N. Brummetts Creek Road
Bloomington, Indiana 47408

Re: Formal Complaint 16-FC-59; Alleged Violation of the Open Door Law by the Bloomington Township Board

Dear Mr. Frazo:

This advisory opinion is in response to your formal complaint alleging the Bloomington Township Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. The Board has responded to your complaint via counsel, Ms. Darla Brown, Esq. 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 March 16, 2016.

BACKGROUND

Your complaint dated March 15, 2016 alleges the Bloomington Township Board violated the Open Door Law by taking action outside of an official meeting or by failing to properly memorialize a vote in its record.

On February 12, 2016, the Board published notice regarding the potential formation of a three (3) township fire protection territory. This proposal was reported in local newspapers. On February 29, 2016 it was reported the proposal had changed to a two (2) township territory. You note the minutes from the Board meeting do not reflect a vote to exclude Benton Township. You contend the Board either improperly voted on the matter outside an official meeting or the Board failed to keep accurate records.

On April 4, 2016 the Board responded via counsel. Counsel notes the decision not to include Benton Township was the result of decisions which occurred with Benton officials. Counsel asserts there is no violation and all formalities and necessary procedures were taken.

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)*.

“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)*.

The Board began its deliberations discussing a three (3) township territory and ended with two (2). Generally, it is outside the scope of this Office to opine on whether a local governing body followed statutory protocol for specific initiatives. *Ind. Code § 36-8-19-0.3 et. seq.*, sets forth the procedure for establishing a fire territory. As for the Open Door Law, *Ind. Code § 5-14-1.5-4(b)* requires memoranda are kept from all meetings:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken by individual members if there is a roll call.
- (5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

It is clearly public business to hold hearings and discuss a proposal to form a unified fire territory. Therefore, memoranda must be kept detailing those discussions. However, the memoranda do not have to be exhaustive; only five (5) statutory requirements are listed. While any board’s memorandum could always be more detailed, it is not required – only the general substance of matters proposed. The Board could have listed in greater detail when Benton was dropped from the proposal but it is not required. The Board’s records meet the requirements of *Ind. Code § 5-14-1.5-4(b)* and are therefore proper. You have not specifically alleged any instances of closed-doors discussions and I cannot infer any from the information provided.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Bloomington Township Board has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Darla Brown, Esq.