





# STATE OF INDIANA

**ERIC J. HOLCOMB, Governor**

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The Complainant, a Trustee of Green Township (“Township”), attended the April 24 hearing and spoke on the Township’s behalf. The Complainant notes that only he was given the opportunity to speak, even though other attendees had indicated their intention to speak. The Complainant also notes that no vote was taken at the April 24 hearing, and that he is concerned the vote was not binding because not all customers were notified of the final vote on March 27, 2017.

The Council responded that the Township did not receive the mailed notice of the March 27 hearing because the letters were mailed to all monthly billed customers of the water utility located outside of the town’s boundaries, and the Township is billed quarterly. The Council decided to hold an additional hearing when it learned that the Township had not been sent mailed notices of the March 27 hearing as required under IC 8-1.5-3-8.1(c)(3). According to the Council, at the April 24 hearing, only the Township was given the opportunity to speak because all other customers had received notice of the March 27 hearing and had an opportunity to either submit comments or speak at that hearing. The Council responds that the motion to ratify the prior adoption of the rate increase ordinance was unanimously approved, and the vote for the ordinance was properly cast.

## ANALYSIS

It is the intent of the Open Door Law (“ODL”) that 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 ODL does not specify the procedures for taking a vote. Secret ballots are prohibited under the ODL. *See Indiana Code § 5-14-1.5-3(b)*. Furthermore, if a roll call is taken, the individual votes of members are to be recorded as a memorandum. *See Indiana Code § 5-14-1.5-4*. The Complainant does not allege that there was a secret ballot, and the Council’s response indicates that there was no secret ballot. The Council also maintains that the minutes of both meetings demonstrate that both the vote on March 27 to adopt the ordinance and the motion on April 24 to ratify the prior adoption were properly conducted under the ODL. So long as the votes at the March 27 hearing were recorded and not done by secret ballot, and so long as the Council members openly approved the motion to ratify the prior adoption of the rate increase at the April 24 hearing, it appears the vote was properly cast.

Indiana Code section 8-1.5-3-8.1(c)(3) provides that for municipally owned water utilities, notice of hearings regarding rate changes are to be mailed to any users of the utility located outside of the boundaries of the municipality. The Council sent mailed notice to all customers located outside of the Town’s



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boundaries, but due to a technical error, the Township was omitted. The Council held another public hearing so that the Township could be heard and notified the Township of the hearing at least ten days before the hearing. While the Township is correct that the Council should have sent mailed notice of the hearing to them, the Council made a good faith effort to correct the mistake.

Indiana Code section 8-1.5-3-8.1(c), however, also provides that “before the ordinance is finally adopted, the municipal legislative body shall hold a public hearing at which users of the works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed rates and charges.” While the intention of this additional hearing was to allow the Township to speak about the proposed rate change, I do not think the Council should have prevented the attendees who wished to speak from doing so. The April 24 ratification of the prior vote from March 27 effectively served as the final adoption of the ordinance. The Council could have decided not to ratify the prior adoption of the ordinance based on the comments made by the Township at the April 24 hearing. The language of the statute indicates that interested parties may be heard at a public hearing before the final adoption of an ordinance. Because the ordinance had not been finally adopted, those attendees at the April 24 meeting should have been allowed to be heard. This does not appear to be a fatal flaw in the proceeding as the only person complaining was the one individual allowed to speak. No other constituent has claimed a grievance.

Overall, the Council made a good faith effort to correct its mistake of not mailing notice to the Township. The Complainant notes that the Council’s vote would have been favorable to the Township. The intent of the ODL is to ensure the actions of public agencies be conducted openly so that the people may be informed. It appears that the Council complied with the intent of the ODL.

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt".

Public Access Counselor

Cc: Mr. Gregg H. Morelock