
OPINION OF THE PUBLIC ACCESS COUNSELOR

BRENT SNOW,
Complainant,

v.

TIPTON CITY PLAN COMMISSION,
Respondent.

Formal Complaint No.
17-FC-169

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Tipton City Board of Appeals (“BZA”) violated the Open Door Law (“ODL”). Ind. Code §§ 5-14-5-1-8. The Commission responded by and through Counsel David Langolf Smith, and Board of Zoning Appeals Chair Linda Winkleman on August 8, 2017. The response is enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 12, 2017.

BACKGROUND

The Complainant, Mr. Snow, contends the Tipton City Board of Appeals violated the Open Door Law by taking final action outside of a public meeting.

On or about June 14, 2017, an executive session was held by the Tipton City Board of Zoning Appeals (“BZA”) for the discussion of strategy regarding pending litigation. A decision was made in the executive session to approve the filing of an objection to a motion to dismiss. It was subsequently discussed at a public meeting but no vote was taken on the decision to file the objection.

The BZA responded by arguing the decision did not necessitate a final action by voting and the decision was merely litigation strategy.

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.

Pursuant to Ind. Code § 5-14-1.5-6.1(c) a final action must be taken at a meeting open to the public. In the recent months, I have been critical of governing bodies who have used executive sessions and even email to take final actions on matters such as ordinances, resolutions, and grant

applications. All of these items were without any other context or public discussion. They were not routine decisions or administrative choices; they were substantive binding outcomes affecting essential public business.

The General Assembly has carved out an executive session to take official action on strategy with respect to pending litigation. The intent behind this exception to the Open Door Law is that while the decisions made within the vacuum of lawsuits have gravitas and can be weighty, navigating the waters of litigation is not effective if it is micromanaged by a client hamstrung by having its strategy laid bare in public. The decision to object to a motion to dismiss by a plaintiff is fundamentally straightforward. It is not a decision that merits a vote and final action at a public meeting is unnecessary. Decisions and final actions are not always synonymous.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Tipton Board of Zoning Appeals did not violate the Open Door Law.



Luke H. Britt
Public Access Counselor