
OPINION OF THE PUBLIC ACCESS COUNSELOR

JERRY J. WILKINSON,
Complainant,

v.

HUDSON TOWNSHIP,
Respondent.

Formal Complaint No.
18-FC-139

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Hudson Township Trustee and Board violated the Open Door Law.¹ Hudson Township Trustee Joyce Forbes² filed an answer to the complaint on behalf of the Township. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code §§ 5-14-1.5-1 to -8

² Thomas M. Euler is now Hudson Township Trustee.

by the Office of the Public Access Counselor on November 30, 2018.

BACKGROUND

On November 8, 2018, the Hudson Township Trustee and Advisory Board joined the New Carlisle Town Board for a joint work session to discuss the feasibility of creating a fire protection territory.

Jerry J. Wilkinson (“Complainant”) alleges that the Hudson Township Advisory Board and Trustee voted to spend township funds and move forward with a “detailed financial budget” for the proposed New Carlisle Fire Territory. Wilkinson contends the meeting violated the Open Door Law (“ODL”) because Hudson Township failed to provide public notice of the meeting.

Hudson Township Trustee Joyce Forbes—whose term ended on December 31, 2018—denies Wilkinson’s claim that Hudson Township failed to provide notice of the work session. Forbes contends that she posted notice of the meeting in three places: (1) the door of the Trustee’s office; (2) the township website; and (3) on the door of the New Carlisle Town Hall.

Forbes also argues that Hudson Township did not take “formal action” at the meeting except to provide financial information to H.J. Umbaugh and Associates for further documentation. Forbes says no formal action is planned on the issue until after three public hearings are conducted as provided by law.

ANALYSIS

1. The Open Door Law (ODL)

It is the intent of the Open Door Law (“ODL”) that 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, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The parties do not dispute that the Hudson Township is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. Ind. Code § 5-14-1.5-2. In addition, the parties do not dispute that the Hudson Township Advisory Board is a governing body of the township for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the Council must be open at all times to allow members of the public to observe and record.

1.1 Public Notice

At the heart of this complaint is a dispute about whether Hudson Township provided appropriate public notice prior to the work session on November 8, 2018.

Under the ODL, the governing body of a public agency must give public notice 48 hours in advance as follows:

The governing body of a public agency shall give public notice by posting a copy of the notice at the

principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

Ind. Code § 5-14-1.5-5(b)(1). Here, the Trustee asserts that she posted notice of the work session in three places: (1) her office's door; (2) on the township's website; and (3) on the door of the New Carlisle town hall.

Although Wilkinson concedes that Hudson Township "apparently posted" notice on the building where the meeting occurred, he argues that he can find no evidence that the Trustee "published" notice in Hudson Township.

Notably, under the ODL, Hudson Township was not required to *publish* public notice for the work session in question. So, it follows that Wilkinson would not be able find such evidence.

On the other hand, the ODL does require a public agency to post public notice at the agency's principal office, which the Trustee claims she did. Because Wilkinson has not offered any reason to dispute the Trustee's claim, this Office sees no reason to doubt the veracity of her statement.

As a final aside, Wilkinson contends the Hudson Township Board voted to spend township funds and move forward with a "detailed financial budget" for the proposed fire territory. The Trustee denies this assertion.

As before, Wilkinson and the Trustee have conflicting versions of what occurred at the meeting, and

Wilkinson has not offered evidence (e.g., meeting minutes referencing a vote) that would substantiate his claim that the Hudson Township Board took final action on public business.

Even if he did, a public agency may take final action at a properly noticed public meeting.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Hudson Township Trustee and Board did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor