
OPINION OF THE PUBLIC ACCESS COUNSELOR

THOMAS A. TRENT,
Complainant,

v.

NYONA/SOUTH MUD LAKE CONSERVANCY DIS-
TRICT
Respondent.

Formal Complaint No.
18-FC-83 (amended)¹

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Nyona/South Mud Lake Conservancy District (“District”) violated the Open Door Law² (“ODL”). The District responded to the complaint through attorney Ethan S. Lowe. In accordance with Indiana Code § 5-14-5-10, I issue

¹ The original advisory opinion issued incorrectly stated that District failed to file a response to the formal complaint. This version accounts for the District’s response.

² Ind. Code §§ 5-14-1.5-1 to -8

the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 24, 2018.

BACKGROUND

On May 9, 2018, the Nyona/South Mud Lake Conservancy District Board of Directors held an executive session. The executive session started around 3:45 in the afternoon.

Thomas A. Trent (“Trent”) asserts that the District violated the Open Door Law during this executive session. It is unclear whether this was a properly noticed executive session, however, Trent claims that during the meeting the Chairman requested the presence of an outside party – an employee of the district. After some discussion as to whether his presence was proper, he was allowed to attend.

Trent asserts the Board notified the employee that it had terminated his employment. Further, Trent argues that the District did not hold this vote in a public meeting, but rather held the vote in executive session in violation of the Open Door Law.

The Board disputes Trent’s claim of an ODL violation.

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 Nyona/South Mud Lake Conservancy District is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Therefore, unless an exception applies, all meetings of the Board of Directors must be open at all times to allow members of the public to observe and record.

1.1 Official Action

Section 6.1 of the ODL authorizes the governing body of a public agency to exclude the public from certain meetings. This allows the governing body to discuss limited, and narrowly-defined subject matters. These meetings are called executive sessions.

Critically, executive sessions are permitted only in certain statutorily-defined circumstances. *See* Ind. Code § 5-14-1.5-6.1(b)(1) to (15). Here, it is unclear what exception the Board invoked under Indiana Code to authorize the meeting, but conceivably, they could have used Indiana Code section 5-14-1.5-6.1(b)(9): to discuss a job performance of an individual employee.

Toward that end, however, while governing bodies may hold discussions, final actions in executive sessions pursuant to those discussions are expressly prohibited. *See* Ind. Code § 5-14-1.5-6.1(c): A final action must be taken at a meeting open to the public. Final action is defined as a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. The termination of an employee requiring a vote falls squarely within that definition. *See* Ind. Code § 5-14-1.5-2(g).

Executive sessions are preliminary, pre-determinative work sessions but they are not to be substituted for a public meeting. Because final action (the termination of an employee) was effectuated behind closed doors, the action was illegal.

CONCLUSION

Based upon the foregoing, it is the Opinion of the Public Access Counselor that the Nyona/South Mud Lake Conveyance District violated 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