
OPINION OF THE PUBLIC ACCESS COUNSELOR

GARY ROBINSON,
Complainant,

v.

CRAWFORD COUNTY COUNCIL,
Respondent.

Formal Complaint No.
19-FC-104

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to two formal complaints alleging the Crawford County Council violated the Open Door Law.¹ The Council responded via Legal Counsel Marcus M. Burgher IV. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the Office of the Public Access Counselor on October 7, 2019.

¹ Ind. Code § 5-14-1.5-1, to -10.

BACKGROUND

This case involves a dispute over the public comment period during a public hearing of the Crawford County Council.

On September 24, 2019, the Crawford County Council convened the following public hearings and meetings:

1. Public Hearing (Local Income Tax Ordinance): 5:00 p.m.;
2. Public Hearing (Budget for Binding Units in County): 5:30 p.m.;
3. Regular County Council Meeting: 6:00 p.m.

The origin of the dispute in this case is the first public hearing concerning local income tax ordinance. Gary Robinson (“Complainant”) attended the hearing and provided comment to the council on the measure.

On October 7, 2019, Robinson filed two formal complaints with this office alleging the council violated the Open Door Law in connection with the hearing on September 24, 2019.

In the first complaint, Robinson alleges that the council committed multiple violations. First, Robinson asserts that the council informed the audience before the hearing that each person would have two minutes to speak.

Robinson claims that if the Council wishes to impose time limits they should provide specific details to the public can prepare accordingly. He asserts that the public was not informed of the two minute time limit on public comments until right before the public comment portion of the hearing began.

Second, Robinson argues that the council was discriminatory against the members of the public who attending the hearing when it allowed the “advanced speakers”, or county employees to present without time restrictions. Robinson contends that the county employees, who were advocating for operating funds for their respective departments, were given “preferential treatment by being allowed to speak first without time limits.”

Third, Robinson accuses Chad Riddle, a member on the Council, of “gigggl[ing] like a girl or giv[ing] smug sneering grins at speakers who were giving passionate speeches about tax increases.” Robinson argues that this kind of behavior is “deliberative and intended to disrupt and discourage others who may want to speak ...”

In the second complaint, Robinson alleges that after the Council President gave his approval for Robinson on behalf of another member of the audience during the hearing, Riddle interrupted by telling him “ that is [he] did not sit down and shut up he would have [him] removed from the room.” Robinson argues that the action taken by Riddle constitutes a violation of the ODL by infringing on his right to speak at a public hearing.

On October 31, 2019, the Council filed an answer to Robinson’s complaints disputing his allegations.

First, the Council asserts that it established the two minute time limit based on the number of people that signed up to speak and the 30 minutes allotted for the hearing. Thirteen people signed up to speak.

Second, regarding the local officials who spoke prior to opening the floor for public comment, Councilman Riddle

opened the meeting with a prepared speech that listed about 3 minutes. Next, the Crawford County Emergency Service Director spoke about how the new income tax could benefit public safety, which the Council says lasted less than a minute. Though this individual had not explicitly been given a time limit, he did not exceed the two minute limit that was being enforced for the rest of the speakers.

Finally, the Council argues that Robinson mischaracterizes the facts about his interaction with Council. According to the Council, Robinson was the second person signed up to speak and exceeded his allotted two minutes. Further, the Council acknowledges that another person who signed up to speak asked the Council to “give him a minute of my time.” The Council granted that request.

Still, the Council maintains that Robinson, despite receiving extra time, again continued to speak for another thirty seven seconds after his time ended. The Council asserts that the Council President advised Robinson that his time was up but he ignored the comment.

After Robinson ignored the Council’s comments, Councilman Riddle interrupted Robinson saying, “You are cutting into other people’s time. Either sit down sir or you are going to be removed. I’m sorry but your time is up. We have a bunch of people that wants [sic] to talk.”

The Council argues that none of its actions at the hearing could be considered violations of the ODL. The Council asserts that most of the grievances laid out by Robinson revolve around the two minute time limit for speaking at the hearing, which the Council established so that everyone who

wanted to comment could share their views on the proposed local income tax ordinance with the Council.

ANALYSIS

1. The Open Door Law

The Open Door Law (“ODL”) establishes 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. 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. Ind. Code § 5-14-1.5-3(a).

Under the ODL, there can be no doubt that Crawford County is a public agency. Further, the Crawford County Council is a governing body; and thus, subject to the law’s requirements. *See* Ind. Code § 5-14-1.5-2.

2. Time Parameters for Public Comment

Moreover, although the public does not have the unequivocal right to speak at a regular public meeting, when a public agency is required to conduct a public hearing under any statute, the opportunity to speak for those limited purposes must be provided. “Indiana Code § 6-1.1-17-3 requires officers of a political subdivision, such as the School, to hold a public hearing prior to approving its budget, tax rate, and tax levy.” *Brademas v. South Bend Community School Corporation* 783 N.E.2d 745, 750 (Ind. Ct. App. 2003). “Taxpayers have a statutory right to speak at these public hearings.” *Brademas*, 783 N.E.2d at 750.

Be that as it may, a governing body can set parameters around those comments in a manner that does not discriminate based upon the message itself. Part and parcel of being a public official is the ability to receive criticism as well as support for a decision or initiative.

Local income tax ordinances will invariably invite the former, but not to the extent of disrupting the progress of a meeting. Therefore some time constraints on a commenter's remarks are reasonable to prevent filibuster by the public. Seeing as how a board cannot always predict audience turnout, setting these rules on the spot is not ill-advised. Two minutes is a typical timeframe for comment and does not present a barrier to access.

Evidently turnout was relatively high and parameters were set shortly before commencement of the meeting. Without more, this does not constitute a violation of the Open Door Law.

3. Consistency among Speakers

Balanced against parameters for comment is the importance of consistency of application. Robinson takes exception to what he contends was the Council giving county employees more time to speak than members of the public. The Council denies Robinson's allegation.

Unquestionably a public hearing on a local income tax ordinance exists primarily so taxpayers can exercise their right to be heard. At the same time, it is the agency's duty to provide the public with the information predicated its decision to levy additional or increased taxes.

Given this prerequisite, it stands to reason that any presentation by county employees is not immediately parallel to the public's input. As impassioned as the public's opposition or support may be, input from constituents is a reaction thereto.

So even if true, staff proposing the need for an increase is part of the foundation for the decision and not analogous to public comment.

4. Decorum

Turning to the perceived slights directed toward Robinson during the meeting, the Council responded to some, but not all, of his allegations. Unfortunately, the complaint itself offers some abrasive language as well.

In any professional setting, decorum is imperative. While counseling the public on the finer points of civic discourse is not expressly enumerated in the statutory duties and powers of this office, access and a cooperative spirit often go hand in hand. Forceful but courteous arguments can be presented without resorting to name calling and belittlements.

Rather than specifically address the disparaging statements and actions attributed to the Council - and perpetuated by Robinson - this office will simply note that constituents' voices are not always best amplified by coarse language and insults, but rather by well-reasoned and mannered dialog.

Discourse devolving into animosity does not give public discussion a good name. It would serve both sides well to take this into consideration.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor the Crawford County Council 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