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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BEN MIDDELKAMP,  
*Complainant,*

v.

HANCOCK COUNTY COUNCIL,  
*Respondent.*

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Formal Complaint No.  
19-FC-55

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Hancock County Council violated the Open Door Law.<sup>1</sup> Attorney Scott A. Benkie filed a response to the complaint on behalf of the county. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the amended formal complaint received by the Office of the Public Access Counselor on July 19, 2019.

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<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8

## BACKGROUND

Ben Middelkamp, a reporter for the Greenfield *Daily Reporter*, filed a formal complaint alleging the Hancock County Council violated the Open Door Law by failing to provide public notice of a council meeting.

On July 1, 2019, the Hancock County Budget, Efficiency, and Revenue Committee<sup>2</sup> (“Budget Committee”) convened a meeting in the basement of the county jail. The membership of the Budget Committee consists of the Hancock County Council and the Hancock County Board of Commissioners.

During the committee meeting, Hancock County Council President William Bolander called the council into session to vote on the final adoption of ordinance increasing the county’s local income tax rate.

Middelkamp asserts the county council violated the Open Door Law by not posting public notice of the meeting.

The Council disputes Middelkamp’s claim. Essentially, the Council contends that it intended to vote for final adoption of local income tax ordinance at its regularly scheduled meeting on July 10, 2019, which the Council contends it provided notice for in accordance with Indiana Code section 5-14-1.5(c). The Council also asserts that the county provided proper notice of the Budget Committee’s meetings in accordance with the same statute.

Finally, the Council contends that the public had already had the opportunity to address the local income tax ordinances

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<sup>2</sup> The committee considers matters relating to the county budget, efficiencies, and revenues. The committee makes recommendations to the full county council for consideration.

in May, and final adoption was a mere formality the council postponed from its May 23 meeting. Even so, the Council adopted the local income tax ordinances at the council's meeting on July 10, 2019.

### ANALYSIS

The principal issue in this case is whether the Open Door Law required the Hancock County Council to provide public notice of its meeting on July 1, 2019.

#### 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.

Toward that end, 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). There is no dispute that Hancock County is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the County Council is a governing body of the county for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

“Meeting” means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code § 5-14-1.5-2(c). “Public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind.

Code 5-14-1.5-2(e). The definition of “official action” includes: (1) receiving information; (2) deliberating; (3) making recommendations; (4) establishing policy; (5) making decisions; or (6) final action (e.g. taking a vote). Ind. Code § 5-14-1.5-2(d).

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

## **2. Public Notice**

The crux of Middelkamp’s complaint is that the Hancock County Council failed to provide public notice of its meeting on July 1, 2019, which occurred at some point during or after the county’s budget committee meeting.

Under the Open Door Law, the governing body of a public agency must give public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting 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, there is no dispute that the Council president called the County Council into session during a meeting of the county budget committee for the purpose of taking a vote for final adoption of an ordinance increasing the local income tax rate. Under the ODL, this

gathering constituted a meeting of the Council; and thus, required public notice 48 hours in advance.

As a preliminary matter, it is important to acknowledge that the Hancock County Budget, Efficiency, and Revenue Committee is distinguishable from the Hancock County Council for purposes of the ODL because each governing body is independently subject to the provisions of the ODL.

In other words, Budget Committee meetings are not County Council meetings and vice versa. It follows that public notice of a Budget Committee meeting does not establish or otherwise function as public notice for a meeting of the Hancock County Council.

The Council's argument to the contrary is troubling. Moreover, having a full council be on an entire separate committee is a recipe for confusion and defeats the purpose of committees. Committees are a tool used for delegation of powers, not consolidation with a separate entity in the political subdivision.

First, there is no legal authority to support the council's suggestion that the public notice for a county budget committee meeting is capable of moonlighting as the public notice for a meeting of the Hancock County Council. By its own admission the county posts separate annual notices of the county council's regularly scheduled meetings and the budget committee meetings in accordance with Indiana Code section 5-14-1.5-5(c).

Second, the committee and the council are separate governing bodies with separate—and widely disparate—powers and duties. The Budget Committee is limited by its enabling

resolution to making recommendations about budget matters to the full Council for consideration. Conversely, the Hancock County Council can enact ordinances to establish or increase local income taxes. The Budget Committee here can do no such thing.

Finally, to adopt the Council's position would short circuit the legislature's intent with the Open Door Law. The whole idea under is to put the public on notice of what its government is doing and when.

Here, the Hancock County Council materialized during a budget committee meeting and took official action on public business (e.g., voting for final adoption of an LIT ordinance) without posting public notice. Plainly enough that violates the Open Door Law. The fact that the county provided public notice for the committee meeting is irrelevant because the council is required to post public notice of its meetings 48 hours in advance.

A council cannot simply gavel in to a committee meeting and slip an ordinance through without notice. The access laws do not exist so that governing bodies can find loopholes to subvert their purpose in the name of "convenience" and "efficiency".

Furthermore, votes on ordinances are not a "formality" as the Council suggests. They go through a rigid reading process and should be promulgated in the full light of day, and not thrown off as a casual missive in a jail basement.

### **3. Enforcing the ODL; Remedies**

The Open Door Law authorizes any person to file an action to void any policy, decision, or final action taken at a meeting which violates the statute. Ind. Code § 5-14-1.5-7(a)(3). This, of course, includes voiding an action taken at a meeting where public notice is not given in accordance with section 5 of the ODL. Ind. Code § 5-14-1.5-7(a)(3)(B).

Here, the council did not give public notice in accordance with section 5 of the ODL when it convened on July 1, 2019 and voted on the local income tax ordinance.

Granted, the Council redid the vote on the local income tax ordinance at a meeting nine days later. Even so, under the Open Door Law, if a court finds that a governing body violated the law, the court may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with the ODL. Ind. Code § 5-14-1.5-7(c). Indeed, the Council should be mindful of these remedies and the other provisions of the Open Door Law going forward.

## CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Hancock County Council violated the Open Door Law by failing to post public notice of its meeting on July 1, 2019, in accordance with Indiana Code section ~~5-14-1.5-5~~.



Luke H. Britt  
Public Access Counselor