
OPINION OF THE PUBLIC ACCESS COUNSELOR

BLAKE E. NEWKIRK,
Complainant,

v.

SHELBY COUNTY PLAN COMMISSION,
Respondent.

Formal Complaint No.
20-FC-144

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Shelby County Plan Commission violated the Open Door Law.¹ Attorney Mark W. McNeely filed an answer on behalf of the commission. 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 October 7, 2020.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether the Shelby County Plan Commission (Commission) violated the Open Door Law (ODL) at its executive session on October 7, 2020.

Blake E. Newkirk (Complainant) contends that during the Commission's meeting on September 22, 2020, the Commission decided to move its discussion of the county's Commercial Solar Energy System ordinance to an executive session scheduled for the first week of October. Newkirk argues that the ODL does not authorize the Commission to discuss the ordinance in executive session. As a result, Newkirk filed a formal complaint with this office alleging an ODL violation.

On October 21, 2020, the Commission filed an answer to Newkirk's complaint disputing that the executive session violated the ODL.

Specifically, the Commission argues that it held an executive session on October 7, 2020, to discuss recent efforts by certain solar energy companies to lease property that is located in Shelby County. The Commission contends the ODL authorizes an executive session for this subject matter in accordance with Indiana Code section 5-14-1.5-6.1(b)(2)(D).

Although the Commission admits that it necessarily referenced the local ordinance during the meeting, it argues that the discussions dealt only tangentially with the ordinance. The Commission contends that the primary purpose of the executive session was to discuss the leasing of real property that occurred based on the ordinance.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, 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).

Shelby County is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Shelby County Plan Commission (Commission) is a governing body of the county 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 Commission must be open at all times to allow members of the public to observe and record.

2. Executive sessions

The crux of this complaint is whether the Commission's executive session on October 7, 2020, complied with the Open Door Law.

Under the ODL, "executive session" means "a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose." Ind. Code § 5-14-1.5-2(f).

A governing body may meet in executive session only as authorized by statute. *See* Ind. Code § 5-14-1.5-6.1(b).

Here, Newkirk argues that the Commission held an executive session, in violation of the ODL, to discuss Shelby County's Commercial Solar Energy System Ordinance

It is worth mentioning that the ODL does not authorize executive sessions to discuss existing or draft ordinances. Even so, the Commission disputes Newkirk's claim.

Instead, the Commission argues that the purpose of the session was to discuss the recent efforts made by certain solar energy companies to lease property in Shelby County. Moreover, the Commission contends that the ODL authorizes an executive session for this purpose in accordance with section 6.1(b)(2)(D), which allows an executive session for the discussion of strategy with respect to:

A real property transaction including:

- (i) a purchase;
- (ii) a lease as lessor;
- (iii) a lease as lessee;
- (iv) a transfer;
- (v) an exchange; or
- (vi) a sale;

by the governing body up to the time a contract or option is executed by the parties. This clause does not affect a political subdivision's duty to comply with any other statute that governs the conduct of the real property transaction, including IC 36-1-10 or IC 36-1-11.

Ind. Code § 5-14-1.5-6.1(b)(2)(D). Emphasis added. Notably, the exception cited by the Commission would apply here

only if the Commission is party to one of the types of real estate transactions listed in the statute. In other words, this exception does not authorize the Commission to meet in executive session to discuss the real property transactions or lease efforts of other parties (e.g., solar energy companies) in Shelby County.

Since the Commission did not indicate that it was discussing strategy for a real property transaction where it was a party, the exception does not apply.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Shelby County Plan Commission misapplied Indiana Code section 5-14-1.5-6.1(b)(2)(D) and should not have held the executive session unless it was a party to the transaction.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor