
OPINION OF THE PUBLIC ACCESS COUNSELOR

TERRY L. YOUNG,
Complainant,

v.

PULASKI COUNTY BD. OF COMMISSIONERS,
Respondent.

Formal Complaint No.
20-FC-3

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Pulaski County Board of Commissioners violated the Open Door Law.¹ Pulaski County Attorney Kevin Tankersley filed an answer on behalf of the board. 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 January 10, 2020.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

On January 6, 2020, the Pulaski County Board of Commissioners (“Board”) convened a regular meeting at 6:00 p.m. at the county highway garage.

Four days later, Terry L. Young (“Complainant”) filed a formal complaint with this office alleging the commissioners violated the Open Door Law (“ODL”).

First, Young asserts that the Board failed to post public notice 48 hours before the meeting. Young contends the Board has failed to post public notice 48 hours prior to meetings over the past several months.

Second, Young argues that the Board violated the ODL because the public’s inability to hear the proceedings on January 6. Young says he raised the issue during public comment and asked if the sound system worked. Young says the Board President responded that the commissioners had not tried the sound system. He says the meeting continued with the public still unable to hear.

Finally, Young contends that the Board President and the Pulaski County Auditor engaged in private conversations with each other for the remainder of the meeting, which could not be heard by those in attendance.

On January 17, 2020, the Board filed an answer with this office disputing Young’s claims that it violated the ODL.

First, the Board argues that the meeting on January 6, was a regularly scheduled meeting and does not require 48 hours’ notice like a special meeting. The Board attached a copy of the classifieds and public notice page published in

the *Pulaski County Journal* on January 1, 2020, which includes a public notice for the Board's regular meetings for the year. Additionally, the Board asserts that it always posts the public notice on the sign outside of the meeting door and provides copies of the notice and meeting agenda for the public to take. The Board argues that Pulaski County is in compliance with Indiana Code section 5-14-1.5-5(b)(1) and section 5-14-1.5-4.

Second, the Board argues that the ODL does not require the use of a voice amplification system at public meetings. Although the Board concedes that it has an amplification system, it generally only uses the system when there are larger crowds in attendance. The Board maintains that fewer than ten citizens attended the meeting on January 6, so it did not use the amplification system.

Moreover, the Board notes that the county has listening devices available for those with difficulty hearing the proceedings. The Board contends that Young is aware of the listening devices because the county had them available when Young was a county commissioner.

The Board also observes that Young could have "audio recorded the meeting, used the listening devices available or sat closer to the Commissioners."

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).

Pulaski 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 Pulaski County Board of Commissioners ("Board") is a governing body of the agency 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 Board must be open at all times to allow members of the public to observe and record.

2. Public notice

Young argues that the Board violated the Open Door Law by failing to post public notice for its meeting on January 6, 2020, 48 hours in advance. In response, the Board argues that the meeting did not require 48 hours' notice because it was a regularly scheduled meeting, which the Board published notice for on January 1, 2020 in a local newspaper.

Under the ODL, 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 Board did not post public notice 48 hours in advance in accordance with this statute. In essence, the Board contends that the law did not require it because the meeting was a regularly scheduled meeting and the Board published a public notice for regular meetings in a local paper at the beginning of the year.

As an initial matter, it is important to note that the ODL authorizes a governing body of a public agency to post annual public notice of regular meetings as follows:

Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

Ind. Code § 5-14-1.5-5(c).

Based on the evidence provided, it is unclear whether the Board provided an adequate annual notice for regular meetings.

Indeed, the Board attached a copy of a public notice it published in the *Pulaski County Journal* on January 1, 2020, which contains the necessary information for notice.

If the Board also posted the annual notice of its regular meetings at the county's principal office, then no additional notice is required under the ODL for the regular meetings unless the date, time, or place changes for any of them. This office's interpretation of this statute means physical annual

notice. Internet notice, while commendable, needs to be supplemented by an on-site annual notice as well, albeit only once at the beginning of the year.

The ODL, however, does not require notice by publication; and thus, publication is neither strictly necessary nor adequate to provide the annual public notice of regular meetings.

On the other hand, if the Board *only* published the notice for regular meetings in the newspaper, the Board did not meet the ODL notice requirement; and thus, the Board needed to post public notice 48 hours before the meeting on January 6, 2020.

3. Inability to hear proceedings

Young asserts the Board violated the ODL based on his, and by extension others', inability to hear the proceedings on January 6, 2020. Although the commissioners have a sound amplification system, the Board does not use it at every meeting. As set forth above, the Board argues that Young could have recorded the meeting, used the listening devices available, or simply sat closer to the board during the meeting.

The ODL secures the public's right to observe and record the meetings of the governing body of a public agency. *See* Ind. Code § 5-14-1.5-3(a). The law does not, however, specifically require a governing body to use microphones or a sound amplification system.

Still, part of the of the ODL's purpose is to permit the people to be fully informed on the business of the government. To-

ward that end, the spirit of the ODL implicitly requires reasonable effort on the part of the agency to make sure the audience can see and hear what is going on at a meeting.

It appears as if reasonable accommodations are available to attendees upon request. If the public continues to indicate trouble hearing the proceedings, it would become incumbent on the Board to adjust and perhaps utilize the sound equipment.

CONCLUSION

Based on the foregoing, it is the opinion of this office that, without more, the Pulaski County Board of Commissioners did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned to the right of the conclusion text.

Luke H. Britt
Public Access Counselor