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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DANNY LUNDY,  
*Complainant,*

v.

MOORESVILLE TOWN COUNCIL,  
*Respondent.*

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Formal Complaint No.  
20-FC-42

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Mooresville Town Council violated the Open Door Law.<sup>1</sup> Town attorney Beth A. Copeland filed an answer on behalf of the council. 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 March 23, 2020.

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

## **BACKGROUND**

This case involves a dispute about whether a series of text messages exchanged between members of a town council amount to a public meeting under the Open Door Law (ODL).

On March 20, 2020, Danny Lundy (Complainant) was notified via email that the placement of several political signs were in violation of the Town of Mooresville's unified development ordinance (UDO), which states that signs are not to be placed in the town right of way. Therefore, the signs in question would need to be removed from public spaces within three days or the town would dispose of them.

Lundy claims that this notice constitutes a change in policy, which is drastically different from prior rules as he understood them. In search of clarification, he reached out the council via Facebook. At this point the Council President, Shane Williams, stated that he gave the order and provided screenshots of text messages sent individually between the five council members demonstrating they had discussed the policy of removing the signs.

On March 23, 2020, Lundy filed a formal complaint with this office alleging the Council violated the Open Door Law (ODL). Specifically, he argues that the electronic communications constitute a "chain-meeting" and that the Council took final action outside of a public meeting since the decision to require the removal of political signs was never discussed publically at a council meeting and public comment was never solicited.

On April 1, 2020, the Council filed an answer with this office disputing Lundy's claims that it violated the ODL. According to attorney Beth Copeland, the Mooresville Public Works Superintendent, Dave Moore, sent Lundy the aforementioned email after being advised by the Town's attorney that the Town should enforce its UDO on signs placed on public property. The Council president followed Moore's email with a Facebook post to inform the public of the intention to enforce the ordinance. Furthermore, in an effort to be as transparent as possible Council president Williams shared the screenshots of his text messages sent to the other council members, to show that the Council was notified that he had asked Moore to enforce the UDO.

Moreover, Copeland argues that the Council could not have violated the ODL because the actions taken by the Council were all pursuant to the enforcement of an already existing ordinance. Pursuant to local ordinance 3(G)(1)(f)(i)(a) and (d), signs may not be installed "in any public right-of-way, unless specifically authorized by the legislative body or their designee." So, the Council argues, contrary to Lundy's assertions, there was never a new policy relating to political signs on public property; instead the town simply chose to enforce an already existing UDO.

The Council argues the matter of removing the signs was never discussed between the council members as a collective, they never recommended amending the ordinance or creating a new policy, and there was never a vote taken.

## 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).

The Town of Mooresville 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 Mooresville Town Council (Council) is a governing body of the town 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 Council must be open at all times to allow members of the public to observe and record.

#### 1.1 Meeting

Under the ODL, a meeting is "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). "Official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d).

Moreover, “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).

## 1.2 Majority and serial meetings

Critically, under the ODL, a gathering must involve a numerical majority of board members to constitute a meeting. If so, the agency must give public notice and the discussion must be open to the public.<sup>2</sup>

This office has often opined on virtual communication as being “meetings of the minds” and can certainly qualify if there is simultaneous communication among board members meant to subvert the Open Door Law. *See Opinion of the Public Access Counselor*, 17-FC-11 (“Group text messages, listserv forums and instant messaging services are more likely to be considered simultaneous communications”).<sup>3</sup>

A crucial component of these communications is participation by a collective majority. One-on-one conversations about public business are not considered inappropriate unless the board has only three members because two would constitute a majority. Thus, the text messages referenced in the complaint do not qualify as a public meeting under the ODL.

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<sup>2</sup> Notably, there is a notice exception for town board’s called an “administrative function” meeting. Details can be found at Indiana Code section 5-14-1.5-4(f)(2). While this is not immediately relevant to this opinion, the subject matter would qualify for such a meeting.

<sup>3</sup> It should also be noted that these opinions preceded the COVID-19 events and the governor’s executive orders addressing public health, which temporarily alter the elements of virtual meetings.

Insofar as the allegation of a “chain-meeting” is concerned, no such construct exists in Indiana law. Presumably Lundy means a serial meeting. Serial meetings are continuous series of meetings by less than a majority of members. Serial meetings are prohibited by the ODL. *See* Ind. Code § 5-14-1.5-3.1.

Importantly, however, subsection 3.1(a) sets a condition precedent of three members as a prerequisite for a serial meeting. Because a meeting of three of five members of a town board is a numerical majority of membership, it is statutorily impossible for a town board to have a serial meeting. The gathering of three would just be a meeting.

Nonetheless, that does not appear to be the case here either. The text messages were not a serial meeting.

### **1.2 Actions outside a public meeting**

Under the ODL, “final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. Ind. Code § 5-14-1.5-2(g). A final action must be taken at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c).

These provisions notwithstanding, not every action on public business requires a vote.

Although not explicitly addressed in the Indiana Code, this office takes no umbrage to the position that a town council president has the authority to tell a town’s public works superintendent to perform the duties of his job as it relates to existing ordinances and policies. Contrary to the complaint, there is no evidence the ordinance or policy was amended or

created as new. It appears as if the ordinance was in existence at the time of the controversy. The public works superintendent was simply urged to enforce it. This does not require a vote and does not connote a deviation from law, notions of transparency, or good governance.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Mooresville Town Council did not violate the Open Door Law.

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

Luke H. Britt  
Public Access Counselor