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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JOHN R. MOLITOR,  
*Complainant,*

v.

GIBSON COUNTY ADVISORY PLAN COMMISSION,  
*Respondent.*

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Formal Complaint No.  
20-FC-43

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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 Gibson County Advisory Plan Commission violated the Open Door Law.<sup>1</sup> Attorney G. Michael Schopmeyer filed an answer on behalf of the plan 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 March 27, 2020.

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

## **BACKGROUND**

On February 14, 2020, John R. Molitor (Complainant), serving as the attorney for a group of Gibson County residents opposed to certain proposals considered by the Gibson County Area Plan Commission (APC), was notified via an email from the APC's attorney that the public hearing scheduled for February 19, 2020 was postponed until a new date in March.

On February 26, 2020, Molitor was informed that he had been invited to speak on behalf of his clients at the rescheduled public hearing held on February 28, 2020.

When Molitor arrived at the Gibson County courthouse for the public hearing he could not find a hearing notice on the building's bulletin board, which had several other notices posted on it for other meetings, or on the door to the meeting room. He also did not find an agenda for the hearing. According to Molitor, it was apparent that the APC utilizing an agenda for the meeting, as the chairperson invited several other speakers to testify at certain times, according to a schedule that he appeared to be using.

On March 27, 2020, Molitor filed a formal complaint with this office alleging the APC violated the Open Door Law (ODL). Specifically, he argues that the commission violated Indiana Code section 5-14-1.5-5(b)(1), for failing to properly post notice of the public hearing, and section 5-14-1.5-4(a), for failing to post a copy of the agenda – allegedly used during the meeting - prior to the start of the meeting.

The commission filed an answer with this office disputing Molitor's claims that it violated the ODL.

The APC concedes the notice and agenda may not have been posted at the meeting location but contends that if this was the case, it was an outlier and it typically does post these items. In any case, no final action was taken at the meeting, only official action.

## **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).

Gibson 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 Gibson County Area Plan Committee 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 APC 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 infor-

mation; (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 Public notice**

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). Furthermore, in accordance with Indiana Code section 5-14-1.5-4, a governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting.

### **2. Molitor’s claims**

Molitor argues the APC violated the Open Door Law by not publishing public notice 48 hours before the meeting and not distributing an agenda although one was used.

Although this office is not traditionally a fact-finding agency in that it does not take testimony or sworn testimony, the APC does not explicitly refute the claims and holds out the possibility that if Molitor's claims are true, it was merely an oversight.

While the ODL requirements are not to be taken lightly, it is always appreciated by this office when an agency recognizes a potential oversight and vows to rectify the noncompliance for future meetings. The APC does not appear to be overly defensive or argumentative nor has information been submitted suggesting this is a systemic problem. Therefore I trust they will act according to the law in the future.

As a gentle reminder, it matters not that only official action was taken on public business and a vote or other final action did not occur, the requirements of the law nevertheless apply.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Gibson County Area Plan Commission violated the Open Door Law if it did not post meeting notice or a copy of a utilized agenda at the February 28, 2020 meeting.

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

Luke H. Britt  
Public Access Counselor