
OPINION OF THE PUBLIC ACCESS COUNSELOR

RICHARD E. VOLBRECHT JR; LAWRENCE R. KON-
DRAT,
Complainant,

v.

HIGHLAND TOWN COUNCIL,
Respondent.

Formal Complaint No.
20-FC-9

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Highland Town Council violated the Open Door Law.¹ Town attorney John P. Reed 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 January 21, 2020.

¹ Ind. Code §§ 5-14-1.5-1-8

BACKGROUND

In early January, the Highland Town Council received an invitation from eGov Strategies LLC, a company that designs websites for governments, to see an online demonstration for a new town website. The company scheduled the demonstration for 10:00 a.m. on January 14, 2020, through the online meeting platform “GoToMeeting.” The email invitation included a link to the online meeting tool and the access code to participate. Based on the information provided, all 5 council members received the email invite with the link to participate in the demonstration.

A week after the demonstration, Richard E. Volbrecht Jr. and Lawrence R. Kondrat (Complainants) each filed a formal complaint alleging the Highland Town Council (Council) violated the Open Door Law.

In essence, Volbrecht and Kondrat argue the Council failed to provide public notice 48 hours before the demonstration. They assert that the ODL required the Council to publish notice of the meeting in a local newspaper by 10:00 a.m. the Friday before the demonstration.

On February 18, 2020, the Council filed an answer to the complaints denying any violation of the Open Door Law. In sum, the Council argues that only two council members attended the online meeting for the website demonstration; and thus, it did not constitute a meeting under the ODL because there was not a quorum of council.

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 Highland 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 Highland 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 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).

2. Volbrecht and Kondrat’s claims

Volbrecht and Kondrat argue the Highland Town Council violated the Open Door Law by not publishing public notice 48 hours before the scheduled online demonstration. The Council argues there was no meeting for purposes of the ODL because only two council members participated in the meeting, which does not constitute a quorum.

Under the ODL, a meeting requires a gathering of a majority of a governing body. The Highland Town Council has five members. Thus, at least three council members are necessary to convene a meeting subject to the ODL.

Here, the Council contends that only two members participated in the online meeting for the website demonstration.

Volbrecht and Kondrat offer no countervailing information to suggest that a majority of the Council gathered, virtually or actually, on January 14, 2020.

Instead, Volbrecht and Kondrat focus the substance of their complaints on the issue of defective public notice. The public notice provisions of the ODL do not apply in the absence of a meeting, executive session, a reconvened meeting, or re-scheduled meeting.

In other words, a meeting—as defined by statute—is necessary to argue defective public notice.

As a result, without evidence of a majority of the council gathering to take official action on public business, this office concludes that the Council did not need to provide public notice in accordance with the ODL.

Even if there was a meeting for purposes of the ODL, the law does not require the Council to publish public notice 48 hours in advance in a local newspaper. The ODL only requires the Council to post a copy of the notice at the town's principal office 48 hours before the meeting.

CONCLUSION

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

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

Luke H. Britt
Public Access Counselor