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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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NATALIE N. COFFEY,  
*Complainant,*

v.

SHELBY CO. BOARD OF COMMISSIONERS,  
*Respondent.*

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Formal Complaint No.  
21-FC-145

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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 Shelby County Board of Commissioners violated the Open Door Law.<sup>1</sup> The three members of the Board filed an answer. 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 September 14, 2021.

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

## BACKGROUND

In this case we consider whether the Shelby County Board of Commissioners (Board) held an executive session in violation of the Open Door Law (ODL) before adopting a mask mandate for county buildings and Shelby County schools.

On September 13, 2021, the Shelby County Board of Commissioners (Board) held a public meeting where the Board voted 2 to 1 to adopt a resolution to mandate masks in all county buildings and Shelby County schools. The order went into effect the next morning.

On September 14, 2021, Natalie Coffey (Complainant) filed a formal complaint alleging the Board violated the Open Door Law. Specifically, Coffey contends the Board violated the law by holding an improper executive session prior to adopting the resolution where the Board participated in improper *ex parte* communications with the mayor's office, the Shelby County Health Department, and other officials.

Coffey bases her complaint, at least in part, on comments made by other officials to local newspapers about the mask mandate. Coffey argues that the commentary by the mayor of Shelbyville and the county health department indicate the mask mandate had been secretly planned for a while.

On October 12, 2021, the Board filed an answer denying the allegations set forth in Coffey's complaint. The Board acknowledges that the three commissioners participated with other community stakeholders in telephone conference coordinated by MHP Major Hospital on September 5, 2021. The purpose of the conference call was to provide an update

on the status of the COVID-19 outbreak in Shelby County and the effects it was having on the community, particularly the hospital.

The Board asserts that during the conference, representatives of Major Health Hospital and the Shelby County Health Office discussed various recommendations that they would like to recommend to various stakeholders. Although the Board acknowledges that hospital representatives and Shelby County Health Officer discussed and made recommendations to various stakeholders during the call, the Board argues that it took no action on any of the discussion items or recommendations.

Moreover, the Board notes that it did not discuss or act on the mask mandate resolution until the public meeting on September 13, 2021.

Also, the Board clarified that at the September 13, 2021, meeting, the Shelby County Health Department presented to the Commissioners a Public Health Order, which, after listening to the Health Officer's remarks, the Board approved by adopting Resolution 2021-21.

The Commissioners maintain their actions, both on September 5, 2021, and September 13, 2021, were legal; and thus, there was no violation of the Open Door Law.

## 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, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the Shelby County Board of Commissioners (Board) is a governing body 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 school board must be open at all times to allow members of the public to observe and record.

#### 1.1 ODL definitions

Under the ODL, "meeting" means "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). Additionally, "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).

Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

## **2. Coffee’s complaint**

Coffee’s complaint against the Shelby County Board of Commissioners is largely based on comments that other public officials (e.g., Shelbyville’s Mayor; county health department officials) made to the media about a mask mandate. Although Coffee argues the Board held an improper executive session before adopting the mask mandate resolution, she provides no additional evidence to support the complaint beyond the media accounts mentioned earlier.

At the same time, the Board acknowledges that all three commissioners participated in a conference call with other local stakeholders (including other public officials) coordinated by MHP Major Hospital for the purpose of discussing various recommendations to respond to a local COVID-19 outbreak. The Board argues there is no problem because the commissioners participated on an individual basis.

This office cannot agree.

For purposes of the ODL, when the majority of a governing body (i.e., two or more commissioners) gather for purposes of taking official action on public business, it constitutes a meeting. Meetings must be open to the public unless an exception applies under the law. The Board contends that it

took no action on any of the discussion items or recommendations. Going forward, the board should be mindful that “official action” under the ODL includes actions like receiving information and deliberating. In other words, official action is not limited to final action (i.e. voting on a resolution).

Moreover, this discussion would also not qualify as an administrative function meeting as the subject matter was well beyond the routine, operational and day-to-day issues facing a county executive. This was substantive county business of which the reasonable, inquiring mind of the public would be curious.

If the meeting was indeed a preliminary, brain-storming or listening session, the Commissioners could have easily sent a single delegate to observe/participate and the Open Door Law would not have been triggered.

During these emergent, trying times, it is all the more imperative that the public is privy to the conversations that lead up to decisions affecting them directly. While the later discussion and ratification of the mandate at a later public meeting is somewhat of a salve, the damage had already been done in fostering suspicion, regardless of intention.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Shelby County Board of Commissioners violated the Open Door Law.

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

Luke H. Britt  
Public Access Counselor