
OPINION OF THE PUBLIC ACCESS COUNSELOR

KELLI HARDING; LEE CHESTNUT,
Complainants,

v.

PERRY COUNTY PROP. TAX BD. OF APPEALS,
Respondent.

Formal Complaint No.
22-FC-1

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to two formal complaints alleging the Perry County Property Tax Board of Appeals violated the Open Door Law.¹ Attorney Christopher Goffinet filed an answer on behalf of the county. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the Office of the Public Access Counselor on January 4, 2022, and January 11, 2022, respectively.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether the Perry County Property Tax Assessment Board of Appeals (PTABOA) and the Perry County Assessor acted in accordance with the Open Door Law (ODL) before, during, and after conducting various appeal hearings on December 13, 2021, and December 14, 2021.

Kelli Harding (Complainant 1) alleges that the PTABOA failed to properly publish notice of her appeal hearing 48 hours before the hearing, which happened on December 13, 2021.

Harding also alleges that the December 13 hearing included no discussion, questions, comments, or deliberations by the PTABOA. Following the hearing, the Perry County Assessor informed her that she would receive a notice of the board decision within the following 10 business days. Harding argues that based on the lack of discussion during the hearing and the Assessor's comments, the PTABOA must have held a separate private meeting to discuss and vote on her appeal prior to mailing its findings.

Lee Chestnut (Complainant 2), whose appeal hearing was held on December 14, 2021, similarly alleges a violation of the Open Door Law insofar as the PTABOA did not discuss his case prior to receiving its decision via mail.²

² Several concerns were raised in the complaints that are beyond of the scope of this office to address and will not be analyzed herein. They are more appropriate for a direct appellate mechanism and not the PAC office.

On January 24, 2022, Perry County filed a response to the complaint allegations. The County concedes that the Assessor failed to provide notice by publication, as required by Indiana Code section 6-1.1-28-6. Perry County also acknowledges that public notice was not posted 48 hours before the hearings. The Assessor stresses, however, that written, individual notice was provide to each person who appealed the assessment.

Regarding the allegation of a private meeting by the PTA-BOA, the County asserts that deliberation did not occur directly subsequent to the adjournment of the individual hearings, but was deliberated at the end of the day in a public meeting. All voting was done in public, but not immediately adjacent to the hearing itself.

Both complainants rebutted that they had no idea (or way of knowing) the matter would be discussed at the end of the hearing days rather than after their individual proceedings. Minutes of the hearings appear to be substandard and contain no substantive content as to the decisions or the proceedings, including vote tallies. Finally, one of the complainants was informed by a board member that the assessor solicited the votes offline and not during the meeting itself.

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 re-

quires 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).

Perry 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 Perry County Property Tax Board of Appeals (PTABOA) 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 PTABOA 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). 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). 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).

2. Public notice

This office is often asked to opine on issues that intersect with other areas of the law separate and distinct from the traditional public access laws. One common issue is the requirement to publish public notice for hearings.

This office does not have exclusive jurisdiction over hearings or ordinance procedures as a matter of law. The public access counselor's enabling statute only grants the office jurisdiction over meetings and public records. *See* Ind. Code § 5-14-5-6. While some hearings are meetings, not all meetings are hearings.

That stated, the Open Door Law defers to those alternative statutes in Indiana Code section 5-14-1.5-5(e). "This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation." Therefore, the notice issue, like some of the others in the Complainants' submission, is best left for appellate venues and not this office.

3. Deliberation by PTABOAs

As noted above, unless an exception applies, deliberating and voting on public business requires an open meeting. Here, there does not appear to be an applicable exception.

Perry County included an affidavit of the assessor in which she attests that the deliberation and vote took place after the conclusion of all the hearings.

Understandably, the Complainants were confused as to when their cases were discussed and decided. It does not appear any meaningful announcement was made about when the PTABOA would deliberate.

Constituents unfamiliar with processes like property tax appeals would rightfully expect a case to be discussed immediately after adjournment of their arguments. At the very least, an indication would be given as to when discussions would take place. Hence the importance of agendas or itineraries. While those may not be technically required, it would serve Perry County constituents well.

Additionally, while the Assessor's affidavit is well received and appreciated, ultimately, it is the PTABOA's responsibility to ensure compliance with all relevant procedures, including ODL considerations. Based on information provided, including the minutes of the meeting, we remain unconvinced that all steps were taken to ensure compliance. That is a factual matter which cannot be directly addressed by this office without sworn testimony, but questions remain, nonetheless.

Even if the Perry County PTABOA is not in violation of the letter of the law in this case (at least insofar as the access laws are concerned), but it is prudent to remind the board of best practices and good governance considerations. Hearing participants should be given an idea of when their cases are being discussed so that they can meaningfully observe those deliberations. Otherwise, they file these complaints, and understandably so.

Furthermore, a county PTABOA must make a motion and affirm by majority vote its findings. These findings also must be issued in writing. *See* Indiana Code § 6-1.1-15-1.2(j). While findings can reasonably substitute for memoranda (i.e., minutes), it must contain all the information found at Indiana Code section 5-14-1.5-4(b):

As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken by individual members if there is a roll call.
- (5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

Based on the information provided, the required documentation of the meeting does not appear to be appropriately kept.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Perry County Property Tax Board of Appeals violated the Open Door Law by not keeping appropriate documentation of its meetings and possibly taking action behind closed doors. All other matters raised by the complainants are outside the scope of this office's jurisdiction.



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