
OPINION OF THE PUBLIC ACCESS COUNSELOR

GEORGE B. COFFEY,
Complainant,

v.

GREEN TOWNSHIP TRUSTEE – MORGAN COUNTY,
Respondent.

Formal Complaint No.
22-FC-106

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Green Township Trustee violated the notice provisions of both the Indiana Open Door Law¹ and Indiana Code section 36-6-6-13.5.² Attorney James Wisco filed an answer on behalf of trustee. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the

¹ Ind. Code § 5-14-1.5-1-10

² The public access counselor has the authority to address any state statute governing access to public meetings. *See* Ind. Code § 5-14-4-3 and Ind. Code § 5-14-4-10(6).

formal complaint received by the Office of the Public Access Counselor on June 30, 2022.

BACKGROUND

This case involves a dispute about whether a township trustee provided adequate notice of a special meeting of the township board.

George B. Coffey (Complainant), a member of the Green Township Board in Morgan County, contends that the Township Trustee did not post proper public notice 48 hours before a special board meeting, which the Trustee scheduled for June 30, 2022, at 7:30 p.m.

Additionally, Coffey asserts that his status as a Township Board member entitles him to individualized written notice of the date, time, and purpose of a special meeting in accordance with Indiana Code section 36-6-6-13.5(a), which he did not receive. As a result, Coffey filed a formal complaint on June 30, 2022.

The Trustee concedes that the original public notice was deficient because it omitted the date and time of the meeting, but he corrected the notice and posted it later that evening at both the fire department and the Trustee's office. The Trustee alleges the Coffey intentionally ignored the Trustee's calls and texts and refused to conduct business by electronic mail although Coffey did communicate at least to some extent by email.

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).

Green Township 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 Township 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 the 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). 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

Generally, the ODL requires an agency to provide public notice of the date, time, and place of any meeting, executive session, or of any rescheduled or reconvened meeting at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. The ODL requires agencies to post a copy of the notice at the agency’s principal office or if there is no such office at the location of the meeting. *See* Ind. Code § 5-14-1.5-5.

Ultimately, it is the responsibility of the Township Board to ensure proper notice, however, that responsibility can certainly be delegated to a Trustee. Here, it appears the township corrected the defective notice but not within the 48-hour window.

While the lack of proper notice in this context does not seem to be egregious (no other constituent voiced concerns), public notice is critical to the fidelity of the meeting. A technical violation occurred by this omission.

Nevertheless, the Township Board, out of caution, adjourned the meeting before conducting any public business. This was the correct course of action and mitigated any prejudice to the public.

3. Notice of trustee-called special meetings

Coffey also contends that he did not receive written notice of the date, time, and location of the meeting even though he is statutorily entitled to it.

Indiana Code section 36-6-6-13.5 authorizes a township trustee to call a special meeting if notice of the time, location, and purpose of the meeting is provided to each individual board members in writing.

Generally, this office does not insert itself into matters of local governance unless a situation intersects with the public access laws. Giving public notice—as well as individual notice—of a meeting qualifies as one of those situations.

Much was made in the complaint and response regarding the way written notice is provided. While every public official is not required to use email, there are other methods of providing notice – standard mail, hand-delivery, etc. This office counseled the Trustee individually on those options.

While the harm was mostly mitigated by cancelling the meeting, the Trustee should be mindful of those considerations moving forward. Likewise, it would behoove board members to be flexible in how it receives that notice.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Green Township did not provide proper public notice for the Township Board's special meeting on June 30, 2022. Nevertheless, the township corrected the error, and it should not be an issue in the future.

Moreover, it is the expectation of the law that written notice be provided individually to each advisory board member for special meetings called by the executive of a township.



Luke H. Britt
Public Access Counselor

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