
OPINION OF THE PUBLIC ACCESS COUNSELOR

PATTIE GIBSON-KING,
Complainant,

v.

SCHOOL CITY OF EAST CHICAGO,
Respondent.

Formal Complaint No.
22-FC-14

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging that the School City of East Chicago, through its Board of Trustees, violated the Open Door Law.¹ Attorney Tramel Raggs filed an answer on behalf of the board. 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 27, 2022.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether a school board complied with the Open Door Law when it changed a regularly scheduled in-person public meeting to a virtual meeting.

Pattie Gibson-King (Complainant) alleges that the School City of East Chicago (SCEC) Board of Trustees unlawfully denied her access to a regularly scheduled public meeting on January 4, 2022.

Gibson-King contends that she was prevented from entering the SCEC's Administrative Building after the interim superintendent decided not to have the meeting open to the public. Gibson-King also alleges that the public was not properly notified of the board's decision to hold the meeting virtually rather than in person.

On February 17, 2022, the SCEC filed an answer to the complaint. As an initial matter, SCEC defends the decision to move the January 4, 2022, meeting from in person to virtual, based on the increase in reported COVID-19 infections. Furthermore, SCEC argues that the board had authority to hold the meeting virtually under Governor Holcomb's Executive Order 21-33.

As for the public notice for the virtual meeting, SCEC asserts that it posted notice for the January 4 meeting on the district's website and at the School Administrative Building more than 48 hours before the meeting. A copy of the meeting notice that was included with the complaint indicating that the meeting in question would be broadcast via live stream, the link for which could be found on the SCEC's website.

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 School City of East Chicago (SCEC) 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 SCEC Board of Trustees is a governing body of the agency; and thus, subject to the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the SCEC's governing bodies 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. Virtual meetings

In 2020, in response to the COVID-19 pandemic, the Indiana General Assembly took action to address the ability of local governing bodies—including school boards—to hold meetings virtually for the public health and safety of their communities.

In effect, the legislature codified the Governor’s Executive Orders by creating a new section of the Open Door Law. *See* Ind. Code § 5-14-1.5-3.7. It provides that virtual meetings can take place under the following circumstances:

- (1) the governor declares a disaster emergency under IC 10-14-3-12; or
- (2) the executive (as defined in IC 36-1-2-5) of a political subdivision declares a local disaster emergency under IC 10-14-3-29.

The statewide public health emergency was in place on January 4, 2022, when the complainant was excluded from the meeting. The law continues:

- (b) Notwithstanding section 3.5 or 3.6 of this chapter, the members of a governing body are not required to be physically present at a meeting until the disaster emergency or local

disaster emergency is terminated. The members of a governing body may meet by any means of electronic communication, if the following are satisfied:

(1) At least a quorum of the members of the governing body participate in the meeting by means of electronic communication or in person.

(2) The public is able to simultaneously attend and observe the meeting. However, this subdivision does not apply to a meeting held in executive session.

(c) The memoranda for a meeting prepared under section 4 of this chapter for a meeting held under this section must:

(1) state the name of each member of the governing body who:

(A) participated in the meeting by using any electronic means of communication; and

(B) was absent; and

(2) identify the electronic means of communication by which:

(A) members of the governing body participated in the meeting; and

(B) the public attended and observed the meeting, if the meeting was not held in executive session.

(d) All votes taken during a meeting under this section must be taken by roll call vote.

So long as these conditions are met, a virtual meeting is in compliance with the Open Door Law. The complaint does not indicate any deviation from these guidelines.

Early January was a peak time for reported COVID cases. Over 10,000 cases were being reported daily during that month. While it has since eased, the public health emergency was still in effect at the time of this complaint.

Given the fluidity and the emergency nature of the situation, the new section 3.7 was aimed at giving governing bodies creative options to keep their constituents safe. Insofar as public notice is concerned, if an emergency circumstance warrants the change in location or a deviation in the nature of the meeting from in person to virtual, Indiana Code section 5-14-1.5-5(d) provides:

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply.

It appears the meeting in question fell into these circumstances and SCEC took proper action consistent with the law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the School City of East Chicago did not violate the Open Door Law.



Luke H. Britt
Public Access Counselor

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