
OPINION OF THE PUBLIC ACCESS COUNSELOR

LINDA A. THOMPSON,
Complainant,

v.

PITTSBORO TOWN COUNCIL,
Respondent.

Formal Complaint No.
22-FC-36

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging that the Pittsboro Town Council violated the Open Door Law.¹ Attorney James Buddenbaum 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 March 10, 2022.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether the Pittsboro Town Council (Council) violated the Open Door Law (ODL) when three council members convened a private virtual meeting to discuss the possible resignation of one of the councilors over a residency issue.

On March 10, 2022, Linda Thompson (Complainant) filed a formal complaint alleging the Council violated the ODL. Specifically, Thompson contends that the Council President called a Zoom meeting with two other council members on March 1, 2022. During the meeting, one of the council members present was asked to resign due to residency issues. Thompson argues this gathering of a council majority, held without notice, violates the Open Door Law.

On April 12, 2022, the Council filed an answer to Thompson's complaint. The Council argues that the March 1, 2022, meeting does not constitute a public meeting because public business was not discussed.

Specifically, the Council argues the residency requirement to serve as a town council member is not under the jurisdiction of the remainder of the council; and thus, the issue is not public business for purposes of the ODL. The Council also asserts that only the State Board of Accounts or a local prosecutor would have the authorization to address the matter formally.

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 Pittsboro 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 Town Council (Council) 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 Council 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).

2. Public business

The question at hand is whether the residency requirement of a duly elected town council member qualifies as “public business” under the Open Door Law. The ODL defines “public business” as “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

The Open Door Law also defines “official action” to mean the following:

- (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). Here, a majority of the Pittsboro Town Council met to discuss the resignation of a current member who may not meet residency requirements to hold office.

The Council contends that it contacted the Indiana Election Commission about this issue, which confirmed that the

Pittsboro Town Council itself does not have authority to remove a councilor. That would be a matter for the State Board of Accounts or law enforcement.

While the Council may not have had authority to take final action on the matter, (i.e., remove the member via an internal vote), it is empowered to take official action. By discussing the matter, it did just that. Arguably, it could also take other action by reporting its findings to the relevant authority. The mere absence of the power to legally resolve an issue does not remove the subject matter from an issue over which a Council can take *official* action under the Open Door Law.

The discussion of removal of a member of a governing body—by whatever ultimate means—is very much public business and is not a mere internal or administrative detail. At the same time, it is not a subject matter authorized for executive session by the General Assembly. As a result, the discussion, no matter how sensitive, should have taken place in a public meeting with notice.

The ability of a governing body to take official action on public business under the Open Door Law is not predicated on its ability or authority to take final action.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Pittsboro Town Council took official action on public business outside of a properly notice meeting.

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Luke H. Britt
Public Access Counselor

Issued: May 10, 2022