
OPINION OF THE PUBLIC ACCESS COUNSELOR

NIKKI G. SOUTHWOOD,
Complainant,

v.

SHELBURN TOWN COUNCIL,
Respondent.

Formal Complaint No.
22-FC-87

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging that the Shelburn Town Council violated the Open Door Law.¹ Then-interim Clerk-Treasurer Jane Landry filed an answer on behalf of the council as well as former council member and current Clerk-Treasurer Melissa Copeland. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code § 5-14-1.5-1-8.

by the Office of the Public Access Counselor on May 25, 2022.

BACKGROUND

In this case we consider whether a the Shelburn Town Council violated the Open Door Law (ODL) when it held a special meeting.

On May 20, 2022, the Shelburn Town Council held a meeting at Shelburn Town Hall. The public notice for this gathering, which was posted at the meeting location, described the Council's proceeding as a special meeting.

On May 25, 2022, Nikki Southwood (Complainant), alleged that the meeting violated the Open Door Law. Southwood alleges that the doors to town hall were locked during the entire meeting. Southwood contends that she tried knocking on the door several times and no one granted her access to the meeting.

Southwood also argues the public notice was not published in the local paper and did not contain a statement of the meeting's purpose. Southwood filed her complaint on May 23, 2022.²

On May 26, 2022, Jane Landry, the interim Clerk-Treasurer, addressed Southwood's complaint via an email sent to this office. First, Landry explained that the notice for the meeting was posted on the door of the meeting place 48 hours before the meeting. Next, Landry asserts that because this was a Town Council meeting and not a County meeting,

² She also alleges other allegations about prior meetings, but these are outside the scope of the 30-day statute of limitations for filing a complaint with the public access counselor. *See* Ind. Code § 5-14-5-7(a)(2).

the subject matter was not required to be included on the notice. Finally, Landry confirmed that the local newspaper was not provided a copy of this notice because she determined it was not required.

For her part, the current Clerk-Treasurer, Melissa Copeland, was serving in her capacity as a council member at the time of the meeting. Copeland contends the door was not locked and multiple people were in attendance. Copeland contends that if the door were locked, the council would have noticed attendees trying to enter because the meeting space is near the door.

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 Shelburn 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 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). 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

Under the ODL, the governing body of a public agency must give public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows:

The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

Ind. Code § 5-14-1.5-5(b)(1). Notably, the law does not require online or published posting of the notice.

Similarly, the law is silent on the matter of describing the subject matter of a meeting on its notice. While other “special” or irregularly scheduled meetings do require noticed subject matter (e.g., county commissioners and township advisory boards) town councils do not need to do so.

3. Locked door

While the Open Door Law is a figurative legal term of art, a locked door to a meeting space is indeed a cause for concern.

Here, there are two versions of events presented by the parties. If the door was locked and attendees were turned away because of this, a violation may have occurred. If not, or if there was a way to flag the attention of those inside in order to open the door, the Council remains in compliance. Because this office is not a finder of fact, it is impossible to say which version of events is accurate.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Shelburn Town Council did not violate the Open Door Law with its notice procedure. As for the locked door issue, this office recommends the council ensure that all attendees have the ability to observe and record public meetings.



Luke H. Britt
Public Access Counselor

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