
OPINION OF THE PUBLIC ACCESS COUNSELOR

TYSON W. WHEELER,
Complainant,

v.

NORTH WEBSTER CMTY. PUB. LIBRARY,
Respondent.

Formal Complaint No.
22-FC-97

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging that the North Webster Community Public Library violated the Open Door Law.¹ The Board of Trustees filed an answer on behalf of the library. 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 June 9, 2022.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether the North Webster Community Public Library Board of Trustees violated the Open Door Law (ODL) by taking final action outside a public meeting to terminate the library's executive director before the date the Board previously voted to accept.

On May 20, 2022, NWCPL executive director Tyson W. Wheeler (Complainant) submitted his resignation—effective July 22, 2022—to the Board. Wheeler asserts that he provided the effective date in good faith to provide the Board with ample time to search for a replacement.

Six days later, the NWCPL Board accepted Wheeler's resignation at a public meeting.

On June 9, 2022, Wheeler contends that two Board members met with him and demanded he collect his things and leave immediately without a reason. Wheeler says he asked the two board members if a quorum of the board agreed, which he says the board members confirmed.

Wheeler asserts that he reminded the Board members that they voted to accept his resignation effective July 22, 2022, any action to terminate him sooner required a vote at a properly noticed public meeting. Wheeler indicates the Board members stated they did not need to do that and forced him to leave.²

² According to Wheeler's formal complaint, the incident occurred on June 9, 2022, but the response by the board places the incident on June 8. Despite this discrepancy, the specific day does not matter in resolving this dispute.

As a result, Wheeler filed a formal complaint with this office the same day. Wheeler claims the NWCPL Board violated the ODL by taking final action outside a public meeting. Specifically, Wheeler argues that the ODL required the Board to vote at a public meeting to terminate him sooner than July 22, 2022, because the Board already voted to approve that effective date during its meeting at the end of May.

On June 21, 2022, the NWCPL Board filed an answer to Wheeler's formal complaint. Notably, the Board admits that it unintentionally violated Open Door Law.

The Board states that it convened in executive session on June 6, 2022, where it decided (without voting) that it was in the best interest of the library to move the effective date of Wheeler's resignation to June 8, 2022.

The Board admits that it privately informed Wheeler of the decision to change the effective date of his resignation. The Board states that it was concerned about embarrassing Wheeler by discussing and voting on his immediate resignation at public meeting, which have recently had several community members and local news reporters in attendance.

On June 10, 2022, the Board held a special public meeting. The Board voted to set Wheeler's resignation date to June 10, 2022, and to pay his salary through that date.

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 North Webster Community Public Library (NWCPL) 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. The Board of Trustees (Board) is a governing body of the NWCPL; 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 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). 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. Final action without a public meeting

The Open Door Law expressly requires a governing body to take final action on public business at a public meeting.³ Under the ODL, “final action” means:

“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).

Here, the meeting minutes confirm that the Board voted to accept Wheeler’s resignation at a public meeting on May 26, 2022.

³ Ind. Code § 5-14-1.5-6.1(c).

Undoubtedly, the Board's vote to accept the resignation constitutes final action under the ODL. There is no indication in the minutes that the Board had concerns with Wheeler's stated effective date of July 22, 2022.

When the Board subsequently decided to change the effective date that it previously voted to approve, the ODL requires that action happen at a public meeting. This is true even if the Board is concerned about embarrassing the outgoing executive director.

The purpose of the Open Door Law would be decidedly damaged if a governing body could vote one way at a public meeting and privately reverse or amend that vote without a public meeting.

3. Civil action and judicial remedies

Under the Open Door Law, any person may file an action for declaratory or injunctive relief to ensure compliance with the statute. Ind. Code § 5-14-1.5-7(a). In certain circumstances, a court may void a decision taken at a meeting that violates the statute. Ind. Code § 5-14-1.5-7(a)(3).

It is also important to remember that if an ODL dispute ends up in court, subsequent remedial measures do not automatically fix ODL violations. For instance, the ODL provides:

If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

Ind. Code § 5-14-1.5-7(c). Additionally, the ODL provides that a court shall award reasonable attorneys' fees, court

costs, and other reasonable expenses of litigation, to a prevailing plaintiff. Ind. Code § 5-14-1.5-7(f). The ODL also authorizes civil penalties in certain circumstances for violations. See Ind. Code § 5-14-1.5-7.5.

As an aside, this office appreciates the Board's candor in this case. Indeed, it is a rare thing to see a respondent admitting a mistake, committing to additional training, and apologizing to the complainant and the community. Moreover, the Board is encouraged to consider this office a resource on going forward.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the North Webster Community Public Library Board of Trustees violated the Open Door Law by taking final action on public business without a public meeting.



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