
OPINION OF THE PUBLIC ACCESS COUNSELOR

WILLIAM PURCELL,
Complainant,

v.

ST. JOHN TOWN COUNCIL,
Respondent.

Formal Complaint No.
23-FC-121

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the St. John Town Council violated the Open Door Law.¹ Attorney David W. Westland of Westland & Bennett P.C. filed an answer on behalf of the council. 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 November 18, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over a continued discussion of public business subsequent to the adjournment of a meeting.

On November 16, 2023, the St. John Town Council held a properly noticed “study session” complete with an agenda. There appears to be no dispute that the session was a public meeting.

After the meeting concluded, three members of the Council continued to discuss a matter broached later in the meeting. Complainant William Purcell takes exception to this off-the-record discussion and filed his complaint received by this office on November 18, 2023.

In its response, the Council concedes the post-session discussion, yet argues that no official action was taken.

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 St. John 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 St. John Town Council (Council) is

the governing body of the Town; 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). 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. Majority gatherings

The primary issue in this complaint is whether a group of Council members—constituting a majority—violated the Open Door Law by gathering for a discussion after a meeting was adjourned.

The ODL governs public business, however, it does not strictly preclude a majority of governing body members from being in the same place at the same time. The numbers alone do not trigger the statute, but the content of the discussion, coupled with a majority, certainly does.

The Council, in its response, does not distinguish between “official action” and “final action²”. It appears to argue that because final action was not taken, the Council did not run afoul of the law.

On the contrary, as noted above, the definition of official action includes final action but the analysis does not end there. Official action can be as passive as receiving information, but also includes deliberating on subjects.

The Open Door Law not only exists to include final decisions and votes, but the actions the majority takes up to, and including, the final action.

Here, the Council admittedly engaged in a post-meeting discussion regarding public business. Simply put, that discussion was antithetical to the requirements of the Open Door Law.

It is our sincere hope that the Council takes this into consideration going forward and pays closer attention to both the letter and the spirit of the law, including how their actions are perceived by their constituents. As always, this office is dutifully available to assist in those efforts.

² "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. See Ind. Code § 5-14-1.5-2(g)

CONCLUSION

Based on the foregoing, it is the opinion of this office the Town of Saint John violated the Open Door Law by holding a discussion regarding public business after a meeting was adjourned.



Luke H. Britt
Public Access Counselor

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