
OPINION OF THE PUBLIC ACCESS COUNSELOR

JON DEBOER,
Complainant,

v.

CARMEL CLAY SCHOOLS,
Respondent.

Formal Complaint No.
23-FC-17

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that Carmel Clay Schools violated the Open Door Law.¹ Attorney Alexander P. Pinegar filed an answer on behalf of the school corporation. 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 February 8, 2023.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case considers whether the Open Door Law (ODL) applies to meetings of a parent and guardian advisory team created by a school corporation.

On January 10, 2023, the Equity & Inclusion Parent-Guardian Advisory Team for Carmel Clay Schools (CCS) held its quarterly virtual meeting.

Jonathan M. DeBoer (Complainant) made a series of public records requests with CCS for public notices of these meetings, meeting minutes, membership rosters, and the like. CCS honored some of the requests and denied others.

The condition precedent to these records existing hinges primarily on the applicability of the Open Door Law to these meetings. DeBoer contends CCS does not open these meetings to the general public as a matter of course. As a result, DeBoer filed a formal complaint with this office on January 31, 2023.

Notably, this office has issued several opinions concerning these types of groups since 2019. In sum, this office concluded these groups of administrators, faculty, and parents were subject to the Open Door Law as a governing body of the public agency. More on that in the analysis.

For its part, CCS argues—as it has in previous cases—that this office’s interpretation of the relevant statute is incorrect. Specifically, CCS contends the grammatical structure of the statute supports its conclusion that the ODL does not apply in this case.

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).

Carmel Clay Schools (CCS) 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, CCS is a governing body for purposes of 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). "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).

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). Additionally, the ODL mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

2. Governing body

Here, the committee in question is neither a direct offshoot of the school board nor are its members direct appointees thereof. Rather, it is established by the superintendent. It does not appear as if the school board itself directly plays a part in the creation of this or similar committees.²

As far as the Open Door Law is concerned, the statute under scrutiny is one of the definitions of governing body. In relevant part, governing body is defined as:

The board, commission, council, or other body of a public agency which takes official action upon public business.

Ind. Code § 5-14-1.5-2(b)(2). The parties do not disagree that the committee takes official action—as defined by the ODL—on public business by discussing and deliberating issues germane to the operation of the school district, including curricular issues.

CCS suggests, however, that the definite article “The” modifies the entire list, making all four subjects read as follows:

² It bears repeating that pursuant to *Indiana State Bd. of Health v. Journal Gazette Co.*, 608 N.E.2d 989 (Ind. Ct.App.1993), “The Legislature never indeed [the Open Door Law] to apply to gatherings of agency employees conducting the ‘internal staff operations of public agencies.’”

The board, the commission, the council, or the other body. In other words, a singular body.

The cardinal rule of statutory construction is to ascertain the intent of the legislature by giving effect to the ordinary and plain meaning of the language used. *T.W. Thom Const., Inc. v. City of Jeffersonville*, 721 N.E.2d 319, 324 (Ind.Ct.App.1999).

When considering series of nouns in a statutory list, phrasing is important. When a series of items are presented in the form of a list and the only conjunction used is an “or” between the last two items, all of the items should be read disjunctively. *Bourbon Mini-Mart, Inc. v. Commissioner, Indiana Dept. of Environmental Management*, 806 N.E.2d 14, 21 (Ind. Ct. App. 2004).

Even the Drafting Manual for the Indiana General Assembly provides:

“And” usually stands for the conjunctive, connective, or additive, and “or” for the disjunctive or alternative. An ambiguity occurs where it is not clear whether the inclusive “or” (A or B, or both) or the exclusive “or” (A or B, but not both) is intended. It is not always clear whether the several “and” (A and B, jointly or severally) or the joint “and” (A and B, jointly but not severally) is intended.³

³ DRAFTING MANUAL FOR THE INDIANA GENERAL ASSEMBLY Prepared Under the Direction of the INDIANA CODE REVISION COMMISSION By the OFFICE OF CODE REVISION LEGISLATIVE SERVICES AGENCY Approved by the INDIANA LEGISLATIVE COUNCIL December 19, 2012.

Therefore, to assign the modifier “the” before “other body” would be legislating from this office when a direct article is conspicuously absent.

Moreover, the word “other” implies multiple iterations of governing bodies within a political subdivision rather than a singular body. And we see this in counties, municipalities, the state executive branch, and even the General Assembly.

At the very least, the statute could be considered ambiguous. When courts are faced with an ambiguous statute, the legislative intent behind a statute may be identified and effectuated by examining the act as a whole, the law existing before its passage, changes made to the law since enactment and the reasons for those changes.⁴

Consequently, this office is statutorily charged with liberally construing the provisions of the Open Door Law in favor of its purpose, which is openness.⁵

It is curious that CCS suggests this office construe the statute so narrowly that it would greenlight secret committees to take official action on public business. Toward that end, the Open Door Law does indeed tell a different story.

Once again, this only applies to school-established, officially formalized committees with set rosters addressing educational matters. Booster clubs, parent-teacher groups, internal staff meetings, teachers’ union committees, ad hoc gatherings, and the like, are not at play here because they lack the authority to take official action on public business.

⁴ *Tax Analysts v. Indiana Economic Development Corporation*, 162 N.E.3d 1111 (Ind.Ct.App.2020).

⁵ Ind. Code § 5-14-1.5-1.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Carmel Clay Schools violated the Open Door Law by continuing to hold secret meetings of school-established committees.



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