
OPINION OF THE PUBLIC ACCESS COUNSELOR

NATHAN L. FORMO,
Complainant,

v.

PERRY TOWNSHIP SCHOOL BOARD,
Respondent.

Formal Complaint No.
23-FC-4

Kristopher L. Cundiff
Deputy Public Access Counselor

CUNDIFF, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Perry Township Board of Education violated the Open Door Law.¹ Attorney Mark J. Crandley 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 January 12, 2023.

¹ Ind. Code § 5-14-1.5-1 to -8

BACKGROUND

On January 12, 2023, Nathan L. Formo (Complainant) filed a formal complaint against the Perry Township Board of Education (Board) alleging the Board violated the Open Door Law (ODL) during its meeting on December 12, 2022.

First, Formo argues the Board routinely takes official action on public business outside of a public meeting. Next, Formo contends the Board has a policy prohibiting the public from recording the Board's meetings.

On February 1, 2023, the Board filed an answer denying any violation of the Open Door Law.

The Board disputes Formo's claim that it engages in insufficient public debate before voting on contentious issues. Specifically, the Board argues that the ODL sets no requirement as to the length of debate during public meetings and does not require comments by Board members to justify their votes. The Board notes that it received extensive public comment of the redistricting and busing issues, which included debate and comment by Board members.

Additionally, the Board admits that it has a policy prohibiting the public from recording meetings. The Board argues that nothing in the ODL requires it to allow private citizens to make their own recordings of public meetings. The Board contends the issue is left to the individual governing bodies to determine what is best for their meetings.

ANALYSIS

1. The Open Door Law (“ODL”)

It is the intent of the Open Door Law (“ODL”) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Except as provided in section 6.1, 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. Ind. Code § 5-14-1.5-3(a).

There is no dispute that Perry Township Schools is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the Perry Township Board of Education is a governing body of the agency for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Perry Township School board must be open at all times to allow members of the public to observe and record.

2. Observe and record

Formo argues the Board has a policy prohibiting the public from recording public meetings, which the Board does not dispute. Instead, the Board argues that nothing in the ODL requires it to allow the public to record Board meetings. The Board argues the ODL leaves the issue to individual governing bodies to determine what is best for their meetings.

The Open Door Law tells a different story.

The ODL expressly secures the public's right to *observe and record* public meetings. Ind. Code § 5-14-1.5-3 (emphasis added).

Although the statute does not define the term "record," our courts have long observed it to mean "the reasonable use of recorders, cameras and any other recognized means of recording." *Berry v. Peoples Broad. Corp.*, 547 N.E.2d 231, 234 (Ind. 1989).

This office agrees.

In other words, the ODL's directive that meetings must be open for the public to record includes the reasonable use of a recognized means of recording.

As a result, a categorical prohibition on recording a public meeting absolutely fails under the Open Door Law. When a local board regulation conflicts with a state statute, the local regulation is subordinated. 547 N.E.2d at 234. Stated differently, the Board lacks the authority to enact a policy that supersedes state statute.

Even so, the right to record a public meeting is not absolute. The ODL does not authorize recording devices or practices that would prevent a governing body from conducting public business or otherwise materially interfere with the public's ability to observe the meeting.

This office recommends the Board revise its policy prohibiting recording at public meetings consistent with the statute, relevant caselaw, and this opinion as soon as possible.

3. Official action outside a public meeting

Formo argues the Board is both making decisions and acting on public business outside of public meetings. In other words, the Board's public meetings amount to a perfunctory action used to ratify decisions the Board already finalized in secret.

The Board denies Formo's claims.

The ODL's primary purpose is requiring public agencies to conduct and take public business openly so the public knows what is going on. *See* Ind. Code § 5-14-1.5-3.

Toward that end, this office consistently advises governing bodies at all levels of government to participate in robust and sincere deliberation during public meetings.

It is critical, however, when it comes time to take final action on public business that those decisions are explained in public so constituents can evaluate those decisions.

Under the ODL, a public meeting is not simply a vehicle for a governing body to announce actions and decisions finalized elsewhere.

Substantive items— including elementary redistricting and busing— indeed merit more than mere cursory reflection. If thoughtful discussion is not necessary for taking final action in these types of matters, then the entire construct of the Open Door Law is rendered useless.

Simply put, Perry Township's response demonstrates a concerning disregard for the General Assembly's goal of a fully informed public.

CONCLUSION

It is the opinion of this office that the Perry Township Board of Education is in violation of the Open Door Law by and through its policy prohibiting the public from recording public meetings. This office recommends the Board revisit the policy and amend it consistent with the statutory language, relevant caselaw, and this opinion.

Additionally, this office recommends the Board remain mindful of the intent and purpose of the Open Door Law by ensuring public meetings contain robust discussion—when warranted—to provide context to its actions. Unfortunately, its response to this formal complaint substantiate Formo’s allegations.



Kristopher L. Cundiff
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Luke H. Britt
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March 10, 2023