
OPINION OF THE PUBLIC ACCESS COUNSELOR

MICHAEL TORRES,
Complainant,

v.

INDIANAPOLIS-MARION COUNTY PUB. LIBRARY,
Respondent.

Formal Complaint No.
23-FC-48

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Indianapolis-Marion County Public Library, through its board of trustees, violated the Open Door Law.¹ Attorney Russell L. Brown 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 April 25, 2023.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

The issue in this case is whether the Indianapolis-Marion County Public Library (IndyPL) Board took reasonable steps in accordance with the Open Door Law (ODL) to maintain order in a public meeting by recessing the meeting, reconvening in a conference room with a live video feed, and completing the public business on the agenda.

On April 24, 2023, the IndyPL Board held a public meeting where the Board heard—among other items—more than an hour of public comment about the CEO vacancy.

At the conclusion of the public input portion of the meeting, a resolution was introduced to permanently hire the acting interim CEO. As the resolution was being read, several crowd members expressed additional displeasure with the action and begin to disrupt the meeting with chants, jeers, and physical gestures. Some of the Board's members joined the protesters as well.

When it became apparent that public business could no longer be accomplished due to the agitated atmosphere, the Board president recessed the meeting. After discussion, the Board decided to continue the meeting in an adjacent conference room. While the remainder of the meeting was livestreamed to the assembly room and an overflow area, only a handful of media members were allowed to physically observe the Board concluding its meeting.

As a result, Michael Torres (Complainant) filed a complaint² against the IndyPL Board alleging a violation of the ODL. Essentially, Torres argues the Board violated the law by denying the public the right to observe and record the proceedings by excluding them from the latter portion of the meeting held in a conference room.

On May 18, 2023, the IndyPL Board filed an answer to the complaints denying any violation of the ODL.

The Board argues the ODL allows a governing body to take reasonable steps to maintain order, which includes removal of any person who is willfully disruptive of the meeting. Due to the climate during the reading of the resolution, the Board decided to take alternative measures to ensure safety and order. The Board maintains that the livestreaming of the meeting still allowed attendees to observe and record, albeit in a different room.

² Jason L. Jones filed a substantially similar complaint against the IndyPL Board for the same reasons. His complaint is incorporated by reference.

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 Indianapolis-Marion County Public Library (IndyPL) 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. IndyPL's Board of Trustees (Board) is a governing body of the IndyPL; 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. Reasonable steps to maintain order in a meeting

Under the Open Door Law, a governing body has authority to take reasonable steps to maintain order in a public meeting, including removal of any person who is willfully disruptive of the meeting. Ind. Code § 5-14-1.5-3(e).

Here, the parties disagree about the reasonableness of the IndyPL Board recessing a public meeting, reconvening in a conference room with external video capabilities, and concluding the Board’s business, which included hiring a new CEO for the library. The Board argues these measures were prompted by the actions of some attendees who chose to remonstrate during the meeting with protesting, chanting, and a physical demonstration of standing and linking arms.

It is the conclusion of this office that the IndyPL Board took reasonable steps to maintain order in the meeting for purposes of the ODL.

Notably, this office is not weighing in on the Board’s ultimate decision because that is not an issue properly before this office. This office has no jurisdiction to evaluate the wisdom of a library board’s selection of a CEO. Similarly, this

is not a commentary on the ability of the public to scrutinize, disagree, or protest the actions of a governing body in other contexts.

Save for some specific instances that do not apply here, the Open Door Law does not provide for audience participation at a public meeting. A limited public forum is a courtesy extended by a governing body and is indeed encouraged by this office. Nonetheless, public input during a meeting is, without more, a privilege and not a right.

At the same time, the ability to protest during a public meeting is not contemplated by the ODL. Toward that end, the legislature bestowed the ability, *vis-à-vis* Indiana Code section 5-14-1.5-3(e), to a governing body to maintain order at its meetings.

Based on the information provided—including several pieces of video footage - the IndyPL Board acted reasonably to maintain order in the public meeting. A portion of the attendees disrupted a public meeting to the degree that public business could no longer reasonably be conducted in the original meeting space.

The Board gave multiple warnings to the audience when things began to turn toward disarray. The temperament and tone of some in the crowd became disruptive to the point the Board lost control of the room. The number of agitators made removal by security impractical.

When de-escalation efforts proved unsuccessful, the Board moved to an inner conference room where—based on available footage—protesters still pounded on the doors and shouted in the hallways.

The complainants do not state they were unable to meaningfully observe via the livestream in the assembly or overflow rooms. They do not state they were unable to record that feed or that it was not a real-time broadcast. They only claim they could not do so face-to-face in the same physical space as the Board. Complainants do not offer suggestions, even in hindsight, as to what other courses of action may have been more objectively acceptable under the circumstances.

Notably, steps such as retreating to an inner room and virtually broadcasting the proceedings is an extreme measure and should only be exercised in the rarest of instances.

But here, a significant portion of a sizable crowd communicated its intention to forcefully shut down the meeting thereby prohibiting public business from being conducted. They also frustrated the ability of other attendees from observing. In short, the Complainant's allegations are, at least partially, a direct result of the disruptors.

Based on the information provided, the Board was justified in its actions to take reasonable steps to maintain order and continue its public meeting uninterrupted, consistent with the provisions of Indiana Code section 5-14-1.5-3(e).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees for the Indianapolis-Marion County Public Library did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the signatory.

Luke H. Britt
Public Access Counselor

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