



# STATE OF INDIANA

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John Espar, Corporation Counsel  
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VIA EMAIL: [john@espar.coei.org](mailto:john@espar.coei.org)

**RE: Informal opinion 21-INF-11; Virtual Meeting Legislation**

Dear Mr. Espar:

This informal opinion examines whether the prohibitions on certain voting items for remote board members also apply generally to the new section 3.7 of the Open Door Law.

Specifically, Indiana Code section 5-14-1.5-3.7 grants governing bodies the ability to hold virtual meetings in the event of a publicly declared emergency. Since March 2020, this has been the case in Indiana. Initially, this option was conferred via executive order. The Indiana General Assembly codified the virtual meeting opportunity during the 2021 session.

In addition to the new section 3.7, the legislature modified section 3.5 of the Open Door Law giving some flexibility to local governing bodies in non-emergency times. Once the public health declaration has expired, the new provisions will kick in. Part of the new law prohibits members participating remotely from engaging in a meeting with certain action items like budgets and tax levies.

Your question asks whether the caveats in 3.5 apply also to 3.7.

## 1. Open Door Law

The Open Door Law ("ODL") requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* 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 City of Elkhart 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. The boards, councils, and commissions of the city are governing bodies for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of these governing bodies must be open at all times to allow members of the public to observe and record.

### **1.1 Defining “meeting”**

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<sup>1</sup> upon public business.<sup>2</sup> Ind. Code § 5-14-1.5-2(c).

In other words, unless an exception applies, any time a majority of the members of any Elkhart County governing bodies gather to take official action on public business it will constitute a meeting for purposes of the Open Door Law; and thus, must be open to the public.

Here, the issue presented involves virtual meetings.

### **1.2 Virtual meetings**

Prior to the COVID-19 global pandemic, local governing bodies in Indiana could not hold virtual meetings. Under the previous version of Indiana Code section 5-14-1.5-3.5, if members participated remotely, they could not be considered present or vote on public business.

At the beginning of the pandemic, state leaders recognized the necessity of meeting virtually for the prioritization of public health and safety. The earliest pandemic-addressing executive orders from Governor Holcomb amended the Open Door Law provisions to allow virtual meetings.<sup>3</sup> After a year of operating under those orders, the General Assembly promulgated legislation to address virtual meetings through Indiana code.<sup>4</sup>

The new section 3.7 of the Open Door Law provides that virtual meetings can be held in times of emergency as officially declared by the Indiana Governor or the executive of the local political subdivision. So long as this condition precedent is met, holding meetings virtually is an option. Notably, other than the requirement of a roll call for votes, meaningful observation by the public, and heightened minutes obligations, there are not any other rules surrounding these

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<sup>1</sup> “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).

<sup>2</sup> “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).

<sup>3</sup> Executive Orders 20-04; 20-05 and 20-09

<sup>4</sup> P.L.88-2021, SEC.5; P.L.107-2021, SEC.1; P.L.137-2021, SEC.22.

meeting. This office addresses any outlying issues on a case-by-case basis, but the legislation itself is rather broad.

The amended section 3.5, however, contains many more parameters ensuring transparency. They do not, however, apply in times of declared disaster emergencies.

Therefore, the short answer to your inquiry is “no.” The provisions and restrictions on remote participation of board members in section 3.5 do not apply so long as an emergency is pendent, and section 3.7 can be invoked.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor