



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@opac.in.gov
Website: www.IN.gov/pac

July 19, 2023

Ann M. Ennis
10626 Orchard Lane
Evansville, IN 47720

VIA EMAIL: annennis1985@gmail.com

Re: Informal opinion 23-INF-10; Consent agendas and school consolidation

Dear Ms. Ennis:

This informal opinion is in response to two inquiries you submitted on April 20 and May 30, 2023. The first is a question regarding school consolidation and the level of discussion required before a final determination. The second concerns the appropriate items for a consent agenda.

BACKGROUND

First, on March 7, 2023, you learned the Evansville-Vanderburgh School Corporation (EVSC) was closing a high school. You were not aware of any prior public discussion of this action by the school board. You also could not ascertain whether the topic had been a basis for an executive session. You question the legality of a school building being closed without discussion at a public meeting.

Second, you question the propriety of several items on a consent agenda, submitting the May 30, 2023 school board agenda as an example. They contain items such as fund transfers, approval of grant proposals, purchase agreements for electronic equipment, and contract approvals, among other items.

ANALYSIS

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).



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@opac.in.gov
Website: www.IN.gov/pac

2. School building closure

Your first inquiry concerns the appropriate procedure of closing a school building within a school district. Here, the EVSC Board passed a resolution on May 30, 2023, to transition the Harwood Career and Preparatory High School (Harwood) from a standalone facility to a dispersed program among each of the other five high schools.

Based on the information provided, the Board did not mention the Harwood closure on any agenda, minutes, executive session notice or memoranda. From an outside perspective, the closure seemingly came from nowhere and manifested in a resolution on a consent agenda after the announcement had been made earlier in the year.

Ultimately, the power to manage real estate matters falls on the governing body of a school district pursuant to Indiana Code section 20-26-5-4(a)(4). There are statutory criteria to consider,¹ staff reassignment and disbursement of portions of the student body. There are also financial ramifications for the move. Inexplicably, EVSC appears to downplay the significance of the move, passing it off as a merely “staffing issue.”²

To categorize a building closure as a perfunctory administrative or internal issue is disingenuous at best. While particulars may be handled by the superintendent and its staff, school boards should be publicly considering matters of any significant import to the extent practicable. Notably, some, but not all facility issues can be discussed in executive session, but only preliminarily so and for strategic purposes.

Here, the only evidence of any mention of the closure whatsoever can be found in the May 30, 2023, meeting minutes describing the resolution as an “IDOE State School Number Change.” This was also on a consent agenda devoid of context.

Based on the information provided, there is no objective indication that EVSC ever intended to put the public on notice of the action or explain the decision whatsoever. If public discussion of building closures is not important enough to the

¹ Ind. Code § 20-26-7-47

² <https://www.courierpress.com/story/news/local/2023/03/08/evsc-will-close-one-of-its-nontraditional-high-schools-harwood/69981183007/>



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@opac.in.gov
Website: www.IN.gov/pac

Board to address substantively at a meeting, one wonders what else it artificially suppresses.

3. Consent agendas

In that same vein, the gravamen of your next inquiry concerns the appropriate items for a consent agenda. The ODL provides a general prohibition against a governing body's sweeping vote to take final action without discussion. Specifically, the ODL provides:

A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

Ind. Code § 5-14-1.5-4(a). The purpose of such a provision is to foster communication and dialogue between Board members during a public meeting so the public is better informed about the decision-making process. It is an opportunity not only for accountability and transparency, but also a chance for Board members to showcase their thoughtfulness and mindful consideration of the stewardship of public resources.

As a practical matter, it is not necessary for a governing body to discuss every issue at length. School boards usually do not micromanage the daily business of a school corporation. Instead, boards set policy, drive innovation, set parameters on spending, and put the people in place to execute their vision.

Controlling routine duties on a granular level would amount to poor management and governance (as well as marathon meetings). Therefore, a governing body's use of a consent agenda for approving routine business is not prohibited by the Open Door Law. Additionally, this office does not believe that consent agendas are antithetical to transparency.

Consent agendas for board meetings can be a useful tool for disposing of routine matters of ongoing, yet insubstantial, consequence without setting them apart as separate agenda items. Consent agendas can streamline meetings and trim unnecessary formal procedures. Approval of minutes, claims under existing contracts, payroll, or other routine ministerial tasks can certainly be placed on a consent agenda.

Other matters of import, however, should have their own bullet points on an agenda with discussion, motions, and votes, if necessary. While the law does not specify



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
Toll Free: 1-800-228-6013
Email: pac@opac.in.gov
Website: www.IN.gov/pac

what items require heightened attention, a good practice would be to separate routine issues from those about which a reasonable member of the public would be curious.

Distinguishing between what is and is not a routine matter is largely fact sensitive. As noted earlier, however, closing of buildings within a school district is largely a matter of substance which warrants its own entry on an agenda. The same would be true of significant personnel decisions, new contracts, non-routine expenditures, delegations of authority, etc.

Some of the items that the EVSC Board seemingly passes on a consent agenda are not objectively routine or standard at all. It would be well served to reevaluate its procedure in this regard and adjust accordingly.

Please do not hesitate to contact me with any other questions.

Sincerely,

A handwritten signature in black ink, appearing to read "LH Britt".

Luke H. Britt
Public Access Counselor
www.in.gov/pac