



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@in.gov/opac
Website: www.IN.gov/pac

July 27, 2023

Brown County Council
David Redding, Vice President
201 Locust Lane
Nashville, IN 47448

VIA EMAIL: reddingdm@browncounty-in.us

Re: Informal opinion 23-INF-12; Remote participation

Dear Mr. Redding:

This informal opinion is in response to the inquiry you submitted July 19, 2023. Specifically, you requested an informal opinion regarding a council member's remote participation during a meeting on July 17, 2023.¹

BACKGROUND

During a July 17, 2023, meeting of the Brown County Council, a council member joined the meeting over a virtual platform. You contend only the County Auditor could see the council members and other attendees remarked that they were unable to see or hear the remote participant. The Council has an ordinance in place authorizing virtual participation subject to certain rules and restrictions, which largely mirror state statute.²

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).

¹ Tim J. Clark filed a formal complaint on this issue This will serve as his advisory opinion as well.

² Ind. Code § 5-14-1.5-3.5.



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@in.gov/opac
Website: www.IN.gov/pac

2. Remote participation

Upon the expiration of the public health emergency regarding COVID-19, the legislature amended the Open Door Law to allow limited remote participation by local governing body members. Specifically, legislature revised Indiana Code section 5-14-1.5-3.5 to allow virtual platforming of absent members so long as the other requirements of the statute are met. One of those requirements is the opportunity for the public to see and hear the remote participant:

[A] member of the governing body of a public agency who is not physically present at a meeting of the governing body may participate in a meeting by any electronic means of communication that does the following:

- (1) Allows all participating members of the governing body to simultaneously communicate with each other.
- (2) Allows the public to simultaneously attend and observe the meeting.

...

Subject to subsection (i), a governing body member who participates in the meeting by an electronic means of communication shall be considered present for purposes of establishing a quorum but may participate in any final action taken at the meeting *only if the member can be seen and heard*.

Ind. Code § 5-14-1.5-3.5(b) (Emphasis added). Many of the provisions of section 3.5 are self-policing. As the statute gives a menu-option of sorts for governing bodies from which to choose, compliance is a matter of internal governance to a certain extent. The “seen and heard” provision, however, is a nonstarter. It is an absolute requirement for a remote participant to properly comply with the law.

Here, if an absent member was not seen and heard by the attendees in a meaningful way, any action taken where the remote participant was a deciding vote is called into jeopardy. Compliance can simply be effectuated with a wired or cast feed to a reasonably sized monitor or screen where the public can view. Otherwise, a governing body has not complied with the Open Door Law.



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@in.gov/opac
Website: www.IN.gov/pac

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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Britt", is positioned above the printed name.

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