



STATE OF INDIANA

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May 25, 2023

Margie Rice

VIA EMAIL: margiekrice@gmail.com

Re: Informal opinion 23-INF-9; Committees, administrative functions, and caucuses

Dear Ms. Rice:

This informal opinion is in response to the inquiry you submitted on March 31, 2023. Specifically, you requested an informal opinion on three topics arising under the Open Door Law: (1) committees; (2) administrative function meetings; and (3) the caucus exception.

BACKGROUND

The three hypothetical questions you presented are as follows:

1. If a committee comprised of more than two County staff members meet with the purpose of making a recommendation to the County Commissioners or County Council about a matter that will be on the Commissioners' or Council's agenda, is that committee of staff members considered a governing body and do they have to meet in public and provide advance notice? Does the answer depend upon if the committee was formed on its own or if it was formed at the request of or with the knowledge of the Commissioners or Council or its presiding officer?
2. Can you explain the administrative exception that is provided for County Commissioners? Does that exception allow meetings to be held at any date/time, outside of the public realm or does it only affect how notice is to be provided? Are administrative meetings still required to be open to the public? Can one annual notice be provided at the beginning of the year that allows the Commissioners to meet at any date/time they wish and at any location for that year?
3. Does the caucus exception give various elected officials or members of a council, commission, governing body, or public agency and who are of the same political party the freedom to meet and discuss the topics that will come



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before them in their official capacity, under the guise of “political strategy?” If the topics discussed in a caucus are those which will, eventually, be voted upon or considered in their official roles does that transform the caucus into a meeting? Does a caucus require that it be called by the political party or can the caucus be called by the members of a council, commission, governing body, or public agency? Do the officers of the political party need to be present or can the members of the party meet alone, without party leadership? I am familiar with the opinion that was issued to the City of Bloomington Common Council regarding the caucus exception, but my questions remain.

4. Also, will your answers change at all, depending upon whether the communication of those involved is via phone, text, email and not in person?

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).

2. Committees

First, you seek clarification on the committee issue as it applies to staffers. In *Indiana State Bd. of Health v. Journal Gazette Co.*, 608 N.E.2d 989 (Ind. Ct.App.1993), “The Legislature never indeed [the Open Door Law] to apply to gatherings of agency employees conducting the ‘internal staff operations of public agencies.’”

If the committee is rostered solely by county employees, the position of this office is consistent with this holding. This is true regardless of how the committee is created. Nonetheless, agencies should be mindful that if outside members are appointed to the committee (other public officials, community members, etc.), this analysis could change.



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3. Administrative functions

Your next question involves administrative functions, an admittedly tricky area of the law to definitively pin down. The legislature gives some latitude to town and county executives to hold administrative function meetings without having to give the full 48-hours-notice. They are defined as:

“Administrative functions” means only routine activities that are reasonably related to the everyday internal management of the county or town, including conferring with, receiving information from, and making recommendations to staff members and other county or town officials or employees.

“Administrative functions” does not include:

- (A) taking final action on public business;
- (B) the exercise of legislative powers; or
- (C) awarding of or entering into contracts, or any other action creating an obligation or otherwise binding the county or town.

Ind. Code § 5-14-1.5-5. Because county executives are three-member boards unlike mayors, town managers, or township trustees, the legislature carved out an exception to the general notice provisions of the ODL to address internal, operational matters. All other requirements of the ODL apply: the gathering must be open to the public and the meeting should be memorialized in minutes or memoranda. Administrative function meetings are only appropriate as need and no annual notice is required.¹

4. Caucus exception

Your third question seek clarification on the ODL’s caucus exception. Much ink has been spilled by this office untangling the jurisprudence regarding caucuses, but the biggest takeaway is this: there should be a clear, bright line between discussions of political business and public business.

Political business is appropriate for a caucus while public business is not. While the Indiana General Assembly tends to blur the lines between the two during legislative sessions, they are unquestionably among the political leaders of the two

¹ Annual notices are appropriate for regular commissioner meetings. See Ind. Code § 5-14-1.5-5(c). This does not apply to executive sessions.



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state parties. Nearly everything they consider has broad, sweeping political impact statewide. Local government is a completely different animal.

This office recommends caucusing only when county or state leaders call an official caucus to address or celebrate purely political matters (e.g., state-called conferences, local club meetings, Lincoln Day dinners, etc.). Local governing bodies unilaterally and insularly calling their own caucuses as an end-around to the ODL will not be tolerated by this office. For a more recent analysis, see *Opinion of the Public Access Counselor 23-FC-12 (2023)*.

In short, if a board does meet in caucus, business should be discussed through the following filters: does this initiative fit within the vision of our political party; is an action consistent with the ideals of our political platform; or will a project or act further our political aspirations as candidates?

5. Method of communication

Your final question asks whether the analysis of this office would shift based upon the method of communication. In short, the answer is no. Public business is public business regardless of the medium used to communicate. If done simultaneously as a majority, the communication could rise to the level of a public meeting. Technology should not be used as an end-around to the ODL.

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

Sincerely,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
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