



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 25, 2013

Mr. Andrew Abrams
Ms. Pam Bassett
Mr. Mike Bassett
Mr. Randy Dugger
Ms. Amber Kortz
Ms. Sara Goedde

Re: Consolidated Formal Complaint 13-FC-285; Alleged Violation of the Open Door Law by the Town of Morristown¹

Dear Complainants,

This advisory opinion is in response to your formal complaint(s) alleging the Morristown Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Town of Morristown attorney, Mr. Mark W. McNeeley, Esq., responded to your complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor October 1- 22, 2013.

BACKGROUND

Your complaint alleges the Morristown Town Council violated the Open Door Law by failing to accommodate interested members of the public at its September 11, 2013 meeting.

You allege that on or about September 11, 2013, the Council held a meeting at the Morristown Municipal Building. Your complaint states the meeting room was too small to hold the amount of observers and several people were forced to stand outside or in the hallway where they had a difficult time hearing or could not hear at all. Those in the meeting room were subjected to extreme heat and discomfort. Your complaint also states that a limited amount of time was provided for individuals to ask questions or to relay concerns with the subject matter of the meeting.

¹ These six complaints have been consolidated for the purposes of efficiency; all of the complaints reference the same meeting and alleged violation.

In its response, the Council argues that a request for a change of a meeting's venue does not have to be granted by an agency under the Open Door Law or Indiana case laws. Furthermore, the Council contends that no authority exists for obligating an agency to allow participant's input at an open meeting.

ANALYSIS

It is the intent of the Open Door Law (ODL) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind.Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* Ind. Code § 5-14-1.5-3(a).

I have addressed the issue of public comment in the past. Consistent with prior opinions, the Council did not violate the Open Door Law by limiting the amount of time for soliciting input from the public or by conducting their meetings in a manner they saw fit. Nothing in the Open Door Law obligates a public agency to allow the public to speak during an open meeting. Likewise, there is no other provision mandating equal time for each individual permitted to speak. This Office does not dictate the manner in which public meetings are held beyond the scope of the Open Door Law. It appears the Council set forth procedures to conduct an orderly meeting while also receiving some public input.

The more troubling aspect of your complaint(s) is the allegation the Council violated the Open Door Law by not changing venue pursuant to a request made by a member of the public. It appears there is no disputing the fact the subject matter of the meeting was anticipated to be controversial. In fact, the Council provided a 95-line sign-up sheet for individuals who wished to ask questions or comment. The materials attached to the Council's response also suggest that specific rules and procedures were placed on the agenda for the September 11, 2013 meeting.²

The Council's response cites three prior Opinions of former Public Access Counselors as persuasive authority in regard to the issue of venue capacity. In two of those Opinions (07-FC-220 and 03-FC-138), the Counselor found there was no violation of the Open Door Law in part, because one agency broadcast the meeting on public television, and the other agency had a public address system relaying the meeting to those who could not fit in the room. The other Opinion cited by the Council, 00-FC-13, is closer to the facts of this case, in that, thirty people were excluded from the meeting and there was no mechanism for broadcasting the proceedings.

In her opinion, Counselor O'Connor made it unequivocally clear the agency in that circumstance violated the *spirit* of the law, but not the *letter* of the law. The distinguishing

² It is unclear if the agenda's rules and procedures or the sign-up sheet was specific to this meeting, or if those rules are part of the normal course of business for the Council. Either way, both parties stipulate the Clerk-Treasurer of the Council was asked to move the venue in anticipation of a large crowd, thus indicating the Council should have expected a significant turnout.

factor in the current circumstance is it is alleged the Morristown Town Hall only can seat approximately 20 people. Media also covered the event and from pictures provided as exhibits to the complaint, there were several large cameras taking up space. The venue in 00-FC-13 held 89 people. The Town excluded over half of the interested members of the public.

Taking Counselor O'Conner's opinion a step farther, I find the violation of the spirit of the law is a violation of the very purpose of the Open Door Law. Liberally construing the provisions of the ODL, I find the Council has not complied with the basic tenets of openness. While not technically closed in the textbook definition of the term, it was certainly not open to accommodate interested members of the public. Open is not a term of art. The plain meaning of the word under the intent of the ODL is to accommodate the public so they may be fully informed. Given the totality of the circumstances and facts of this case, the Council subverted the notions of open access.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Town of Morristown violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Mark W. McNeeley, Esq.