
OPINION OF THE PUBLIC ACCESS COUNSELOR

JENNIFER CARR,
Complainant,

v.

CROWN POINT COMMUNITY SCHOOL CORP.,
Respondent.

Formal Complaint No.
22-FC-176

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Crown Point Community School Corporation, through its Board of School Trustees, violated the Open Door Law.¹ Attorney Cheryl Zic filed an answer on behalf of the school corporation. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

¹ Ind. Code § 5-14-1.5-1-8.

complaint received by the Office of the Public Access Counselor on December 21, 2022.

BACKGROUND

This case involves a dispute over whether the Board of Trustees (Board) for the Crown Point Community School Corporation violated the Open Door Law (ODL) by inappropriately using a consent agenda and producing meeting minutes that allegedly lack critical information.

On December 21, 2022, Jennifer Carr (Complainant) filed a formal complaint alleging the Board violated the Open Door Law. Specifically, Carr argues the Board improperly included a course addition and a transfer to the rainy day fund in the Board's consent agenda during the meeting on December 12, 2022.

Carr also expresses concerns about meeting minutes, arguing the minutes provide limited information about the Board's action items. For instance, Carr cites the November 28, 2022, meeting minutes, which include an item titled "Resolution #820 – Delegation of Authority to Superintendent." Carr asserts the Board approved this item without context.

On January 17, 2023, the Board filed a response to Carr's complaint. Regarding the use of a consent agenda, the Board argues that it is permissible for routine and reoccurring business. As for the December 12, 2022, consent agenda, which was posted that morning, the Board insists that it has routinely included resolutions to transfer funds to the rainy day fund since it is a reoccurring event. Similarly, the addition of courses to the curriculum, such as a new elective in an existing subject matter, has traditionally been included

within the consent agenda. The Board emphasizes that—consistent with Indiana Code section 5-14-1.5-3.2—it offers the opportunity for the public to comment on any of the agenda items every meeting before taking final action.

Regarding the November 28, 2022, meeting minutes, the Board argues that it included all the necessary information pursuant to the Open Door Law. Specific to Resolution #820 - Delegation of Authority to Superintendent, the minutes reflect its adoption under Action Item 5.3. The Board contends this language is sufficiently detailed given that meeting memoranda do not need to be a verbatim transcript of a meeting. The Board references a previous opinion from this office, *Opinion of the Public Access Counselor*, 05-FC-217 (2005), as support of this argument.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. 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).

Crown Point Community School Corporation is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the Board of School Trustees (Board) is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

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 upon public business.” Ind. Code § 5-14-1.5-2(c).

“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). “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).

The ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). Additionally, the ODL mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

2. Consent agendas

The ODL provides a general prohibition against a governing body's sweeping vote to take final action without discussion. Indiana Code section 5-14-1.5-4(a) provides:

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

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 processes of the Board. 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.

Day-to-day processes are delegated to superintendents and administration much like a city or town council defers to a mayor or town manager for the implementation of operational matters. A school board, city council, or other governing body intervenes and acts on issues as necessary, but generally do not interfere with processes unless a bottleneck results.

Controlling routine duties on a granular level would amount to poor management and governance. 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. Items such as payroll, approval of minutes, claims under current contracts, and the like can all qualify as routine business, which do not require much—if any—discussion or deliberation.

Substantive items, however, merit more than cursory reflection. If thoughtful discussion is not a condition precedent for taking final action in these types of matters, then the entire construct of the Open Door Law is rendered useless.

Distinguishing between what is and is not a routine matter is largely fact sensitive. Even so, it is somewhat analogous to an administrative function meeting for town boards and county boards of commissioners. Although they do not apply to schools, the idea is certainly instructive in distinguishing between substantive matters and those the Board can summarily address.

Here, the first issue Carr raises is a fund transfer to the rainy day fund. Presumably this fund results from unspent money from an appropriated line item reallocated to a catch-all pot for unexpected expenses.

School boards are entrusted with financial management of a school district's affairs. To that end, a school corporation may establish, by resolution, a rainy day fund pursuant to Indiana Code section 36-1-8-5.1(a)(2).² Nonetheless, the

² For the purposes of this discussion, school corporations are expressly defined as a political subdivision pursuant to Ind. Code § 6-1.1-1-12.

rainy day fund is subject to the same appropriation process as other funds that receive tax money.³

The appropriation process entails similar scrutiny as budget adoption, including public hearings and reporting to the Department of Local Government Finance.⁴ While schools do have some latitude in transferring money *out* of a rainy day fund to education or operations,⁵ the incoming money appears to have more strings attached. The process is not as casual as the Board implies, a position confirmed by the Department of Local Government Finance. Appropriations are certainly not fitting for inclusion on a consent agenda.

The second item of note is the Board's inclusion of a new course in the district's curriculum. Whether justified or not, it would be difficult to cite an example of a school board's activities that are more scrutinized in today's zeitgeist than curriculum. Setting aside public relations considerations, adoption of a course addition without any reference to subject matter is inappropriate for a consent agenda; it is a matter of substance—hardly routine—that warrants at least cursory discussion.

Finally, the same is true for the resolution delegating authority to the superintendent. Based on the materials provided—including meeting minutes—there is no indication what that delegation entailed. If a school board is going to delegate authority, it is a substantive matter of public business that the board should publicly consider rather than tacking it onto a consent agenda.

³ Ind. Code § 36-1-8-5.1(c).

⁴ *See generally* Ind. Code § 6-1.1-18-5.

⁵ Ind. Code § 36-1-8-5.1(h).

The failsafe to these latter two is making the board packet materials available—within reason—to the public during the meeting. In that regard, a comprehensive discussion may be unnecessary if there are materials with which the audience can follow along.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees for the Crown Point School Corporation violated the Open Door Law by including inappropriate items on its consent agenda and by voting on those items by reference to agenda item only.



Luke H. Britt
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