
OPINION OF THE PUBLIC ACCESS COUNSELOR

DERRICK M. DOUGHERTY,
Complainant,

v.

VERMILLION COUNTY BD. OF COMMISSIONERS,
Respondent.

Formal Complaint No.
22-FC-96

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging that the Vermillion County Board of Commissioners violated the Open Door Law.¹ County Attorney Jon Spurr filed an answer on behalf of the board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

¹ Ind. Code § 5-14-1.5-1-8.

the formal complaint received by the Office of the Public Access Counselor on June 8, 2022.²

BACKGROUND

In this case we consider whether the Vermillion County Board of Commissioners (Board) violated the Open Door Law (ODL) when two county commissioners stayed around after the conclusion of the board's regular public meeting.

On June 7, 2022, the Vermillion County Board of Commissioners (Board) held a regular public meeting at 8:15 a.m.

The next day, Derrick M. Dougherty (Complainant) filed a formal complaint alleging the Board violated the Open Door Law by convening a private meeting after the public meeting ended. Specifically, Dougherty argues two commissioners stayed around after the public meeting, kept the door closed, did not provide public notice, and did not invite the other county commissioner to attend the meeting.

On June 24, 2022, the Board filed an answer with this office denying Dougherty's claims. The Board does not dispute that two of the commissioners did not leave right away after the public meeting. Even so, the Board contends that most of the communication was social in nature; and thus, did not violate the ODL.³

² John D. Moore filed a complaint that is substantially similar to Dougherty's complaint. As a result, this office consolidated the matter; and thus, this opinion addresses both complaints.

³ The Board concedes that Commissioner Yocum said he stayed after the meeting to complete paperwork related to his insurance and retirement, and Commissioner Luther stayed around to speak with a constituent, the auditor, and the human resources director about separate issues.

Additionally, the Board asserts that the Vermillion County Sheriff reviewed the courthouse security cameras, and the door to the commissioners' court remained open after the public meeting until 10:54 a.m.

Finally, the Board argues that Dougherty's interpretation of the Open Door Law would mean that any time two of the county commissioners are in the same place that it violates the law.

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).

Vermillion County 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. The Vermillion County Board of Commissioners (Board) is a governing body of the county; and thus, subject to 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.

2. Meeting defined

Central to this dispute is whether the gathering that occurred after the Vermillion County Board of Commissioners' regular meeting on June 7, 2022, constituted another meeting under the Open Door Law.

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).

Here, there is no dispute that two of the three commissioners stayed behind after the Board's regular meeting adjourned. Undoubtedly, two county commissioners constitute a majority of the Board. Even so, the inquiry does not end there. Any majority gathering of a governing body must also be for the purpose of taking official action on public business to qualify as a meeting under the ODL.

Under the ODL, "official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.⁴ Ind. Code § 5-14-1.5-2(d). Additionally, "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).

In this case, two of the three commissioners—a majority—remained in the room after the meeting adjourned. For this

⁴ 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).

to be a violation of the law, a conversation between the two would have to turn to substantive public business.

Mere social or chance gatherings are explicitly excluded from the ODL's definition of meeting. *See* Ind. Code § 5-14-1.5-2(c)(1). Being in the same place at the same time, even mingling, is not enough to be proof positive of a meeting.

It should also be noted that county commissioners have a unique ability to discuss administrative functions without notice. *See* Ind. Code § 5-14-1.5-5(f)(2).

At the same time, this office encourages the Board—and all governing bodies—to be mindful of the letter of the law. Even if a majority of the Board gathers for a purpose other than taking official action on public business, public perception usually matters when it involves public business.

Optics matter, even when the letter of the law is being followed. Still, there is not enough evidence here to support the claim that a violation of the Open Door Law occurred.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Vermillion County Board of Commissioners did not violate the Open Door Law.



Luke H. Britt
Public Access Counselor

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