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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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RYAN M. GLICK,  
*Complainant,*

v.

GOSHEN COMMUNITY SCHOOLS BOARD OF EDU-  
CATION,  
*Respondent.*

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Formal Complaint No.  
23-FC-18

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Goshen Community Schools Board of Education (Board) violated the Open Door Law.<sup>1</sup> Attorney Timothy S. Shelley 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 complaint

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<sup>1</sup> Ind. Code § 5-14-1.5-1-8.

received by the Office of the Public Access Counselor on February 15, 2023.

## **BACKGROUND**

This opinion examines the legality of holding an executive session to train school members with an outside consultant about the performance of the role of the members as public officials. The complainant makes three allegations, although only the consultant issue will be addressed by this opinion<sup>2</sup>.

Ryan Glick, Complainant, is a newly elected member of the Goshen Community School Board. On January 23, 2023, the Board held an executive session to train school members with an outside consultant about the performance of the role of the members as public officials.

Notably, Glick was not present at the executive session, however, he alleges the purpose of the executive session was not training, but rather to discuss the need for a referendum. According to Glick, the Superintendent and an outside consultant presented to the Board an argument for a referendum and strategy related to that effort.

He argues this is an inappropriate use of an executive session and filed his complaint dated February 13, 2023.

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<sup>2</sup> Glick contends the Board did not publish notice 48 hours in advance of the meeting. Notice by publication is not required for routine meetings. The Board provided evidence of timely physical notice compliance pursuant to Ind. Code § 5-14-1.5-5. Additionally, Glick argues that the Board holds too frequent of executive sessions. This is largely a fact-based determination. Frequent executive sessions are not inherently problematic for larger, more complex organizations such as schools. Based on the information provided, there is no indication of abuse or overuse.

For its part, the Board responded to Glick's formal complaint by acknowledging an executive session took place on January 23 with an outside consultant and a similar executive session was held on February 6.

The Board argues the executive sessions were appropriate because they were for training purposes, which is expressly authorized by Indiana code section 5-14-1.5-6.1(b)(11).

## 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).

The Goshen Community Schools 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 Schools Board of Education (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 and statutory construction**

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).

In any analysis of the Open Door Law, it should be noted that the General Assembly’s intent is that “its provisions are to be liberally construed with the view of carrying out its policy”. Ind. Code § 5-14-1.5-1.

Toward that end, our courts have recognized likewise that the purpose of the Open Door Law is to ensure government business be conducted openly so that the general public may be fully informed. *Lake Cnty. Trust Co. v. Advisory Plan Comm’n of Lake Cnty.*, 904 N.E.2d 1274, 1279 (Ind.2009).

Moreover, exceptions to the general rule of openness – such as executive sessions - should be narrowly and conservatively applied. *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995).

### **1.2 Executive sessions**

Under the Open Door Law, “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

The ODL authorizes executive sessions in limited, specific circumstances, which must be properly and specifically noticed by reference. See Ind. Code § 5-14-1.5- 6.1(b)(1) to – (15).

The enumerated instances allowing a legal executive session are relatively narrow. There are no catch-all subject matters allowing closed door meetings. They are for specific, limited reasons only.

Here, the school board invoked the justification to hold an executive session pursuant to Indiana code section 5-14-1.5-6.1(b)(11): To train school board members with an outside consultant about the performance of the role of the members as public officials.

This is a legitimate reason for having an executive session and is not an uncommon circumstance. In fact, along with the “orientation” statute<sup>3</sup> it has been used by school boards when inviting the public access counselor to give trainings and presentations either in-house or at conferences called by organizations such as the Indiana School Board Association.

Glick, however, appears to claim that the Board not only received consulting from the outside professional, but also engaged in substantive strategic planning.

Training sessions with a consultant pursuant to Indiana Code section 5-14-1.5-6.1(b)(11) expressly limits the conversation to a governing body’s “performance of the role of the members as public officials.” This office interprets that strictly to mean the general roles of school board members in terms of processes, procedure, and responsibilities. It is not an opportunity to discuss substantive school matters in any manner of detail. Otherwise, it reduces the entirety of

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<sup>3</sup> Ind. Code § 5-14-1.5-2(c)(6)

the Open Door Law to a statutory nullity if a board could use “training” as a pretext to conducting school business.

According to the Board, the January 23 gathering entailed training the Board on their “roles as school trustees in the tax referendum process” and the February 6 meeting as a “presentation on the state’s education funding formula.”

So long as the meetings were that focused and generic, there is no issue with which this office takes exception.

If, however, those discussions went beyond training and addressed the actual work of conducting school business regarding referenda and funding stratagem, Glick’s allegations are meritorious. The discussion should have been generic, broad, and germane only to the functional parts the board members play within the organization and general strategies to be effective in those roles.

## CONCLUSION

As is often the case in these opinions, this matter may very well indeed come down to a factual determination of closed-door conversations of which this office was not a part. Without sworn testimony or authenticated evidence, this matter remains unconvulsive.

Nevertheless, this opinion should serve as a roadmap for future executive sessions and these recommendations should be taken under advisement by the Board for the sake of good governance, compliance, and best practice.



Luke H. Britt  
Public Access Counselor

Issued: April 6, 2023