
OPINION OF THE PUBLIC ACCESS COUNSELOR

MICHELLE FULLHART,
Complainant,

v.

HAMILTON SOUTHEASTERN BOARD OF TRUSTEES,
Respondent.

Formal Complaint No.
23-FC-28

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Hamilton Southeastern Schools, through its Board of School Trustees, violated the Open Door Law.¹ Attorney Jacob German 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 March 9, 2023.

BACKGROUND

On March 9, 2023, Michell Fullhart (Complainant) filed a formal complaint against the Hamilton Southeastern Schools (HSE) alleging a violation of the Open Door Law (ODL) by its Board of Trustees (Board) for a majority gathering outside a public meeting.

Specifically, Fullhart contends that four of the seven HSE Board members met behind closed doors following an executive session on March 8, 2023. The full board met in executive session at 6:00 p.m. with a public meeting scheduled for 7:00 p.m. Fullhart contends after the executive session adjourned; a majority of the Board continued to gather behind closed doors prior to the start of the public meeting.

Fullhart contends the four HAS Board members secretly agreed to terminate a vendor's contract. At the subsequent public meeting, the Board terminated the contract. Fullhart surmises the lack of any discussion preceding the vote during the meeting proves the majority discussed the final action in secret. As a result, Fullhart filed her formal complaint the following day.

On March 31, 2023, the HSE Board responded to Fullhart's complaint. The Board concedes the four members remained in the executive session room, but they did not take official action on public business. In that sense, the Board argues it was merely a chance gathering and the four members were merely killing time until the public meeting.

The Board also concedes that the gathering, regardless of propriety, may have given the appearance of an unauthorized meeting. In doing so, it reaffirmed a commitment to ensuring this type of gathering does not happen in the future and subsequently conducted an Open Door Law training.

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).

Hamilton Southeastern Schools 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. Majority gatherings

The primary issue in this complaint is whether a group of HSE Board members—constituting a majority—violated the Open Door Law by gathering in a closed room outside of public earshot after an executive session.

The ODL governs public business, however, it does not strictly preclude a majority of governing body members from being in the same place at the same time. The numbers alone do not trigger the statute, but the content of the discussion, coupled with a majority, certainly does.

Here, it is impossible to determine whether the Board members discussed public business because neither Fullhart nor a member of this office was in the room. Even so, that gathering combined with a seemingly perfunctory vote devoid of discussion, raises hackles on the other side of the door.

That stated, public perception is an important consideration of which all public officials should be mindful.

It is no secret that the newly elected majority of the HSE Board has an aggressive agenda. This office makes no value judgment as to ideology of public officials but from experience can say that assertive plans tend to invite more intense public scrutiny. Accordingly, it is all the more important to ensure that procedural fidelity is maintained.

The majority of this Board—presumably those who stayed in the room—ran recent campaigns, in part, criticizing a lack of transparency by the prior board. Now that the shoe is on the other foot, two wrongs don't make a right.

It is our sincere hope that the Board takes this into consideration going forward and pays closer attention to both the letter and the spirit of the law, included how their actions are perceived by their constituents. As always, this office is dutifully available to assist in those efforts.

CONCLUSION

Based on the foregoing, there is not enough evidence to conclude the Hamilton Southeastern School Board violated the Open Door Law in this case. At the same time, this office recommends the HSE Board course correct in manner consistent with this opinion.



Luke H. Britt
Public Access Counselor

Issued: May 24, 2023