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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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SETH J. MUTCHLER,  
*Complainant,*

v.

MONROE COUNTY,  
*Respondent.*

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Formal Complaint No.  
23-FC-44

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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 the Monroe County Board of Commissioners violated the Open Door Law.<sup>1</sup> Attorney Jeff Cockerill filed an answer on behalf of the county. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the for-

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

mal complaint received by the Office of the Public Access Counselor on April 6, 2023.

### **BACKGROUND**

This case involves a dispute about whether a review committee created to evaluate the qualifications of vendors for a new jail and justice center project is subject to the Open Door Law (ODL).

Seth Mutchler (Complainant) contends the Monroe County RFQ Committee met privately several times this year without public notice to take official action on public business. The committee membership consisted of certain county employees, a representative from the county's contractor for jail maintenance, and the sheriff or his designee. The purpose of the committee was to evaluate respondents to a request for qualifications and make recommendations to the Monroe County Board of Commissioners.

When Mutchler discovered the RFQ Committee had met several times privately without public notice he filed a formal complaint with this office on April 6, 2023.

On April 26, 2021, Monroe County filed an answer to the complaint denying Mutchler's claims. Although Monroe County does not dispute that the committee met privately without public notice with three vendors, the county argues the committee is not a governing body of a public agency; and thus, is not subject to the Open Door Law.

## ANALYSIS

### 1. The Open Door Law

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. Except as provided in section 6.1, 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. Ind. Code § 5-14-1.5-3(a).

There is no dispute that the Monroe County (County) is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2(a). Additionally, the Monroe County Board of Commissioners (Board) is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, 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.

Here, the issue here is whether the RFQ Committee assembled by Monroe County to evaluate the qualifications of vendors for the local justice center project constituted a governing body subject to the ODL.

### 2. ODL applicability to committees

The Open Door Law, subject to limited exceptions, applies to all meetings of the governing bodies of public agencies. Ind. Code § 5-14-1.5-3(a). What constitutes a public agency

is governed by statute. *See* Ind. Code § 5-14-1.5-2(a)(1)-(7). Additionally, the ODL defines “governing body.” Ind. Code § 5-14-1.5-2(b).

Here, the parties disagree about whether the Open Door Law applies to the RFQ Committee. Mutchler argues the committee is subject to the ODL. Monroe County contends the committee is not subject to the ODL because it is not a governing body for purposes of the statute.

### **2.1 Defining governing body**

The ODL includes three definitions of “governing body:”

“Governing body” means two (2) or more individuals who are any of the following:

- (1) A public agency that:
  - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
  - (B) takes official action on public business.
- (2) The board, commission, council, or other body of a public agency which takes official action upon public business.
- (3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Ind. Code § 5-14-1.5-2(b). This case involves section (b)(3), which makes the ODL applicable to any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon

public business has been delegated. Ind. Code § 5-14-1.5-2(b)(3).

Notably, Monroe County does not dispute that the Board of Commissioners—undoubtedly a governing body under the ODL—approved the creation and makeup of the RFQ Committee. In other words, the commissioners appointed the RFQ Committee and it derived its authority directly from the board, which makes it subject to the ODL.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Monroe County RFQ Committee is subject to the Open Door Law; and thus, the previous meetings of the committee required public notice and should have been open for the public to observe and record.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor