
OPINION OF THE PUBLIC ACCESS COUNSELOR

LORI KELLY,
Complainant,

v.

UNION TOWNSHIP BOARD,
Respondent.

Formal Complaint No.
23-FC-68

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Union Township Board, in St. Joseph County, violated the Open Door Law.¹ Attorney Marcellus M. Lebbin filed an answer on behalf of the board. In accordance with Indiana Code § 5-14-5-10, I issue the following

¹ Ind. Code § 5-14-1.5-1 to -8.

opinion to the formal complaint received by the Office of the Public Access Counselor on July 31, 2023.

BACKGROUND

This case involves a dispute about a gathering of township board members prior to a public meeting of which the complainant alleges public business may have taken place.²

On July 13, 2023, the Union Township Board, in St. Joseph County, held a public meeting at the township trustee's office. Lori Kelly (Complainant) alleges two of three board members were present at the meeting location prior to the meeting. She does not specifically allege any public business took place. On July 31, 2023, Kelly filed a formal complaint with this office alleging a violation of the Open Door Law.

For its part, the Union Township Board argues no public business took place and the two board members were simply in the trustee's office before the meeting reviewing materials for the upcoming public meeting.

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

² Kelly also complains of insufficient notice of a fire territory advisory board meeting as well as deleted social media comments, however, she did not identify grounds for a complaint as required by Indiana Code section 5-14-5-6. The fire territory advisory board meeting was canceled, and she does not allege she was denied a public records request for any social media content.

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 Union Township 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 Union Township Board (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 public business took place prior to a properly noticed public meeting.

2. ODL applicability

The Open Door Law applies to meetings where a majority of a governing body takes official action on public business. "Public business" means any function upon which the public agency is empowered or authorized to take official action. *See* Ind. Code § 5-14-1.5-2(c), and -(e).

Although the definition of official action is broad, a majority of governing body is a condition precedent for a public meeting under the ODL.

It does not simply apply to situations where board members are in the same place at the same time – public business must be taking place simultaneously as a group.

Here, the Union Township Board argues the two board members were working individually and independently and any interaction was merely “small talk” unrelated to township business. Notably, the ODL’s definition of meeting excludes social interactions. *See* Ind. Code § 5-14-1.5-2(c)(1).

Without more, it does not appear as if public business was taking place as a governing body prior to the meeting in question.

CONCLUSION

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

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

Luke H. Britt
Public Access Counselor

Issued: August 30, 2023