
OPINION OF THE PUBLIC ACCESS COUNSELOR

BORIS LADWIG,
Complainant,

v.

INDIANA UNIVERSITY BOARD OF TRUSTEES,
Respondent.

Formal Complaint No.
23-FC-86

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Indiana University Board of Trustees violated the Open Door Law.¹ Attorney Zachary R. Griffin filed an answer on behalf of the university. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 1, 2023.

¹ Ind. Code § 5-14-3-1.5-8.

BACKGROUND

In this case we consider whether a committee of the Indiana University Board of Trustees violated the Open Door Law (ODL) by convening and adjourning earlier than a noticed start time.

The facts in this case are not necessarily in dispute. On August 24, 2023, Boris Ladwig (Complainant) attempted to observe a meeting of the Facilities and Auxiliaries Committee of the IU Board of Trustees. While the stated start time of the meeting was 3:45 p.m., the Committee had adjourned by Ladwig's arrival at 3:35.

Given the deviation from the start time, he filed a complaint with this office on August 29, 2023.

For its part, IU responded to Ladwig's complaint on September 22, 2023. It argues that the start time was on an agenda for the overall Board meeting, which was a loose itinerary for the Board of Trustees' meeting as a whole.

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).

Indiana University 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 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. Committees

This case involves the start time of a committee meeting.

At the outset, it is important to note that officially formed committees of principal governing bodies are treated equally under the Open Door Law when their members are directly appointed by the governing body or presiding officer. *See Robinson v. Indiana University*, 638 N.E.2d 435 (Ind.Ct.App.1994).

For the purposes of this opinion, a governing body is defined as two or more individuals who are any of the following: 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. *See* Ind. Code § 5-14-1.5-2(b)(3).

This simply means that the spinoff committee is bound by the same requirements as the original governing body, including public notice requirements. In this case, we have a direct offshoot of the IU Board of Trustees – the Facilities and Auxiliaries Committee. There does not seem to be a question that this Committee is directly appointed by the Board of Trustees.

In practice, each Committee would be required to follow the Open Door Law requirements as if it were an independent autonomous governing body.

3. Public Notice of Meetings

Under the Open Door Law, the governing body, including committees, of a public agency must give public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows: The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. Ind. Code § 5-14-1.5-5(b)(1).

While it is true that agendas are fungible, public notice requirements have much less flexibility:

Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting.

Ind. Code § 5-14-1.5-5(h). It appears as if IU is conflating agenda and notice. The August 24, 2023, IU Board of Trustees itinerary provided sets a start time for each committee meeting and has their own agendas incorporated within the broader schedule. This is not problematic so long as the start times are followed.

The law does not contemplate situations where committee scheduling is incorporated into a flexible agenda. Committee times and principal governing times should be considered distinct and mutually exclusive.

Therefore, the public notice itself does not appear to be an issue, but its execution is suspect. If a committee posts a start time of 3:45 p.m., it is expected to start at that time or shortly thereafter.²

Stated in practical terms, someone who is interested in observing the meeting of the Facilities and Auxiliaries Committee is not necessarily expected to sit through the entirety of the Board of Trustees meeting. If an audience member wants to pick and choose which committees to observe and schedule their day accordingly, the law allows them to do so. Tying committee meetings to a more general agenda of a principal governing body is not a concept contemplated by the law. The schedule should remain firm.

² See also *Warren v. Board of School Trustees of Springs Valley Community School Corp.*, 49 N.E.3d 559 (Ind.Ct.App.1995); and *Blinn v. City of Marion*, 390 N.E.2d 1066 (Ind.Ct.App.1979)

CONCLUSION

Based on the foregoing, it is the opinion of this office that the IU Board of Trustees – Facilities and Auxiliaries Committee violated the Open Door Law by starting its meeting before the noticed time.



Luke H. Britt
Public Access Counselor

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