



STATE OF INDIANA

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December 14, 2017

Metropolitan School District of Steuben County
Mrs. Ann Rice, Assistant Superintendent
400 South Martha St.
Angola, IN 46703

Re: Informal Inquiry 17-INF-18; Open Door Law; Emails Outside of Public Meetings between Board Members

Dear Mrs. Rice:

This informal opinion is in response to your inquiry concerning the use of email outside of public meetings. You expressed concern that email discussions between board members was eroding the discussions during public meetings. You state that a consensus was made over email regarding the school district's bus contractor. I therefore provide the following guidance based upon your concerns.

1. The Open Door Law

The Open Door Law ("ODL") generally requires the meetings of the governing bodies of public agencies to be open to the public. Ind. Code § 5-14-1.5-3(a). The purpose of the ODL is to ensure the official action of public agencies is conducted and taken openly so the general public may be fully informed. *See* Ind. Code § 5-14-1.5-1.

The Open Door Law regulates meetings by those public agencies or governing bodies. A "meeting" is defined as a gathering of a majority of the governing body for the purpose of taking official action on business. *See* Indiana Code § 5-14-1.5-2(c). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. *See* Indiana Code § 5-14-1.5-2(d).

Consider the following from *Opinion of the Public Access Counselor, 13-FC-324 (2013)*:

While Indiana has not addressed whether email gatherings constitute a quorum for the purposes of a meeting where a constructive vote is taken, other jurisdictions have done so. As previously addressed in 05-FC-115, former Public Access Counselor Davis offered some guidance. Referencing the non-binding Virginia Freedom of Information Act, similar to the ODL, she cites in relevant part:

“Meeting’ or ‘meetings’ means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.”

Va. Code Ann. § 2.2-3701.

Consider also the following from Counselor Davis:

The Supreme Court of Virginia analyzed the definition of “meeting” using principles of statutory construction. The court stated:

“[T]he key to resolving the question before us is whether there was an ‘assemblage.’ The term ‘assemble’ means ‘to bring together’ and comes from the Latin *simul*, meaning ‘together, at the same time.’ The term inherently entails the quality of simultaneity. While such simultaneity may be present when e-mail technology is used in a ‘chat room’ or as ‘instant messaging,’ it is not present when e-mail is used as the functional equivalent of letter communication by ordinary mail, courier, or facsimile transmission.”

Id. at 198.

The Virginia Supreme Court, under the circumstances presented, declined to find a meeting had occurred via e-mail. Applying the same logic in the case at hand, all of the replies occurred within approximately a 24-hour period. This is not “simultaneous” therefore, must be treated akin to a serial meeting. Indiana law has not yet addressed whether a meeting of the minds over an email chain would constitute constructive presence for public meetings or in an aggregate sum...It should be noted, however, an open meeting is a condition precedent to a vote or final action under the ODL.

In sum, while emails are not considered traditional “meetings,” they could very well rise to the level of violating at least the spirit of the Open Door Law. This is especially so when a board presents mere cursory discussion—or no discussion at all—at a subsequent board meeting.

Undoubtedly, email is convenient and a useful communication medium, but it should not be a substitute for taking official action on public business openly. While ideas and thoughts may be exchanged via email – even in a “reply-all” type of communication, substantive discussion of an issue should be tabled until a board can do so in a public meeting. In any case, any decisions, resolutions, or final decisions *must* be made at an open meeting and not via email or behind closed doors.

In regard to these considerations, I recommend the school district tighten-up its practices when it comes to using emails and ensure discussions of substantive issues are held in front of the public.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor