



STATE OF INDIANA

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November 21, 2014

Mr. Jay M. Young
C/o Evansville Courier & Press
300 E. Walnut St.
Evansville, IN 47702

Re: Formal Complaint 14-FC-254; Alleged Violation(s) of the Open Door Law by Evansville City Council

Dear Mr. Young,

This advisory opinion is in response to your formal complaint alleging the Evansville City Council ("Council") violated the Indiana Open Door Law ("ODL"), Ind. Code § 5-14-1.5 *et. seq.* Mr. Scott Danks, Esq., attorney for the Counsel responded on their behalf. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 22, 2014.

BACKGROUND

Your complaint dated October 22, 2014, alleges the Counsel violated the ODL by holding a closed meeting, involving a quorum of the council, on October 1, 2014, at the office of the council's attorney, Mr. Scott Danks, Esq.

Both parties are in agreement that five of the nine Council members, all members of the same political party, gathered at Mr. Danks' office on October 1, 2014. It is also undisputed that email correspondence regarding the fore-mentioned gathering indicated it was originally intended to address budget cuts.

The issue in this case is whether the gathering was a "meeting" or a "caucus" pursuant to the ODL.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

"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). "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). "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. Ind. Code § 5-14- 1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

The ODL expressly provides that a "caucus" is not a "meeting." See Ind. Code § 5-14-1.5-2(c)(4). The Indiana Supreme Court has provided the following analysis regarding caucuses:

Under the Indiana Open Door Law, "caucus" is defined as "a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action." I.C. § 5-14-1.5-2(h). The nature of such political meetings will often necessarily involve receiving information, deliberating expected issues, and holding discussions concerning anticipated official action and public business. If the persons attending such meetings happen to constitute a majority of a governing body, such a caucus is not thereby transformed into a meeting subject to full public scrutiny under the Open Door Law. It is the taking of official action which changes the character of a majority political party strategy meeting from a private caucus to a public meeting. *Evansville Courier v. Willner*, 563 N.E.2d 1269, 1271 (Ind. 1990).

While caucuses are allowed under the Open Door Law, consider the following from former Public Access Counselor Joe Hoage:

Official action may not take place at a caucus. Members of a governing body in a caucus can hold discussions preparing them to take official action, but may not actually take official action. Undoubtedly, there is a fine line between taking "official action", which can be as little as receiving information, and holding discussions designed to prepare members for taking official action. I would caution those members of a governing body planning to hold a caucus to keep in mind that

transparency and accessibility are the hallmarks of the ODL, and to be mindful of the definition of “official action” when holding a caucus. . .

As long as the political party or coalition was not taking official action in the caucus, it would not be violating the ODL.” *See Informal Opinion of the Public Access Counselor 12-INF-03.*

Representations in the email correspondence of the Council as well as statements made in the media give a strong indication the original purpose of the meeting was to take official action on public business. While it appears as if Mr. Danks was present to moderate and ensure compliance with the Open Door Law, there was no independent party to observe.

I often counsel governing bodies that caucuses are a slippery slope. While they may be necessary at times to truly discuss political strategy, they should be used judiciously. The frequency of caucuses will naturally differ from entity to entity, however, any closed-door meetings are treated with scrutiny and rightfully so. Mr. Danks specifically references the appearance of impropriety. This should not be taken lightly.

While I cannot make a conclusive determination because the Public Access Counselor is not a finder of fact, I implore the Evansville City Council to exercise the utmost caution in conducting caucuses to maintain strict compliance with the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Scott Danks, Esq.