
OPINION OF THE PUBLIC ACCESS COUNSELOR

KYLE A. HURD,
Complainant,

v.

PULASKI COUNTY COUNCIL,
Respondent.

Formal Complaint No.
18-FC-129

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Pulaski County Council, by and through the county's "Salary Matrix Committee," violated the Open Door Law.¹ Attorney Kevin C. Tankersley filed an answer to the complaint on behalf of the Council. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

¹ Ind. Code §§ 5-14-1.5-1 to -8

the formal complaint received by the Office of the Public Access Counselor on October 5, 2018.

BACKGROUND

This case stems from a dispute between a local newspaper editor and the Pulaski County Council (“Council”) about whether the Open Door law (“ODL”) applies to the entity in the community known as the “Salary Matrix Committee.”

The Salary Matrix Committee consists of three members of the Pulaski County Council, the county attorney and his paralegal, and one other county employee.

On October 1, 2018, Kyle A. Hurd (“Hurd”), editor for the Francesville *Tribune*, emailed Pulaski County Auditor Laura Wheeler stating that he was missing the “Salary Matrix content” and requested the Auditor send the minutes and recordings. That same day, the Auditor emailed a response to Hurd declaring there were no other minutes or recordings and that most “MATRIX discussion outside of the regular meetings was done through committees and those were not recorded...”

Two days later, Pulaski County attorney Kevin C. Tankersley emailed Hurd a letter stating that the county did not have records or recordings responsive to his request. Tankersley also maintained that the meeting held by the Salary Matrix Committee was not subject to the ODL.

On October 5, 2018, Hurd filed a formal complaint with this Office alleging an ODL violation by the County Council and the Salary Matrix Committee.

In its response the Council asserts that the Salary Matrix Committee is not a governing body because the committee was never formally established by the Council under Indiana Code Section 5-14-1.5-2(b)(3). As support, the Council contends that the committee was not directly appointed by it or its presiding officer, Jay Sullivan. Moreover, the Council argues that it did not delegate any authority to the committee to take official action on public business.

ANALYSIS

The primary issue in this case is whether the Pulaski County Salary Matrix Committee is subject to the Open Door Law.

1. The Open Door Law (“ODL”)

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. *See* Ind. Code § 5-14-1.5-3(a).

Indiana courts have long recognized that when a dispute arises about the applicability of the ODL that “[a]ll doubts must be resolved in favor of requiring a public meeting and all exceptions to the rule requiring open meetings must be narrowly construed with the burden of proving the exception on the party claiming it.” *Frye v. Vigo County*, 769 N.E.2d 188, 192 (Ind. Ct. App. 2002).

2. Committees

Hurd and Pulaski County disagree about whether the Salary Matrix Committee is subject to the Open Door Law.

The Open Door Law applies 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).

Although the term *appointed directly* is not defined in the ODL, Indiana courts have recognized that a committee that “derives authority directly from the governing body” would be appointed directly for purposes of the ODL. *See Frye v. Vigo County*, 769 N.E.2d 188,196 (Ind. Ct. App. 2002); *Robinson v. Indiana University*, 638 N.E.2d 435, 438 (Ind. Ct. App. 1994).

The question here is whether the Salary Matrix Committee derives its authority directly from the County Council.

Indiana Code Section 5-14-1.5-1 requires a liberal reading of the ODL and a narrow construction of its exceptions. Indeed, the term *appointed directly* could be reasonably interpreted to mean “designated” or “assigned.” Tacitly, this could also mean that the original governing body implicitly relies upon a committee to perform official functions. Under the ODL, the definition of “official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.²

² Ind. Code § 5-14-1.5-2(d).

In order for a committee to be “appointed,” either implicitly or expressly, some authority to take action must be delegated. Stated differently, the committee must be performing a function of the principal governing body *on its behalf*. In doing so, it would also meet a functional equivalency test set forth by the ODL because the committee would be taking official action and exercising the executive, administrative, or legislative power of local government.³

It matters not whether the members of the new committee are sitting members of other boards, fellow public employees, or volunteer at-large members of the public. A new committee is formed whenever a governing body delegates official action to a committee, by whatever name designated.

If the Salary Matrix Committee was formally created by some declaration or mandate from the Council, it would be a new governing body - a board within a board. If, however, the committee was an organically formed *ad hoc* meeting of a volunteer non-majority gathering of Council members, it would not be a new governing body. But that does not appear to be the case in the current instance.

Information provided to this Office indicates that the County Council relies on the Salary Matrix Committee to scrutinize and make recommendations on county salaries.⁴

To what extent the Council rubberstamps the Committee’s “proposals” is unclear, but the Committee certainly appears to be taking official action on the behalf of the Council. Notably, the Council unanimously approved the revised MATRIX rules as presented on June 11, 2018.

³ Ind. Code §§ 5-14-1.5-2(a)(2) & (b)(1)

⁴ September 20 email from Kevin Tankersley (dictated)

Membership on this committee was not fluid, nor did the subject matter change. It seems as if it was exclusively established to establish and define the rules of the county salary matrix, and present those rules for adoption by the council. It has the form and shape of a separate committee as contemplated by the Open Door Law. The Salary Matrix Committee derived its existence solely to take official action—as defined in the ODL—on public business directly from the County Council with no intervening steps.

Public employee compensation is a matter of no small import. It comprises a substantial percentage of any local government's operating fund. When a governing body implicitly or expressly delegates authority to take official action on substantive public business, a new governing body is formed. Therefore, if the Committee exists to take official action—as defined in the ODL—on behalf of the County Council, the Salary Matrix Committee should have conducted its meetings openly.

CONCLUSION

Based upon the foregoing, it is the Opinion of the Public Access Counselor that the Salary Matrix Committee meetings should have been open in accordance with the Open Door Law.

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

Luke H. Britt
Public Access Counselor