



STATE OF INDIANA

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November 22, 2024

Patrick Lyp, City Attorney
166 Lincolnway
Valparaiso, IN 46383

VIA EMAIL: lawdept@valpo.us

Re: Informal opinion 24-INF-05; Orientations

Dear Mr. Lyp:

This informal opinion is in response to the inquiry you submitted October 1, 2024. Specifically, you requested an informal opinion regarding a redevelopment meeting that was described as an orientation by a board member. While orientations are not considered public meetings subject to the Open Door Law, you question whether the subject matter was appropriate for such an orientation.

BACKGROUND

On September 20, 2024, three members of the Valparaiso Redevelopment Commission (RDC) met with the city engineer to discuss procedure concerning a specific project that had already been vetted by the RDC.

You are concerned that a majority of the RDC discussing public business was a potential violation of the Open Door Law. One of those members – who also serves as the city council president – contends the meeting was an orientation, which is not considered a public meeting subject to the Open Door Law.

Your questions concern whether the subject matter of the gathering qualified as an orientation.



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ANALYSIS

1. Open Door Law

The Open Door Law (ODL) requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* 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).

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). Notably, 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). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “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).

2. Orientations

Despite the ODL’s general rule of open meetings, there are some notable exceptions. One of those concerns “an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action”. *See* Ind. Code § 5-14-1.5-2(c)(6).

Practically speaking, newly elected or appointed officials do not always come into a role with institutional knowledge, therefore it makes sense to be able to train up these officials



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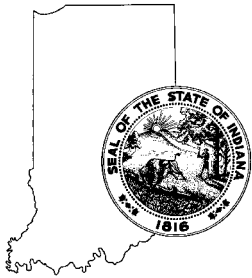
to prepare them for leadership. The public access counselor regularly conducts orientations, re-orientations, and trainings for any and all manner of public officials.

The latter clause of the subsection makes clear that the gatherings qualifying as orientations are not for official action on any specific measure, but rather general trainings on the powers and duties of board members.

Here, a seemingly impromptu gathering of a majority of the RDC was held to discuss an initiative after-the-fact. Conducting a post-mortem on a course of action is not contemplated by the statute. I take the council president at his word that the intention of the gathering was to analyze the steps and processes of the funding stream application, but the city engineer indicates the meeting was a review of a specific application.

In common parlance, orientations are for newcomers to a process and are prospective to action items. Alternatively, a re-orientation could be held to refamiliarize a board member with general concepts that have not been addressed recently, but official action on any specific item – either pending or post-vote – is prohibited. In either case, in the context of governing bodies, they are almost universally prospective, scheduled activities rather than spontaneous conversations that arise organically and are subsequently declared as orientations.

The law and courts instruct us to interpret the access laws liberally with the view of carrying out the purpose of openness and transparency. Conversely, exceptions are to be construed conservatively. See Ind. Code § 5-14-1.5-1 and *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995). Based on these instructions, this office hesitates to treat these types of issues too casually.



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Fidelity to the law is critical to maintain the public's trust. I know you and Mr. Cotton both to be thoughtful and conscientious public servants. Nonetheless, in this matter, I side with your position that the meeting should have either been open and noticed, or alternatively, fewer than a majority of the board present.

Please do not hesitate to contact me with any other questions.

Sincerely,

Luke H. Britt
Public Access Counselor
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