



STATE OF INDIANA

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January 8, 2015

Mr. Terry Karre
Ms. Darlene Underwood

Re: Consolidated Formal Complaint 14-FC-289; Alleged Violation of the Open Door Law by the City of Elkhart City Council¹

Dear Complainants,

This advisory opinion is in response to your formal complaint(s) alleging the City of Elkhart City Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Counsel for the City, Ms. Margaret M. Marnocha, Esq., responded to your complaint. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor on December 1, 2014.

BACKGROUND

Your complaint alleges the City of Elkhart City Council violated the Open Door Law by failing to accommodate interested members of the public at the November 17, 2014 meeting of the Council.

You allege that on or about November 17, 2014, the Council held a meeting at the Elkhart City Hall. Your complaint states the meeting room was too small to hold the amount of observers and several people were forced to leave the room. You also take exception to the amount of time the public was allowed to comment. Approximately 25 residents may have been excluded from the meeting to observe from the hallway.

In its response, the Council argues that seating considerations for public meetings are not addressed in the Open Door Law. Additionally, the notice of a large crowd was given by a group of concerned citizens only the day before the meeting. Finally, the Council acknowledges the public comment period was cut short.

¹ These two complaints have been consolidated for the purposes of efficiency; both of the complaints reference the same meeting and alleged violation.

ANALYSIS

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. 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).

Please consider the *Opinion of the Public Access Counselor 13-FC-285* for a substantially similar Open Door issue and alleged violation. I find this situation to be distinguished on several grounds. I will repeat a portion of that particular Opinion here. On the topic of public comment, I wrote:

I have addressed the issue of public comment in the past. Consistent with prior opinions, the Council did not violate the Open Door Law by limiting the amount of time for soliciting input from the public or by conducting their meetings in a manner they saw fit. Nothing in the Open Door Law obligates a public agency to allow the public to speak during an open meeting. Likewise, there is no other provision mandating equal time for each individual permitted to speak. This Office does not dictate the manner in which public meetings are held beyond the scope of the Open Door Law. It appears the Council set forth procedures to conduct an orderly meeting while also receiving some public input.

While I encourage public comment exchanges during open meetings, the law does not require it for this kind of meeting. The Council did not violate the Open Door Law by cutting short the public comment time.

Furthermore, in *Opinion of the Public Access Counselor 13-FC-285*, I found a violation on the part of the municipality because it had been on notice for several weeks the meeting would generate a substantial amount of interest. The presiding officer of the Council in that case had specifically been asked to relocate the meeting. Given the meeting space in that town would only accommodate twenty people (the majority of which were reporters), 50-60 people were left *outside of the building*.

In the instant case, the Council was notified the night before a concerned citizens group expected a large turnout. I do not have sufficient evidence or documentation before me which suggests the turnout would have been so large the Council could be reasonably expected to move the meeting to another location. Additionally, the excluded members of the public were instructed to wait outside in the hallway where there was seating and the opportunity to view the meeting from outside the room. They were not excluded from the building.

In an ideal scenario, there would have been a public broadcast system or closed circuit television in the hallway; however, nothing in the Open Door Law suggests this is a requirement. I am more inclined to be consistent with former *Public Access Counselor Anne O'Connor's Opinion in 00-FC-13*. She did not find a violation although 30 people were excluded from the meeting. A factor in that particular Opinion (as well as *13-FC-285*) was

the number of people who were allowed to remain. Here, it appears as if a significant majority of interested members of the public were allowed to observe from inside the room itself.

I do not believe the City Council was on sufficient notice to expect a crowd which would exceed capacity. Nor, do I find the Council obstructed access in a manner inconsistent with the Open Door Law. Any discomfort to interested members of the public who had to remain in the hallways appears to be unintentional.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the City of Elkhart City Council did not violate the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Margaret M. Marnocha, Esq.