



STATE OF INDIANA

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March 24, 2014

Ms. Jennifer Amos
301 North 13th St.
Elwood, IN 46036

Re: Formal Complaint 14-FC-32; Alleged Violation of the Open Door Law by the Otterbein Public Library

Dear Ms. Amos,

This advisory opinion is in response to your formal complaint alleging the Otterbein Public Library Board (“Library”) violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Library has responded via Mr. Jud Barce, Esq.. 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 February 20, 2014.¹

BACKGROUND

Your complaint dated February 20, 2014, alleges the Otterbein Public Library violated the Open Door Law by conducting a meeting in violation of the Open Door Law.

You speculate in your formal complaint the Library appeared to have violated the Open Door Law by revising a township service agreement (“Agreement”) behind closed doors after it was discussed during a February 11, 2014 meeting. At that meeting, the Library voted in favor of an agreement developed between the Library and the township trustees for the issuance of library cards to patrons of Medina Township in Warren County. The Library ratified the Agreement and signed a signature page to be submitted to the Medina Township Trustee and the Township Board of Trustees for their approval. Between February 11, 2014 and February 15, 2014 the terms of the Agreement were changed to reflect a different payment structure for the issuance of the cards.

You suggest the Library met secretly to revise the Agreement. From the correspondence submitted by both parties, it appears the Library board treasurer was the point person for

¹ Your request for priority status was denied because you did not meet the criteria set forth in 62 IAC 1-1-3.

the revisions. In one (1) of the emails between the board treasurer and the Library director (a non-board member), the treasurer indicates the revisions were approved by four (4) other individual board members. From the evidence submitted by you, five (5) of the seven (7) board members endorsed the revision.

The Library has responded arguing no closed-door meetings took place. On February 11, 2014, the Library voted on a version of the Agreement with an incorrect number on the first page of the Agreement. This version was subject to the approval of the Township Trustee. The Library contends there was an understanding the board treasurer would amend the first page of the Agreement and the original signature page was to be shredded. Negotiations then took place between the Township Trustee and the Library board treasurer on another substantive term of the Agreement.

The treasurer revised the Agreement again to present to the Library for vote at a later hearing. From my understanding, at the time of your formal complaint, the Agreement had not been officially adopted by the Library board or the Trustees as a final action. Additionally, the Library contends no meeting took place between the five (5) board members regarding the action.

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).

Open Door Law violations are often difficult to ascertain due to the speculative nature of allegations. There is no authenticated evidence to suggest a majority of the Library board met behind closed doors to discuss these revisions. You have included in your supplemental materials an email between the Library director and the Library board treasurer indicating she spoke with four (4) other Library board members about the revisions. If all five (5) spoke simultaneously, this would constitute a majority of the Library Board.

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). "Official action" means to receive information; deliberate; make recommendations; establish policy; make decisions; or take final action. Ind. Code § 5-14-1.5-2(d).

I cannot determine conclusively if the five Library Board members met together to discuss the revision. If they did, it is clear from the Open Door Law it would be a violation. You have provided me the text of an email from the treasurer to the Library director indicating a meeting of the minds between five (5) board members. A violation of the Open Door Law would include a face-to-face or telephonic exchange discussing

the revision to the Library card payment structure in order for the treasurer to revise that provision of the Agreement.

I do not know the nature of the exchange; however, the email you provide does give the reader a perception that discussions took place behind closed doors. A discussion between individual members to exchange ideas on public business is not an Open Door violation. However, it should be noted these exchanges in the aggregate could constitute a serial meeting, which would be prohibited.

Ind. Code § 5-14-1.5-3.1(a) states:

The governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria²:

- (1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.
- (2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.
- (4) The gatherings are held to take official action on public business.

I cannot confirm the factual scenario wherein the treasurer spoke to the other four (4) board members on the subject. I merely include the serial meeting language to inform the Library that an aggregate sum of individual conversations may constitute a serial meeting if the statutory criteria are met.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Otterbein Public Library did not violate the Open Door Law.

Regards,

² Electronic email exchanges are excluded from the serial meetings exception and do not constitute a physical presence.

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jud Barce, Esq.