



STATE OF INDIANA

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May 29, 2014

Ms. Joyce A. Russell
3410 Delta Dr.
Portage, IN 46368

Re: Formal Complaint 14-FC-96; Alleged Violation of the Open Door Law by the Portage Township School Corporation

Dear Ms. Russell,

This advisory opinion is in response to your formal complaint alleging the Portage Township School Corporation ("School") violated the Open Door Law ("ODL"), Ind. Code § 5-14-3-1 *et. seq.* The School has responded via the firm of Rhame and Elwood by way of Mr. Kenneth B. Elwood, 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 April 29, 2014.

BACKGROUND

Your complaint dated April 29, 2014 alleges the Portage County School Corporation violated the Open Door Law by taking final action at two separate meetings in March and April 2014 during "discussion meetings".

The operative facts in this circumstance are not necessarily in dispute. The School traditionally holds two monthly meetings, a "Board Discussion" session and a regularly held public meeting. There is no dispute both meetings are held pursuant to proper notice and are open to the public. Typically, final action is not taken at the Board Discussion meetings; only official action is conducted.

Votes were taken during both the March and April 2014 Board Discussion meetings (the School contends a vote tabling an agenda item does not constitute a final action, however, Ind. Code § 5-14-1.5-2(g) does not distinguish between different kinds of votes). The substantive vote in March approved Apple as the sole source vendor for classroom iPads. Your contention appears to be the deviation from the typical practice of the School from not voting during the Board Discussion meetings. Votes are generally held during the regular open meetings.

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).

It matters not what public meetings are called, all meetings of public agencies except executive sessions must be open to the public and 48-hour notice must be given. Some agencies call them "work sessions" or "discussion session", but they are all required to be open to the public if there is a majority of the governing body present.

Therefore, the practice of the School holding discussion sessions is appropriate if they are placing proper notice and opening the meeting to the public. There is no prohibition on holding multiple meetings a month. I agree the practice of suddenly taking a vote at meetings where votes are typically not taken could be open to the public. Nothing in the Open Door Law suggests final action must be included in an agenda or notice be given of the vote itself.

That being said, my suggestion to public agencies has historically been to refrain from voting on items of particular public importance during meetings when the interested public does not have a reasonable expectation that the vote will be taken at that particular meeting. Some final actions or votes (such as tabling a discussion topic or other administrative or operational issues) may not be of significant public interest. Votes regarding unusual or extraordinary expenditures or controversial topics would certainly be of public interest and final action should be taken conspicuously.

Not knowing the School Corporation or its community, I do not have the insight to determine whether a vote to sole source a contract is controversial in this instance. Either way, that is not for the Public Access Counselor to decide or pass judgment. Final actions

and votes in any meeting subject to the Open Door Law is permissible, but the public agency should ask itself whether it is in the best interest of its constituents (and the perception of transparency) to take an unexpected vote.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Portage County School Corporation has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. Kenneth B. Elwood, Esq.