
OPINION OF THE PUBLIC ACCESS COUNSELOR

CARROLL PAPERS, INC.,
Complainant,

v.

CARROLL COUNTY PLAN COMMISSION
Respondent.

Formal Complaint No.
17-FC-149

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Carroll County Area Plan Commission (“APC”) violated the Open Door Law (“ODL”). Ind. Code §§ 5-14-1.5-1 to -8. Three APC Administrative Committee members responded on behalf of the APC. The responses are enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 27, 2017.

BACKGROUND

On June 6, 2017, the Carroll County Area Plan Commission Administrative Committee held a public meeting in an office on the second floor of the county courthouse. The room was only large enough to accommodate seating for a select few and the general public were made to stand outside. The meeting lasted for approximately 38 minutes. The three committee members stayed in the room after adjournment along with the zoning administrator. The Complainant suggests the discussion may have been an inappropriate continuation of the meeting.

The three Committee members responded by arguing the exclusion of the audience was an oversight and they would have been accommodated had the Committee known it was an issue. As for the continuation of the discussion, the Committee members contend the subject matter was strictly personal and not about public business. Finally, two of the three responses alluded to the complaint being filed in bad faith and lamented the scrutiny faced by the public and the press.

ANALYSIS

APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Carroll County Area Plan Commission is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Commission’s disclosable public records during regular business hours

unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

The three-person Committee, although not a majority gathering of the APC, appears to be a standing committee authorized to take action by the Commission at large. Therefore, it is subject to the Open Door Law just as the APC as a whole.

The issues in question do not require much technocratic legal analysis. The issues at hand are more practical in nature and I will address them accordingly. When it comes to accommodating the public at meetings, not every gathering needs to take place in an auditorium or boardroom. It can be an office or small conference room. Depending on the board and the subject matter, a large room may not be necessary. And so it is with an Area Plan Commission Committee meeting. The difference, however, is when the governing body expects a larger turnout than normal. The APC Executive Director acknowledges these concerns and concedes the room was small. Another member acknowledges the APC's activities have yielded increased interest. The Committee also appears to suggest that they had no way of knowing anyone was being excluded from the meeting or having trouble hearing because they were not told so.

I was not in the meeting so it would be difficult to analyze the logistics of the gathering. I merely recommend being cognizant of the fact that a small room may unintentionally exclude interested members of the public, especially when there is heightened attention to board business.

Moreover, the Committee also concedes a discussion took place after the meeting was adjourned, however, it was of a personal nature and not regarding public business.

There is no reason to dispute that the conversation was personal and I'll take the Committee members at their word. More importantly, however, is the need for mindfulness that these casual, often-perfectly-innocent discussions can lead to suspicion. I'm not suggesting board members can't discuss social or family lives outside a meeting— they can and should; I'm merely suggesting they not be taken aback when it raises eyebrows.

Right or wrong, an inherent distrust in government persists at all levels of bureaucracy. It's often best to avoid needlessly exacerbating it. For example, the discussion about kids and family could just have easily taken place in a common area where a passersby could confirm no clandestine public business was taking place.

I'm not breaking new ground when I say that it's not easy being a public official. It sometimes requires a heightened sense of self-awareness, a tolerance to perceived slights, and thick skin. This often means anticipating constituent needs and accommodations; or fielding tough questions; or realizing that seemingly innocuous oversights may lead to raised suspicious and perceptions of impropriety. Such are among the consequences of being an appointed or elected government representative. It's difficult, it's inefficient, and sometimes it's even unfair. It's certainly never easy. But gracefully weathering those inconveniences is essential to good government. Stone

sharpens stone. The ability to doggedly question, scrutinize and criticize government by our constituency and the press may sometimes be a bother, but it simply makes us better representatives of the public.

Luke H. Britt
Public Access Counselor