
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMES W. McDONALD
Complainant,

v.

PAOLI COMMUNITY SCHOOL CORP.,
Respondent.

Formal Complaint No.
17-FC-157

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Paoli Community School Corporation (“PCSC” or “School Corporation”) violated the Open Door Law (“ODL”). Ind. Code §§ 5-14-1.5-1 to -8. The School Corporation responded to the complaint on July 18, 2017, via Attorney Patrick A. Shoulders. The response is 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 July 5, 2017.

BACKGROUND

James “Bill” McDonald (“Complainant”) filed a formal complaint against the School Corporation—specifically Board of School Trustees President Lila Tucker—alleging the school board violated the Open Door Law by meeting in an executive session where the agenda was not followed. Notably, McDonald has been a member of the school board since 1994.

On June 12, 2017, the school board held an executive session at 6:00 p.m.; a regular public session at 7:00 p.m.; and another executive session at the conclusion of the board’s regular session. The board stated that the statutory reason for both executive sessions was to discuss a job performance evaluation of individual employees in accordance with Indiana Code § 5-14-1.5-6.1(b)(9).

The Complainant contends that he and two other school board members did not attend the executive sessions because no employee evaluations were needed and the alleged unethical way in which the regular session of the board was handled.

McDonald claims that four members of the board came to the meeting predetermined to give notice of termination and immediately suspend the Superintendent. Moreover, the Complainant argues that he and two other board members had no knowledge of what was to happen that night. He concludes that the later executive session violated the ODL.

The School Corporation denies that an ODL violation has occurred. PCSC argues that the subject matter of the executive sessions was properly noticed and lawful under Indiana Code § 5-14-1.5-6.1(b)(9).

In addition, Attorney Patrick Shoulders offered an email exchange as an exhibit in this matter indicating that that he had been hired “to represent the School Corporation on human resource matters at a rate of \$200 per hour.” The email thread indicates that the scope of Mr. Shoulders’ representation included “anything that has been raised, especially in the Marvin Ward Report of improprieties, irregularities, or ethical issues concerning school business somebody needs to look into.” Mr. Shoulders argues that during the first executive session on June 12, 2017, he discussed with the school board—including McDonald—his evaluation of Superintendent Casey Brewster’s job performance.

Mr. Shoulders states that during the board’s 7:00 p.m. regular session the board adopted his evaluation by authorizing Board President Lila Tucker to deliver Superintendent Brewster a letter which gave notice of a proposed termination, including a statutory statement of reasons therefor.

The crux of the complaint appears to be the alleged exclusion of the Complainant from the executive session, however, there is no evidence that he could not attend, only that he chose not to.

ANALYSIS

The intent of the Open Door Law (“ODL”) is 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. Even so, under the ODL, public agencies are permitted to meet privately in executive session under certain limited circumstances. *See* Ind. Code §§ 5-14-1.5-6.1(1) to (12).

Based on the information provided, this complaint appears to be centered on a governance issue as opposed to a substantive Open Door Law issue. The executive session and meeting notices seem to be in order and there is no allegation that any final action took place during the executive session, nor were issues discussed which were outside the scope of the noticed subject matter.

Outside the parameters of the Open Door Law and other relevant access statutes, a local governing body may conduct its gatherings and take action in any way it sees fit. In my evaluation of the complaint and response, I have not identified any injury to public access or noncompliance with the Open Door Law.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor the Paoli Community School Corporation did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor