
OPINION OF THE PUBLIC ACCESS COUNSELOR

SUSAN “JILL” CORD,
Complainant,

v.

SWITZERLAND COUNTY SCHOOL BOARD,
Respondent.

Formal Complaint No.
17-FC-160

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Switzerland County School Board of Trustees (“Board”) violated the Open Door Law¹ (“ODL”). The Board responded on July 24, 2017, through attorney Andrew A. Manna. 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 6, 2017.

¹ Ind. Code §§ 5-14-1.5-1 to -8.

BACKGROUND

Susan “Jill” Cord (“Complainant”) filed a formal complaint with this office alleging a violation of the Open Door Law by the Switzerland County School Corporation Board of Trustees (“Board”). Notably, the Complainant is a member of the Board and also serves as the Board’s secretary. The Complainant alleges that the Board—during an executive session on June 5, 2017—participated in a discussion that exceeded the scope of the subject matter cited in the public notice for the meeting.

The executive session at issue in this case was held by the Board at 5:00 p.m. on June 5, 2017. The public notice for the Board’s executive session provided:

The Switzerland County School Board will meet in executive session with respect to an individual over whom the governing body has jurisdiction to receive information concerning the individual’s alleged misconduct; and to discuss before a determination the individual’s status as an employee; and to train school board members with an outside consultant about the performance of the role of the members as public officials. This is in compliance with Ind. Code §§ 5-14-1.5-6.1(b)(6)(A), -(B); and Ind. Code § 5-14-1.5.6.1(b)(11).

The Complainant alleges that from 5:46 to 6:12 p.m. the Board, the Superintendent, Consultant Dr. James Halik, Board attorney Matt Hocker discussed the issue of the old Vevay High School Building rather than using that time that to train school board members with an outside consultant as stated on the meeting’s public notice. Specifically, she claims

the purpose of the training session was to receive training in writing mission and vision statements for the school corporation. Cord contends that the 26 minute discussion about the school building violated the ODL.

As an aside, it is clear that the issue of the old Vevay High School Building is—or at least was—a point of contention between the Cord and the other board members. In May, 2017, the Board voted 6-1 to demolish the building. The Complainant was the lone vote against the demolition.

The Board contends that its actions in this situation are consistent with the notice of executive session that was posted prior to the meeting. Specifically, the Board argues that Dr. James Halik—operator of consulting business Compass Keynote Consulting—qualifies as an outside consultant for board training for purposes of the ODL under Ind. Code § 5-14-1.5-6.1(b)(11).

What is more, the Board argues that the discussion about the old Vevay High School building—taken in the context of a board training—was within the scope of the executive session notice. More specifically, the Board suggests that the Complainant has made it difficult for the Board to focus on other issues because she continually attempts to revisit issues that have already been decided. The Board notes that Cord is commonly the sole dissenter on the Board. The Board stated that this type of resistance was a factor that prompted the Board to seek the training that occurred at the executive session. Furthermore, the Board stated that it needed help on how to move forward after the majority of the Board had decided an issue.

Lastly, the Board notes that Cord—by her own admission—fully engaged in the discussion during the executive session without questioning the propriety of the topic. In addition to making no objections, the Complainant joined the other board members in approving the minutes of the executive session unanimously.

ANALYSIS

The public policy of the Open Door Law (“ODL”) is that 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* Indiana Code § 5-14-1.5-1. Therefore—unless an exception applies—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).

Executive Sessions

Under the ODL, an executive session is a meeting where the governing body of a public agency may—in statutorily limited circumstances—exclude the public from a meeting. *See* Ind. Code § 5-14-1.5-6.1(b)(1) to (14). Put differently, a closed meeting may only occur under the specific instances set out in subsection 6.1 of the ODL.

Comparatively, executive sessions require more from a governing body than a regular session as it pertains to public notice and record keeping. The public notice requirements for an executive session are the same as any other public meeting, except the notice for an executive session *must* also state:

- The subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held²...

In addition, the memoranda and minutes—if minutes are kept—of an executive session must also identify the subject matter by specific reference to the enumerated instances for which public notice was given. The ODL also requires the governing body certify by a statement in the memoranda and minutes of the governing body that *no subject matter was discussed in the executive session other than the subject matter specified in the public notice*.³

² Ind. Code § 5-14-1.5-6.1(d).

³ *Id.*

Here, the Board issued public notice for, and held an executive session for the purpose of—in relevant part—training school board members with an outside consultant. There is no question that an executive session may be held to train school board members with an outside consultant about the performance of the role of the members as public officials. *See* Ind. Code §§ 5-14-1.5-6.1(b)(11). Therefore, the question in this case is whether the discussion at issue in the complaint qualifies as training with a consultant.

As a general matter, this Office scrutinizes executive sessions closely due to their very nature of being closed. Although there are justifications for having certain discussions behind closed doors, executive sessions should be invoked judiciously and the notice requirements must be followed to the exact letter of the law. Holding unauthorized discussions behind closed doors as a majority of a governing body only serves to erode the public trust and cast doubts on the transparency of the public agency.

To be sure, training school board members on their role as public servants can be a valuable tool in effective governance. Indeed, the law provides for such a subject to be discussed either in an executive session or as an orientation (or reorientation) in a non-meeting, such as a retreat, seminar or conference. *See* Ind. Code § 5-14-1.5-2(c). These gatherings are intended to be general in nature—high level issues and trends—rather than granular, substantive specific topics.

While the law does afford some latitude in holding these types of discussions outside the public's view, I do find

some aspects of the complaint and response troubling. The Board does not refute the crux of the complaint, which focused on the discussion in executive session about Ms. Cord's dissenting vote on the demolition the old school building and her subsequent efforts to save the building.

Essentially, the Complainant feels the Board was attempting to browbeat her into ideological groupthink under the guise of "training." To a certain extent, the School's response affirms this intent:

"It is not uncommon for Mrs. Cord to be the sole dissenter on Board action."

"This sort of resistance and difficulty [sic] moving forward after a Board decision was a factor that prompted the Board to seek the training."

"The Board needed help on how to move forward after the majority of the Board had decided an issue."

I do not believe the executive session exception under Ind. Code § 5-14-1.5-6.1(b)(11), was intended to be a mechanism by which to quash political or personal differences. There are other outlets for such discussion—even outside of the public view—but executive session is not one of them. Even if Ms. Cord's dissension was inappropriately antagonistic, it stands to reason the Board President would be responsible for helping improve the decorum and efficacy of gatherings. Surely, a single 6-1 vote and its ensuing fallout could be tamped without the need for a consultant.

Moreover, no single Board member is required to vote with the majority of the board on an issue to properly perform her duties as a school board member. Mrs. Cord remains accountable to the constituents of Jefferson Township who elected her to the Board; it is they who decide if her performance is adequate, not the other members of the board. Individually elected board members are not subject to the jurisdiction of a school board; and not an employee.

Discussions about substantive initiatives should be held in a public meeting, not behind closed doors. That being said, I am unconvinced the public has been harmed or injured by the Board's actions. I encourage the Board to be mindful of the correct use of executive sessions and the preceding guidance in the future.

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor