
OPINION OF THE PUBLIC ACCESS COUNSELOR

TERRY L. YOUNG,
Complainant,

v.

PULASKI COUNTY,
Respondent.

Formal Complaint No.
19-FC-100

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Pulaski County¹ violated the Open Door Law² and Access to Public Records Act.³ Attorney Kevin C. Tankersley responded on behalf of the County. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

¹ Multiple complaints were filed against Pulaski County. For efficiency's sake, they were consolidated and will be addressed individually in this Opinion.

² Ind. Code §§ 5-14-1.5-1 to -8

³ Ind. Code §§ 5-14-3-1 to -10

the formal complaint received by the Office of the Public Access Counselor on October 3, 2019.

BACKGROUND

Terry L. Young (“Complainant”) contends that Pulaski County violated the Open Door Law by failing to post adequate public notice for two public meetings. First, he contends the Pulaski County Council held a special meeting without public notice on September 30, 2019 and a public hearing on October 21, 2019. Next, Young contends that the Pulaski County Board of Commissioners attends council meetings without notice.

Additionally, Young argues the Pulaski County Auditor violated the Access to Public Records Act by failing to provide copies of public records in a timely manner.

Specifically, Young requested Board of Commissioners and Council minutes; Commissioner’s “claims;” contact information of the Board and Council; as well as a list of all current board appointments and a list of county employees and wages. Young initially made the request in February, but seemingly resurrected it in September 2019.

In its response to this office, Pulaski County disputes Young’s complaint. Specifically, the county provided a copy of the public notice for the September 30 meeting and argues it posted the notice at the courthouse in the appropriate manner. The county also provided a copy of the notice published in the local paper for the October 21 hearing.

Regarding Young’s complaint about his request for public records, Pulaski County asserts that Young did not submit the request on the county’s prescribed form in accordance

with Indiana Code section 5-14-3-3(a). Young initially submitted the public records request to the county in February – a matter previously dismissed as untimely by this office.⁴

Pulaski County disputes Young’s claim of an ODL violation based on the commissioners’ attendance at county council meetings. The county argues that the board is permitted to attend the council meetings because it is not taking official action on public business.

ANALYSIS

1. The Open Door Law

It is the intent of the Open Door Law (“ODL”) 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. Except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14-1.5-3(a).

There is no dispute that Pulaski County is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the Board of Commissioners (“Board”) and the County Council (“Council”) are each a governing body of the county for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Board and Council

⁴ This office will not address this issue here because we previously disposed of it by letter to Mr. Young on November 6, 2019. Resubmission of the request in an incorrect manner does not resuscitate the grounds for a complaint.

must be open at all times to allow members of the public to observe and record.

2. Public Notice

Generally, under the ODL, public notice of the date, time, and place of any meetings, executive sessions, or of any re-scheduled or reconvened meeting must be posted at the agency's principle office at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* Ind. Code § 5-14-1.5-5.

Here, the meeting on September 30, 2019 was certainly subject to the public notice provision of the ODL. Based on the county's response, the notice met the requirements of the ODL and the county posted it on September 26, 2019. It appears to be in order and proper.

The meeting on October 21, 2019 is a different matter. Public hearings on tax ordinances are mutually exclusive from public meetings and notice is not required under the ODL. Indiana Code section 5-14-1.5-5(3) states: "[t]his section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation."

Notice of public hearing for local tax ordinance is regulated by Indiana Code section 5-3-1-2(b), which requires notice to be published once in a newspaper of local circulation ten days before the hearing. Here, Pulaski County appears to have done so in a timely manner. Thus, paper notice on site is not strictly required by the Open Door Law.

3. Commissioners' Attendance at Council Meetings

The final matter to address is Young's complaint that the Pulaski County Commissioners' attendance at county council meetings violates the Open Door Law. The County argues it is proper for the board to attend council meetings because the commissioners did not meet to discuss business or take official action.

This office cannot agree on those grounds, but offers the following.

Under the ODL, "official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § ~~5-14-1.5-2~~(d). Additionally, "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).

Nevertheless, a special caveat exists for town and county executives *only*. It is called an administrative function meeting and serves to allow governing bodies who are also executive branch officials some leeway in conducting official action on public business without providing public notice. Indiana Code section ~~5-14-1.5-5~~(f) states notice is not required in the following instances:

The executive of a county or the legislative body of a town if the meetings are held solely to carry out the administrative functions related to the county executive or town legislative body's executive powers. "Administrative functions" means only routine activities that are reasonably related to the everyday internal management of the

county or town, including conferring with, receiving information from, and making recommendations to staff members and other county or town officials or employees. “Administrative functions” does not include:

- (A) taking final action on public business;
- (B) the exercise of legislative powers; or
- (C) awarding of or entering into contracts, or any other action creating an obligation or otherwise binding the county or town.

Mere attendance by the commissioners at a County Council meeting—without more—is an administrative function, which can be conducted without additional notice in accordance with the above subsection.

Thus, while the commissioners’ attendance constitutes taking official action, it is administrative in nature, but not final, and can qualify as these types of meetings, which do not require additional notice.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that Pulaski County did not violate the Open Door Law.

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

Luke H. Britt
Public Access Counselor