
OPINION OF THE PUBLIC ACCESS COUNSELOR

DAVID B. CARNES,
Complainant,

v.

TOWN OF KNIGHTSTOWN,
Respondent.

Formal Complaint No.
19-FC-137

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Town of Knightstown, through the town council's police committee, violated the Open Door Law.¹ Attorney Gregg H. Morelock filed an answer on behalf of the town. 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 December 16, 2019.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

This case involves a dispute about the frequency of executive sessions convened by the police committee for Town of Knightstown.

On December 16, 2019, David B. Carnes (“Complainant”) filed a formal complaint with this office asserting the Knightstown Police Committee (“Committee”) is in violation of the Open Door Law based on the Committee’s weekly executive session.

Carnes contends that the town council presented the police chief with a list of requirements and expectations in November 2019, which includes a weekly meeting between the Committee and the chief wherein the chief presents certain information in writing to the Committee.

Carnes says the police chief’s report is to include department spending requests, officers’ schedule for the week, department statistics, overtime requests, and any personnel matters, including complaints received about the department or officers.

Although Carnes did not attach supplemental documents substantiating the town council’s directive regarding the police chief, the Committee does not dispute his narrative. So, this office will presume it is valid.

In essence, Carnes argues that the Committee is over-using executive sessions by convening them weekly to address business that it should conduct at a public meeting. Carnes notes that the majority of the information the police chief is required to report to the Committee does not qualify for executive session.

On January 6, 2020, the Committee filed a response to Carnes' complaint with this office. The Committee argues that its first two meetings in December 2019 were indeed authorized by law to discuss personnel matters.

The Committee acknowledges the public notice for the meetings created a misunderstanding by indicating the executive sessions were "ongoing."

The Committee asserts that its subsequent sessions have been properly noticed as public meetings and the public has attended.

ANALYSIS

1. The Open Door Law (ODL)

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. Accordingly, 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. *See* Ind. Code § 5-14-1.5-3(a).

The Town of Knightstown is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Knightstown Police Committee ("Committee") is a governing body of the town for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the Committee must be open at all times to allow members of the public to observe and record.

2. Executive Sessions

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

There exists a heightened requirement for executive session notice, and for good reason. While the law allows some latitude to a governing body to meet behind closed doors, the public in turn is entitled to specific notice as to why.

Indiana Code section 5-14-1.5-6.1(d) states:

Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b).

Subsection (b), of course, lists the specific subject matters that are authorized for executive session.

Here, the public notice that prompted this complaint said the following:

KNIGHTSTOWN
POLICE COMMITTEE
EXECUTIVE MEETING
ONGOING ON
MONDAYS,
8:00 A.M.
IN THE TOWN HALL
COMMITTEE ROOM

120 E. WASHINGTON STREET
KNIGHTSTOWN, IN 46148

IC 5-14-1.5-6.1(6) With respect to any individual over whom the governing body has jurisdiction: (A) to receive information concerning the individual's alleged misconduct; and (9) To discuss a job performance evaluation of individual employees

CLOSED TO THE PUBLIC

It has long been the view of this office that governing bodies use executive sessions sparingly. Indeed, the ODL only authorizes executive sessions for a specific, limited number of subjects.

The ODL does not authorize a governing body to convene "ongoing" executive sessions. They are exclusively excepted from standing annual notice requirements. *See* Ind. Code § 5-14-1.5-5(c). Executive sessions are appropriate only for the specific circumstances listed and require separate public notice that identifies by specific reference to the statutory reason for the meeting.

The public notice for an executive session, like all meeting notices governed under the ODL, must include the date of the meeting.

Based on the Committee's response, this office is confident that any misunderstanding of the Committee's responsibilities under the ODL have been resolved.

CONCLUSION

Based on the foregoing, it is the conclusion of this office that the Town of Knightstown remedied the noncompliance in this case by removing the standing public notice for executive sessions of the police committee.

Luke H. Britt
Public Access Counselor