
OPINION OF THE PUBLIC ACCESS COUNSELOR

RUTH RIEHLE,
Complainant,

v.

TOWN OF SUNMAN,
Respondent.

Formal Complaint No.
19-FC-24

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Sunman violated the Open Door Law.¹ Attorney John Kellerman filed an answer to the complaint 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 March 21, 2019.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

On February 21, 2019, the Sunman Town Board held its regular monthly meeting. Ruth Riehle (“Complainant”) contends that when she arrived at the location of the meeting, several people were standing outside because the doors were locked. The Board, however, was inside the meeting location. Once the meeting began, the doors were opened but there was not seating enough for everyone.

The subject matter of the meeting – or at least a portion thereof – was the consideration of a clean air permit for a whiskey distillery. The president of the Board mentioned meetings with the distillery but could not locate documentation of any meetings.

In its response, the Board contends the doors were only locked up until the time of the meeting and they were opened promptly at 6:30 p.m. The Board asserts that it was inside eating dinner and not discussing business. Furthermore, the documentation Riehle could not locate was forwarded to her. The Town did not address the matter of insufficient seating.

ANALYSIS

At issue in this case is whether the action of the Town of Sunman was consistent with the Open Door Law in locking doors before the commencement of a meeting and for holding meetings with a commercial prospect.

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).

The Town of Sunman 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 Sunman Town Board ("Board") is the 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 Board must be open at all times to allow members of the public to observe and record.

2. Riehle's Claim

Riehle contends that the Board's action in locking the doors prior to a meeting could rise to a violation of the Open Door Law. Additionally, she asserts that several people could not sit down at the meeting because of insufficient seating. Finally, Riehle expresses concern over prior meetings between the Board and the whiskey distiller.

The Open Door Law is conceptual in nature in that it is not a policy requiring a literal "open door" per se, but more of a metaphor for transparency and general openness of government. Therefore it is not a *de facto* violation of the law to have a meeting place locked until the time of the commencement of a meeting. What is more problematic, however, is the fact that the Board was locked *in* the meeting space congregating. While the Board states it was not engaging in official business – and this office will take it at its word – the

optics can be troubling. A presumption exists that when a majority of a governing body is at the same place at the same time, public business will be discussed. While this is certainly not always the case, this office encourages councils and boards to be mindful of public perception. In this case, it does not appear that the Board improperly took official action outside of public view.

As for the issue of capacity, this office has regularly advised public agencies that if seating is limited at a public venue and an audience is expected to exceed capacity, the venue should be moved. There is no indication in the current case that the Board anticipated a large enough audience to necessitate moving the meeting. Moreover, while the venue may have been standing room only, at least the opportunity to observe was provided, if not the opportunity to do so while seated.

Lastly, Riehle expresses concern about meetings between the Board and the company seeking a permit and abatement for the whiskey distillery. In its response, the Town accurately cites Indiana Code section 5-14-1.5-6.1(b)(4) as the executive session provision that allows the Board to meet in an executive session to interview or negotiate with an industrial or commercial prospect. The Board provided documentation to that effect to Riehle before she filed her formal complaint.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of Sunman has not violated 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