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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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NATHAN MANTLO,  
*Complainant,*

v.

LINCOLN TOWNSHIP BOARD OF TRUSTEES,  
*Respondent.*

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Formal Complaint No.  
19-FC-48

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Lincoln Township Board of Trustees violated the Open Door Law.<sup>1</sup> Board Chairman Emory Lencke filed an answer to the complaint on behalf of the Board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the amended formal complaint received by the Office of the Public Access Counselor on June 26, 2019.

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<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8

## **BACKGROUND**

This case concerns an executive session convened by the Lincoln Township Board of Trustees on June 17th, 2019. More specifically the provision of an insufficient meeting notice, as well as the purposeful exclusion of the Township Trustee from said meeting.

On June 11, 2019, a Notice of Executive Session was posted stating that members of the Township Board would convene on Monday June, 17, 2019, at 5:30 P.M. “to conduct an executive session to: discuss matters regarding Lincoln Township.”

On the same day that the meeting notice was posted, the Lincoln Township Trustee Joseph Walsh was informed by email that he would be excluded from the executive session. Therefore the only people to attend the executive session, were the Board Members, Chairman Emory Lencke, Kendall Hendricks, and Donovan Peoples.

Finally, the Complainant alleges a violation on the part of the Township Board regarding an unnoticed meeting. Mantlo claims that the board members had discussions and took subsequent action, pertaining to the election of Mr. Peoples as the Township Secretary, outside of a public meeting.

In the response to the Complainant’s allegations, the Chairman of the Board, Mr. Lencke, concedes to calling an executive session. In his response the Chairman explains that he mistook an Executive Session to serve the same purpose as a Special Meeting. The Board’s intention was to convene a special meeting to discuss concerns raised by residents,

county elected officials, and media outlets regarding the current Lincoln Township Trustee.

Along with an apology for misusing an executive session, the Board denies any violation relating to Mr. Peoples' election as an officer.

### ANALYSIS

The principal issue in this case is whether the Open Door Law requires a Township Board to post specific notice of executive sessions and who must be allowed to attend those closed-door meetings.

#### 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).

Lincoln Township 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 Township Board ("Board") is the governing body of the Township 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. Executive Session Notice**

Mantlo takes exception with what he refers to as an “unauthorized executive session” and “a quorum violation.”

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).

A meeting, for purposes of the ODL, means a “gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c). “Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.

Notably, the ODL expressly states that “final action must be taken at a meeting open to the public.” Ind. Code § 5-14-1.5-6.1(c). “Final action” means “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.” Ind. Code § 5-14-1.5-2(g).

The upshot of these statutes is that a governing body must not vote on any motion, proposal, resolution, rule, regulation, ordinance, or order during an executive session. Instead, final action on public business, e.g., a vote, must occur at a public meeting.

In sum, if a governing body is voting during an executive session, that is a violation of the ODL. It is worth mentioning that a court has authority to void a decision taken at a meeting that violates the ODL. Ind. Code § 5-14-1.5-7(a)(3).

The Board Chairman appears to now appreciate the difference between a special meeting and an executive session. Thus, the Board should continue to be mindful that executive sessions are only permissible in the specifically authorized circumstances enumerated by the Indiana Code.

Moreover, votes and final binding decisions must not be made outside of a public meeting.

### **3. Executive Session Attendees**

Mantlo also complains about the exclusion of the Township Trustee from the executive session.

The Open Door Law does not specifically address who may be excluded from an executive session - other than bargaining adversaries in certain instances - but only addresses who may be involved: the governing body may admit those persons necessary to carry out its purpose. Ind. Code § 5-14-1.5-2(f).

As is often the case with municipal clerks and clerk-treasurers, it may be statutorily required to include another elected official if attending meetings of a governing body is contained in their enumerated powers and duties. And so it is with township trustees as the executive of a township. Indiana Code section 36-6-4-3(4) mandates a trustee to attend all meetings of the township board. An executive session is a meeting of the board for purposes of the ODL. Unless extraordinary circumstances apply, a township board must allow entry to an executive session by a trustee or a trustee's designee.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the actions of Lincoln Township Board constitute noncompliance with the Open Door Law and the Title 36 provisions regarding Township meetings. It appears to have admirably conceded at least some of these points and intends to correct its course moving forward.

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the right.

**Luke H. Britt**  
Public Access Counselor