
OPINION OF THE PUBLIC ACCESS COUNSELOR

DANIEL J. AXLER,
Complainant,

v.

THE TOWN OF ROCKY RIPPLE,
Respondent.

Formal Complaint No.
19-FC-6

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 Rocky Ripple violated the Open Door Law.¹ Town Council President Carla Gaff-Clark 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 January 18, 2019.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

This case is about whether a Town provided adequate public notice of a town board meeting for purposes of the Open Door Law when the notice identified the location of the meeting as “T.B.A.”

On January 10, 2019, the Town of Rocky Ripple posted the following public notice:

Official Notice

The Rocky Ripple Town Board will be meeting with Butler officials and DPW on Monday (1-14-19) 3-4:30 to discuss the next steps in the levee project.

(Location TBA)

Four days later, the Rocky Ripple Town Board (“Board”) gathered to discuss the levee proposal and explain an upcoming mailing with officials from the Indianapolis Department of Public Works (“DPW”) and Butler University. The meeting occurred on the campus of Butler University.

Daniel J. Axler (“Complainant”) maintains that he showed up at the posted time but found no meeting, presumptively at town hall. He contends that he emailed the Board and discovered the meeting had been moved to the campus of Butler University.

On January 18, 2019, Axler filed a formal complaint with this office alleging an Open Door Law violation based on defective public notice.

On February 7, 2019 the Board filed an answer to the complaint with this office. The Board contends that DPW called

the meeting and was the entity charged with securing the meeting location. The Board asserts that the meeting was not originally planned as a public meeting, but that changed when a second member of the three person Town Board decided to attend.

Although the Board's notice included the date and time of the meeting, the notice identified the location of the meeting as "TBA." While the notice was conspicuously placed in various locations, including Butler University where the meeting was being held, attendees were not directed to the correct building.

Essentially, the Board asserts that it did not have the information about the location of the meeting at the time it posted the notice because the DPW called for and scheduled, chaired, and set the agenda for the meeting, and Butler University scheduled the location. The Board contends it made best efforts to comply and the violation, if any, was technical in nature and inadvertent.

ANALYSIS

At issue in this case is whether the Rocky Ripple Town Board provided sufficient public notice under the Open Door Law as it relates to the location of the meeting on January 14, 2019.

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 parties agree that the Town of Rocky Ripple 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 parties do not dispute that the Town Board of Rocky Ripple ("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. Public Notice

Axler contends he was denied access to the Town Board's meeting with the Indianapolis Department of Public Works because the location of meeting was not included on the Town's public notice.

Under the Open Door Law, public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, must be given at least forty-eight (48) hours before the meeting. Public notice shall be given by the governing body by posting a copy of the notice at the principle office of the public agency holding the meeting, or, if no such office exists, at the building where the meeting is to be held. *See* Ind. Code §§ 5-14-1.5-5(a), and (b).

The term "place" is not defined by the ODL, but can be reasonably construed to mean the exact building where a meeting is scheduled to be held. If this was not the case, then "place" could be so broadly defined that the public would

have to guess where to show up in order to observe the meeting.

Therefore, failing to include the specific location of a meeting forty-eight hours in advance is more than a mere technical violation of the Open Door Law, it is a fundamental departure from the entire purpose of the statute.

Nonetheless, it does not appear the oversight was intentional, nor the omission a scheme to fool the public into confusion. That said, it should not happen again. A governing body, regardless of who is scheduling or planning a meeting, is responsible for giving notice to the public forty-eight hours in advance. That notice must contain the information set forth in Indiana Code section 5-14-1.5-5, including the specific place where the meeting is to be held.

The issue does not seem to be systemic and the harm to the public was likely mitigated by the Board taking official action (receiving information and deliberating) as opposed to taking final action. Even still, the Board should be mindful that even official action that does not amount to a vote or binding decision must be open to the public in a transparent, conspicuous way. I highly recommend the Board be mindful of these considerations going forward.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor