
OPINION OF THE PUBLIC ACCESS COUNSELOR

JOHN R. MOLITOR,
Complainant,

v.

GIBSON COUNTY BOARD OF COMMISSIONERS,
Respondent.

Formal Complaint No.
20-FC-128

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Gibson County Board of Commissioners (Commissioners) violated the Open Door Law.¹ Attorneys G. Michael Schopmeyer and Nicholas Golding an answer on behalf of the Commissioners. 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 August 31, 2020.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute alleging that the Board of Commissioners held a meeting in a location of which the public was not properly notified.

John Molitor (Complainant), on behalf of the himself and a group of Gibson County resident clients, alleges that on August 18, 2020, the Commissioners moved their meeting from the previously advertised Courthouse location, to the Toyota Events Center without proper notice. The time was also changed to 5:30 from 6:00 p.m. The meeting was held to establish a comprehensive plan and a zoning ordinance, both of which appear to carry with them some measure of controversy.

The original notice was published in a local paper on Wednesday, August 12 and updated two days later.

Additionally, a local reporter was not given individualized notice of the rescheduled location either, despite having requested such notice pursuant to Indiana code section 5-14-1.5-5(b)(2). The reporter provided supplemental evidence as to this point as well.

Molitor filed his complaint on August 31, 2020.

For its part, the Commissioners argue it posted proper notice at both the Commissioners' principal place of business and the location of the meeting and provided photos of the notices as evidence. August 14 was a Friday and therefore it would have been posted in compliance with the Open Door

Law as the meeting was held on Tuesday, August 18. Those notices indicated a 5:30 p.m. start time.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, 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).

Gibson County 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 Gibson County Board of Commissioners (Commissioners) is a governing body of the County 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 Commissioners must be open at all times to allow members of the public to observe and record.

1.1 Meeting

Under the ODL, a meeting is “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 infor-

mation; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d).

Moreover, “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).

1.2 Notice

Generally, under the ODL, the governing body of a public agency must provide public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows:

The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

Ind. Code § 5-14-1.5-5(b)(1)². Additionally, if local media requests individualized notice during the previous year, they are entitled to direct notice. *Supra* at (b)(2).

Here it appears as if the meeting was rescheduled, but appropriately so. Either anticipating a larger turnout for a controversial issue or ensuring public health and safety guideline compliance, the Commissioners moved the location from its usual location to an alternative site.

² Executive Order 20-04, Sec. 5, for the duration of the current public health emergency, allows an agency to post notice electronically as well

Notably, County Commissioners have an additional notice requirement for irregularly scheduled or “special” meetings. They must include in meeting notices the subject matter of the meeting. See Ind. Code § 36-2-2-8. Therefore, if the meeting was held at a different time than usual, it must post this additional notice. The Commissioners in this case appears to have done this as well based on the information provided by citing the Plan Ordinance.

Neither party seems to suggest the original notice which was reported in the local media was done intentionally as a diversion tactic or a “bait and switch”. It should be noted that a significant number of the community – over a hundred by the County’s count – were able to attend the meeting without issue. No one has informed this office they were unable to attend or were turned away.

The Commissioners concede that while the individual reporter was not notified, her publication was sent notice on August 14 of the change. It bears repeating that this office does interpret the relevant portion of the Open Door Law to require individualized notice to the actual media representative requesting that notice and not to the general newsroom or another staffer. Toward that end, the Commissioners have also indicated their intention to comply with this consideration in the future, even going to the lengths of scheduling a subsequent meeting to recertify the ordinance in question on September 15 with the reporter receiving the individualized notice this time.

Any technical deficiency in the media notice has been remedied and it appears as if very little, if any, harm has been visited on public access by the Commissioners in this case.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Gibson County Board of Commissioners has not violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor