
OPINION OF THE PUBLIC ACCESS COUNSELOR

TEAMSTERS LOCAL 135,
Complainant,

v.

CHESTERFIELD TOWN COUNCIL,
Respondent.

Formal Complaint No.
20-FC-83

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Chesterfield Town Council violated the Open Door Law.¹ Attorney Thomas Beeman filed an answer on behalf of the Board. 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 June 10, 2020.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute alleging the Chesterfield Town Council held an executive session for an improper reason and without providing public notice.

David Vlink (Complainant), on behalf of the Teamsters Local 135, alleges that on May 19, 2020, the Council held an executive session to consider and vote on Resolution No. 2020-4, which concerned scheduling for the Chesterfield Police Department. Vlink also claims that the Board failed to post a notice for this meeting. Vlink argues that the Council violated the Open Door Law by not posting a public notice and by discussing and voting on a resolution during an executive session.

Vlink submitted the resolution with the complaint that appears to be a true and accurate copy. It is signed by four of the five Council members and the Chesterfield Clerk-Treasurer.

On June 18, 2020, the Council filed a response to the complaint through attorney Thomas Beeman. In sum, the Council argues that Vlink failed to state a claim under the Open Door Law. Additionally, the Council asserts that since the complaint concerns a labor issue it has nothing to do with the ODL; and thus, the complaint is frivolous and meritless.

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).

The Town of Chesterfield 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 Chesterfield Town Council (Council) is a governing body of the Town of Chesterfield 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.

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 information; (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 Action outside of a public meeting

Vlink and the Teamsters contend that the Council adopted Resolution No. 2020-4 outside of a public meeting at an improperly noticed executive session.

Under the ODL, “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 ODL requires a governing body to take all final action at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c).

Irrespective of the type of meeting, the adoption of a resolution absolutely requires a vote.

The claim that Vlink and the Teamsters have not stated a claim in the complaint is a curious one. The grounds for a formal complaint are governed by statute. *See* Ind. Code § 5-14-5-6. A defective executive session or final action taken outside of a public meeting falls squarely within those statutory grounds. Frankly speaking, this office is flummoxed by the Council’s response.

Given the lack of a meritorious defense, this office will therefore take the Teamsters allegations as true. It matters not the subject matter, if the Council ratified a resolution outside of a public meeting a violation has occurred under the ODL.

Interestingly enough, there is an executive session statute that authorizes a governing body of a town to engage in collective bargaining strategy discussions for labor issues.² If the board of a municipality would like to speak about these matters privately, it may do so simply by invoking this subsection in a notice. Then it may go into executive session to strategize.

Without such notice, however, a governing body may not hold any discussion as a majority. Moreover, it may never, under any circumstances, ratify a resolution outside of a public meeting.

² Ind. Code § 5-14-1.5-6.1(b)(2)(A).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Chesterfield Town Council 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