
OPINION OF THE PUBLIC ACCESS COUNSELOR

MATTHEW NORTH BURLINGAME,
Complainant,

v.

MANCHESTER COMMUNITY SCHOOLS,
Respondent.

Formal Complaint No.
21-FC-156

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Manchester Community Schools violated the Open Door Law.¹ Attorney Mark Frantz filed a response to the complaint on behalf of the Schools. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

¹ Ind. Code § 5-14-1.5-1 to -8.

the formal complaint received by the Office of the Public Access Counselor on September 27, 2021.

BACKGROUND

This case involves a dispute about whether a committee created by the Board of Trustees for Manchester Community Schools (“MCS”) is subject to the Open Door Law (ODL).

On August 30, 2021, the MCS Board held a special meeting wherein it unanimously approved 7-0 the formation of a committee to review and recommend additional changes to the district’s COVID reentry plan. Part of the committee’s responsibility involved considering whether MCS should mandate masks for students and staff based on available data. The makeup of the committee was likewise recommended by the Board.

The committee consisted of two school board members, three medical professionals, two MCS administrators, one teacher, and three specialty guests. The committee met five times in September but did not keep minutes for the meetings.

On September 23, 2021, the Board unanimously adopted—without further discussion—the committee’s recommendations except the mask mandate. The Board addressed that issue separately and ultimately approved a modified version of the committee’s mask recommendation.

Four days later, Matthew North Burlingame (Complainant) filed a formal complaint alleging the MCS committee, which he refers to as the “Mask Committee” violated the ODL. Specifically, Burlingame contends the committee held meetings

privately, failed to provide public notice of the meetings, and failed to make meeting minutes available to the public.

On October 18, 2021, MCS filed an answer to the complaint denying Burlingame's claims. Although MCS concedes that the school board approved the formation of the committee to review and recommend changes to the district's reentry plan, it argues that the Open Door Law does not apply because the committee is neither a public agency nor a governing body of a public agency for purposes of the ODL.

At the same time, MCS contends that the board merely recommended the makeup of the committee but did not directly appoint its members.

MCS contends that if the committee were to become subject to the Open Door Law, it would lead to a slippery slope where every staff or administrator meeting would be subject to the law too.

ANALYSIS

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).

There is no dispute that the Manchester Community Schools (MCS) 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(a). Additionally, the MCS school board (“Board”) is a governing body of the agency for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, 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.

Here, the issue here is whether the MCS committee created by the Board at its meeting on August 30, 2021, is subject to the law.

2. ODL applicability to committees and other bodies

The Open Door Law, subject to limited exceptions, applies to all meetings of the governing bodies of public agencies. Ind. Code § 5-14-1.5-3(a). What constitutes a public agency is governed by statute. Ind. Code § 5-14-1.5-2(a)(1)–(7). Additionally, the ODL defines “governing body.” Ind. Code § 5-14-1.5-2(b).

Here, the parties disagree about whether the Open Door Law applies to the MCS committee created by the board in August. MCS contends the committee is not subject to the ODL because the committee is neither a public agency nor a governing body of a public agency.

The MCS Board—undoubtedly a governing body under the ODL—approved the creation and makeup of the committee, however, its roster was not formally ratified by the board.

The ODL includes three definitions of “governing body.”

“Governing body” means two or more individuals who are any of the following:

- (1) A public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business.
- (2) The board, commission, council, or other body of a public agency which takes official action upon public business.
- (3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Ind. Code § 5-14-1.5-2(b). In this context, the only public agency at play is the school corporation itself. Therefore, subsection (b)(1) can be eliminated from the discussion leaving the latter two definitions.

Turning then to subsection (b)(2), the advisory committee is, unquestionably, a deliberative assembly akin to a board, commission, council, or other body. However, MCS seemingly suggests the committee did not have any power to exercise any function of the Board therefore it could not take official action on public business.

“Official action” means to: receive information; deliberate; make recommendations; establish policy; make decisions; or

take final action. Ind. Code § 5-14-1.5-2(d). Even if the advisory committee did not have the authority to make binding decisions or take final action, it certainly took official action at its meetings.

The question remains whether the committee took its official action on public business.

“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). If a governing body is delegated authority to take official action on its agency’s public business, it satisfies the definition of Indiana Code section 5-14-1.5-2(b).

MCS concedes the Board formed the committee for a specific purpose: to review and recommend additional changes to the district’s COVID reentry plan. This is MCS’ public business by any legitimate and reasonable definition. By all accounts, the MCS Board commissioned the committee to do a portion of the school board’s work.

MCS asks this office to take a position whereby a governing body can outsource its work to a third-party group of designees as an end-around to the Open Door Law. It does so in light of one of the most controversial subject matters facing schools at the moment.

This office declines to do so. The advisory committee should have been subject to the Open Door Law.

2.1 Direct appointment

Even if the reader takes an alternative position on the interpretation of Indiana code section 5-14-1.5-2(b)(2), arguably subsection (b)(3) applies in this case as well.

There exists a great fiction in the Open Door Law interpretation that direct appointment of committee *members* is the operative trigger for qualification.

While it is true that a committee must be directly appointed to conduct public business on a governing body's behalf, but case law and statute are silent on the element of membership. It is the committee that is appointed to take action, not individuals.

Both controlling cases on this issue - *Frye v. Vigo County*, 769 N.E.2d 188 (Ind. Ct. App. 2002) and *Robinson v. Indiana University*, 638 N.E.2d 435 (Ind. Ct. App. 1994) – focused not on the roster of a committee, but its relationship with the establishing governing body. Both cases were ultimately concerned with the origin of the power to act, i.e. from who was their authority to act derived. Both cases dealt with authority bestowed by powers other than the original governing body. Here, however, the committee was directly appointed to advise the governing body and public agency on matters of the district's reentry plan.

We are required to liberally construe the statute in order to give effect to the legislature's intention. Unless an exception applies, "all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record

them.” Ind.Code § 5-14-1.5-3(a). All doubts must be resolved in favor of requiring a public meeting and all exceptions to the rule requiring open meetings must be narrowly construed with the burden of proving the exception on the party claiming it. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 70 (Ind.Ct.App.2001), *reh’g. denied, trans. denied*.

The MCS advisory committee meetings should have been subject to the Open Door Law. To conclude otherwise would erode the intent of the law and is a semantic leap this office is not prepared to make.

Public agencies will often cry foul at this analysis by claiming it will subject all gatherings of rank-and-file staff or department heads to the reach of the Open Door Law, which would create a burdensome impracticality.

This is not so.

This argument falls flat because random gatherings of staff or employees are not directly appointed to perform a specific undertaking. Governing bodies like the school board and its committees recommend, adopt, and mandate policy and rules; staff execute their vision. While the former is subject to Open Door Law requirements, the latter is not.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the MSC advisory committee is subject to the Open Door Law. As a result, MCS did not comply with the Open Door Law by holding five separate closed door meetings.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor