
OPINION OF THE PUBLIC ACCESS COUNSELOR

SEAN SMITH,
Complainant,

v.

MADISON COUNTY PLANNING COMMISSION,
Respondent.

Formal Complaint No.
21-FC-70

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Madison County Planning Commission violated the Open Door Law.¹ Executive Director Brad Newman filed an answer on behalf of the Commission. 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, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider the narrow issue of whether the Open Door Law establishes specific rules regarding the location selected to post agendas for public meetings.

On June 10, 2021, Sean Smith (Complainant) filed a formal complaint with this office alleging the Madison County Planning Commission violated the Open Door Law by refusing to publish agendas and meeting minutes on the County website. Furthermore, Smith contends that the Commission refuse to post the agenda or notices at their office. Specifically, the complaint references a meeting held on June 8, 2021, which Smith attended and claims that there was no agenda posted at the location entrance.

On June 29, 2021, the Commission filed an answer to Smith's formal complaint denying any violation of the Open Door Law. The response, submitted by the Commission's executive director simply states that a copy of the agenda for each Plan Commission and Board of Zoning Appeals Meeting is posted on the bulletin board at the front of the Planning Department a minimum of five days before every meeting per county ordinance.

The response noted that the bulletin board utilized for posting their agendas is not the one cited by the Complainant, however, they argue that by posting the agendas outside the Department Office they are fulfilling the notice requirement.

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).

Madison County is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the Madison County Planning Commission (Commission) is a governing body 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 Commission must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

Under the ODL, "meeting" 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. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines "final action" as "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 also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

Additionally, “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).

2. Smith’s claims

The crux of the dispute concerns the location of notices in relation to the location of Commission meetings.

The Complainant contends the Commission falls short of legal requirements by not posting notice on the county website or at the entrance to the meeting room.

2.1 Agendas

A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. *See* Ind. Code § 5-14-1.5-4(a).

First, this statute contemplates the use of an agenda – one is not strictly required. However, it does require one be publicly available if one is used. Here, it appears as if the Commission does in fact utilize an agenda.

Secondly, agendas are required to be posted in a designated area – the meeting location itself. As discussed below, notices are different but the Open Door Law is clear that itineraries are to be posted at the actual meeting location and not in another office or location in the building.

According to the executive director of the Commission, local rules dictate the location of the agenda be posted as the Plan Commission Office.

While it may seem like semantics, the state statute does dictate the specific location – the entrance to the meeting place. Because state statute preempts local ordinance when there is a conflict, the statute wins out. To that end, the local rules should be changed to come into compliance with the Open Door Law.

2.2 Notice

Insofar as notice is concerned, there is a little more flexibility here. The notice can be posted at *either* the meeting location *or* the governing body's principal place of business. Internet notice is not contemplated by the Open Door Law for local governing bodies. See generally Ind. Code § 5-14-1.5-5.

In this case, so long as the notice is posted in one of these two places, the Commission has satisfied the law. And it appears as if they have in this case.

In terms of practice and good governance, both agendas and notices, regardless of posting locations, should be conspicuous and readily viewable by passers-by and interested members of the public. That simply means they should not be intentionally posted in the dark, hidden hallways of a courthouse or town hall.

That certainly does not appear to be the case here. The agenda issue, while a technical violation, is not a substantive one. It was still posted, albeit in another location in the same building. I am disinclined to take the Commission to

task over a technical issue so long as they take steps to remedy the matter going forward.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Madison County Land Use and Development Code is in conflict with the Open Door Law in terms of agendas and should be updated to reflect conformity with the law. The Commission's practice regarding notices is compliant.

A handwritten signature in black ink, appearing to read 'LHB', is positioned to the right of the conclusion text.

Luke H. Britt
Public Access Counselor