
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMESON A. WARREN,
Complainant,

v.

ABINGTON TOWNSHIP ADVISORY BOARD,
Respondent.

Formal Complaint No.
24-FC-29

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Abington Township Advisory Board, violated the Open Door Law.¹ Attorney Joel E. Harvey filed an answer on behalf of the Township 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 March 29, 2024.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

These issues in this case include whether the Abington Township Advisory Board violated the Indiana Open Door Law. For clarity's sake, the background portion of this opinion may have more heightened detail and context than other opinions from this office, as they are germane to the underlying controversy.

Abington Township in Wayne County, Indiana has, of course, an elected Trustee and Advisory Board. Fire protection is served by a volunteer fire department, the Abington Township Volunteer Fire Department, Inc. (AVFD). Like many volunteer fire departments, it is established as a non-profit and is contracted with the Township. The AVFD has a "membership committee" (Committee) that makes personnel decisions.

The Complainant, Jameson Warren, is a former employee of the AVFD. On March 18, 2024, Warren received notice of his dismissal from the Committee due to his behavior in a monthly business meeting.

The fire chief was also suspended by the Committee that same day. Subsequently, the Township Advisory Board – the body with oversight of the chief – removed him as chief after a 2-1 vote during a public meeting on March 27. The chief was removed, according to the Township Trustee, for a breach of contract involving stipend distributions to department officers.

Warren (and the former fire chief) sees the issue differently and posits that both he and the chief were let go for report-

ing an issue with the purchase of a fire truck. Based on information provided and gathered, the Trustee allegedly used AVFD letterhead and the chief's electronic signature (without his knowledge) to solicit equipment from another fire department. Warren sent an email on March 13 to the Advisory Board after conversations with the State Board of Accounts. He urged the Trustee to remedy the situation. According to reports, this matter is, or was, under criminal investigation².

While those details cannot be substantiated or adjudicated by this office, they inform the timeline of the public access dispute. Warren also asserts Constitutional First Amendment and whistleblower concerns, but those are both matters outside the scope of this office and will not be addressed.

After the action taken by the Committee on March 18, the Township Advisory Board was scheduled to meet on March 20 at its regularly scheduled meeting. This meeting was rescheduled for March 27, when the Board voted on the chief's removal. Additionally, an executive session was noticed to take place immediately before the rescheduled public meeting. Notices of both gatherings were posted on March 19, and both were set to begin at 5:30 p.m. The executive session was to receive information about an individual's misconduct. Notably, the executive session did not take place, but the Board entered directly into the public meeting at 5:30 p.m.

² <https://westernwaynenews.com/abington-township-board-removes-fire-chief/>

Warren alleges that the notice was deficient based on the timing of the meeting. Additionally, he contends that an executive session would not have been warranted as the fire chief is not an “employee” pursuant to Indiana code section 5-14-1.5-6.1(b)(6). He also contends the VFD Committee did not post notice of its meeting on March 18 when it took action against both Warren and the chief.

For its part, the Township responded on April 22, 2024. It contends that the contractual relationship between the AVFD and the Township stipulates that the Township is the appointing authority of the fire chief.

It concedes that the March 20 meeting was rescheduled to March 27 and notice was posted of the rescheduling on March 19. The motivation behind the rescheduling was the Committee’s actions the prior day. The Advisory Board did not hold an executive session as scheduled and instead entered into a public meeting on March 27 at 5:30 p.m. and the fire chief was removed after a vote. Notably, all public meetings of the Advisory Board were also scheduled at 5:30 p.m.

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 Abington Township is a public agency for the purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Township Advisory Board is the Township's governing body. 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. Meeting cancellation and rescheduling

First, Warren contends the meeting cancellation and rescheduling was handled improperly.

Under the Open Door Law, the governing body, including committees, of a public agency must give 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).

The law is silent, however, on cancellation. While this office often recommends that cancellation be conspicuously announced as a courtesy when practical, no notice legally must be given. It can be cancelled on the spot.

Rescheduling, however, would require the same notice as any other regular meeting³. Here, when the notice for the rescheduled meeting was posted on March 19 for March 27, all legal requirements were satisfied.

So long as this notice was given more than 48 hours in advance of this meeting, which appears to be the case, the Advisory Board has complied with the ODL in this regard.

3. Executive Session for discussion of misconduct

Due to the concerns of the community and the Advisory Board, there was an intention to have an executive session to discuss the allegations made against the fire chief. An executive session may be held in the following circumstances:

With respect to any individual over whom the governing body has jurisdiction:

- (A) to receive information concerning the individual's alleged misconduct; and
- (B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:
 - (i) a physician; or
 - (ii) a school bus driver.

³ Note that rescheduling is mutually exclusive from reconvening. See Ind. Code § 5-14-1.5-5(a).

Ind. Code § 5-14-1.5-6.1(b)(6). It appears as if Warren takes exception to this executive session because, although the Township does indeed have contractual jurisdiction over the chief, he is not an employee of the Township.

We agree.

Since the fire chief was not an employee of the Township, the Advisory Board would not have had legal authority to conduct an executive session. The same would be true if it met to discuss any other service provider with whom the Township had a contractual relationship. Without more, the appointment authority over the chief position was not enough to transform him into a Township employee.

Mr. Warren also alleged that the Board must have held a meeting outside of the public meeting on March 27, 2024, because the Board did not have extended discussion regarding the allegations against the fire chief.

This concern is well-taken and suggests the Board already had drawn a foregone conclusion about the fate of the chief's status. While this cannot be substantiated – this office does not take authenticated evidence or sworn testimony – it underscores the importance of robust discussion prior to taking final action.

Finally, the notice of both gatherings – the executive session and the public meeting – is of concern, albeit from a technical aspect. All meetings of governing bodies must have particularized start times so that the public knows when to attend. Both the executive session and the public meeting were advertised to begin at 5:30 p.m. They should have had distinct start times to alleviate any confusion. Since the executive session did not take place, however, this concern is

moot. In the future, however, care should be taken to have pinpoint commencement times. See also Ind. Code § 5-14-1.5-5(h)⁴.

4. Abington Volunteer Fire Department Committee

After review, it appears that the public access issue that is the most troubling is potential non-compliance on the part of the AVFD.

As Mr. Harvey correctly notes, the VFD is a non-profit entity. Nonetheless, the courts treat volunteer fire departments as instrumentalities of the state and this office does as well.⁵ The crux of that argument is that fire protection is a core government function. Public agency is defined as:

Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

Ind. Code § 5-14-1.5-2(a)(2). It follows then that any governing body of the AVFD is subject to the Open Door Law. A governing body is defined as any of the following:

⁴ Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting.

⁵ *Ayres v. Indian Heights Volunteer Fire Department*, 493 N.E.2d 1229 (Ind. 1986); *Veolia Water Indianapolis, LLC v. Nat'l Trust Ins. Co.*, 3 N.E.3d 1 (Ind. 2014); *Opinion of the Public Access Counselor* 09-FC-134; Ind. Code § 34-13-3-22

- (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. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

Ind. Code § 5-14-1.5-2(b). Here, chances are good that the AVFD would be considered a public agency and its membership committee a public governing body subject to the Open Door Law even though it is established as a non-profit entity.

By taking action outside of a public meeting in regard to Warren and the fire chief, a violation of the law may have occurred. We cannot say definitively here without a response from the AVFD, but the likelihood of a violation is seemingly high.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Advisory Board for the Township of Abington did not violate the Open Door Law but may seek to clean up some technical issues to ensure absolute compliance.

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

Luke H. Britt
Public Access Counselor

Issued: June 4, 2024