



STATE OF INDIANA

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September 27, 2019

Ann M. Ennis

VIA EMAIL: anna.ennis@evsck12.com

Re: Informal Inquiry 19-INF-17; Executive Sessions

Dear Ms. Ennis,

This is in response to the informal inquiry you submitted to our office on September 4, 2019. Specifically, you raise four questions in your inquiry, which I respond to in turn.

- 1. The EVSC Board of School Trustees meets in Executive Session two hours before every Regular Meeting of the EVSC Board of School Trustees. This equals 22 two-hour Executive Sessions a year: more time in Executive Session than Regular meetings. Is this advisable and or legal?**

This office consistently advises governing bodies to use executive sessions sparingly. Under the Open Door Law, executive sessions are only available for a limited number of subject matters. *See* Ind. Code § 5-14-1.5-6.1(b)(1) to (15). As a result, a governing body should only convene in executive session for one or more of those specific purposes. Granted, there are times where the need to meet in executive session may increase. Even so, these meetings are the exception and not the rule. As a result, an executive session likely should not be held before every meeting of the board or exist as a standing meeting on the board's schedule unless extraordinary circumstances apply.

- 2. In the August 12 and August 26 Executive Session, we discussed changing the Public Comment Policy and Procedure to match that of the Evansville-Vanderburgh Public Library. We discussed why we need to do this, what the new language would be and going forward with Superintendent working with School Board Legal Counsel to draft new Public Comment language. Is this an acceptable topic to discuss in Executive Session?**

No. The Open Door Law authorizes executive sessions in limited instances. There is no statutory authorization to meet in executive session to discuss the board's public comment policy and procedure. Those statutory authorizations are found at Ind. Code § 5-14-1.5-6.1, et. al.

3. **Currently we are in negotiation with unions/staff for contracts. Negotiation strategy is an approved Executive Session topic, but if an offer has been presented, is a presentation from the labor/teacher side to defend the offer 1) possible? 2) recommended? And 3) done in Executive Session or in public regular meeting? Is there a difference between “negotiation strategy” and verifying the accuracy of offers as explained by a second party?**

The Open Door Law authorizes a governing body to meet in executive session to discuss strategy with respect to collective bargaining. Ind. Code § 5-14-1.5-6.1(b)(2)(A). At the same time, the statute expressly states that “all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.” Discussing an offer for acceptance or counter-offers could be part of that strategy and is allowed in an executive sessions. The bargaining adversary cannot be in the executive session, however, even for clarification purposes.

4. **During Executive Session, legal counsel sits outside the room. We have a habit of calling counsel into the room when there is disagreement on appropriateness of topic, and then going through a several minute abridged recap: “he said, she said.” This also intimidates the person who has to get up and retrieve the attorney. Is it advisable that the legal counsel sit in the room during Executive Sessions to assure adherence to the Open Door Laws in context?**

Under the Open Door Law, executive sessions are meetings from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. Ind. Code § 5-14-1.5-2(f). At the same time, our courts have observed that public agencies may not seek legal advice from their attorneys in private about matters which are not related to litigation. *Simon v. City of Auburn, Ind., Bd. of Zoning Appeals*, 519 N.E.2d 205 (Ind. Ct. App. 1988). In the context of the appropriateness of an executive session meeting topic, however, it may be advisable for legal counsel to be consulted in real-time to ensure compliance. Whether the attorney is in the meeting or waiting outside is a matter of local governance and this office does not have a recommendation either way.

Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt
Public Access Counselor