



STATE OF INDIANA

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March 12, 2020

B Square Beacon
David M. Askins
110 ½ E. 6th Street
Bloomington, IN 47408

Re: Informal Opinion 20-INF-1; ODL caucus exception

Dear Mr. Askins:

This informal opinion is in response to your inquiry about whether a governing body where every official belongs to the same political party may rely on the political caucus exception under the Open Door Law to convene privately. In accordance with Indiana Code section 5-14-4-10(5), I issue the following informal opinion to your inquiry.

BACKGROUND

The Common Council for the City of Bloomington consists of nine Democrats, which means the entire membership of the council belongs to the same political party. As a result, you presented the following question in your informal inquiry:

Can a 9-member city council composed of 9 members of the same political party avail itself of the ODL caucus exemption by convening regular roughly monthly gatherings of just councilmembers to receive information, deliberate expected issues, and hold discussions concerning anticipated official action and public business?

As usual, before examining the scope of an ODL exception, it make senses to briefly consider the rule.

ANALYSIS

1. 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. Toward that end, 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).

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).

The term “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).

In other words, unless an exception applies, if at least five members of the Bloomington City Council gather for the purpose of taking official action—as defined above—on any function upon which the city is empowered or authorized to take official action, then the gathering constitutes a meeting subject to the Open Door Law.

Notably, a caucus is an exception from the definition of meeting under the Open Door Law. Ind. Code § 5-14-1.5-2(c)(4). In other words, caucuses are not subject to the ODL.

2. ODL caucus exception

As set forth above, the Open Door Law removes a caucus from the definition of meeting. So, what is a caucus for purposes of the ODL?

Under the ODL, the term “caucus” means:

A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussion designed to prepare the members for taking official action.

Ind. Code § 5-14-1.5-2(h). The question here is whether this exception would apply to a monthly gathering of all nine members of the Bloomington City Council, who are all Democrats, to receive information, deliberate expected issues, and hold discussions concerning anticipated official action and public business.

3. Meeting v. caucus

As a preliminary matter, it is worth mentioning that one of statutory powers of the public access counselor is to issue opinions interpreting the state’s public access laws. *See* Ind. Code § 5-14-4-10(6). As part of providing interpretive guidance, this office first examines Indiana case law for any binding precedent or other instructive guidance from our courts.

To be sure, Indiana courts have had little opportunity to interpret the caucus exception embedded in the ODL. Even so, we are not completely without judicial interpretation.

In *Evansville Courier v. Willner*, the Indiana Court of Appeals held that the private meetings and discussions between two county commissioners—both Democrats—regarding the hiring of a fellow Democrat as superintendent of county buildings were not political caucuses exempt from the Open Door Law. 553 N.E.2d 1386 (Ind. Ct. App. 1990), *vacated in part, adopted in part* by 563 N.E.2d 1269 (Ind. 1990).

In *Willner*, the court reversed as clearly erroneous the trial court’s conclusion that the commissioners’ discussions “merely constituted the planning of political strategy and the

preparations for final action by fellow Democrats.” *Id.* at 1390. The court reasoned, in part, that “one of the Commission’s functions, for which it had authority to take final action, was the hiring of a new Superintendent of County buildings who would also serve as Administrative Assistant for the Commission.” *Id.* at 1389. The court’s line of reasoning tracks with the ODL’s definition of “public business.” *See* Ind. Code § 5-14-1.5-2(e).

Notably, the Indiana Supreme Court granted transfer in the case and adopted the court of appeals opinion in part and vacated it in part. *Evansville Courier v. Willner*, 563 N.E.2d 1269 (Ind. 1990). In essence, our supreme court left the court of appeals’ holdings intact but wrote to clarify the scope of the caucus exception.

At the same time, the Indiana Supreme Court observed that a political caucus is not transformed into meeting subject to full public scrutiny under Open Door Law merely “if the persons attending such meetings happen to constitute a majority of a governing body.” *Id.* at 1271.

Although the Indiana Supreme Court’s analysis in *Willner* is far from exhaustive, it adopts the court of appeals’ holding acknowledging that the ODL caucus exception did not apply when the majority of a governing body took official action on public business. Two Democratic county commissioners met several times, deliberated, and took final action on public business without a public meeting. Since they were both Democrats, the two commissioners relied on the ODL caucus exception to make their actions lawful based on their political party affiliation.

The trial court ruled that the caucus exception applied to the commissioners’ gatherings, the Indiana Court of Appeals reversed the trial court’s conclusion as clearly erroneous, and the Indiana Supreme Court adopted that holding.

This office agrees.

A caucus is certainly a vehicle for taking official action on the political party’s business, which is why a caucus is not subject to the ODL. The goal of the ODL is to ensure the people are informed on the business of the public, not political parties.

A city’s legislative body is to carry out its roles and duties pursuant to Indiana Code section 36-4-6 et.al in a public meeting. None of those enumerated powers are necessarily political in nature; they are public. Therefore to the extent any caucus purports to take official action on those duties germane to a governing body’s powers, it is a subversion of the Open Door Law.

Conversely, a public meeting is not intended to include internal discussions of a political party’s strategy, methodology, or ideology in terms of its platform or strategy. Those are items for a caucus.

CONCLUSION

In the end, a governing body where all officials are members of the same political party may not rely on the Open Door Law's caucus exception to take official action on public business. A caucus is appropriate for planning political strategy and the preparations for official action by fellow political party members.

To conclude otherwise would short circuit the legislature's intention that public agencies conduct business openly.

Please do not hesitate to contact me with any questions.

Best regards,

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

Luke H. Britt
Public Access Counselor