



STATE OF INDIANA

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December 15, 2020

Mr. Joseph C. Svetanoff
Kopka Pinkus Dolan, PC
9801 Connecticut Drive
Crown Point, IN 46307-1000

Re: Informal opinion; 20-INF-12; Appropriate decorum during executive sessions

Dear Mr. Svetanoff,

This informal opinion is in response to your inquiry regarding board member decorum during executive sessions. In accordance with Indiana Code section 5-14-4-10(6), I issue the following informal opinion. Your general inquiry seeks this office's advice on executive sessions. You seek guidance not necessarily on procedure such as notice and memoranda, but rather the best practices to preserve the integrity of an executive session.

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).

A notable exception to the above-mentioned rule is an executive session. Under the ODL, the term "executive session" means "a meeting 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).

It has been noted by this office that special circumstances give rise to the necessity of executive sessions. Those situations are narrow in scope and the General Assembly has carved out these executive sessions for practicality's sake. They are subject matters sensitive enough to warrant a closed-door meeting. Found at Indiana Code section 5-14-1.5-6.1, executive sessions should be held judiciously and only when necessary to address delicate matters.

This office closely scrutinizes executive session issues. Being an instance of opacity, it is important that compliance is taken seriously, even when the session

is justified. Likewise, final action is never to be taken outside an open public meeting.

By their nature, however, executive sessions require discretion on the part of those allowed in the room to discuss these sensitive matters. Otherwise, the purpose of the meeting may be compromised.

In order to preserve the integrity of these gatherings, caution should be exercised to ensure information is not leaked which might jeopardize the underlying reason for holding the meeting.

The following assumes the executive session is justified and sound and properly held pursuant to the Open Door Law.

As a rule of thumb, executive sessions should not be recorded. The recording itself becomes a public record and could be subject to disclosure pursuant the Access to Public Records Act. A recording of an executive session may or may not fall into an exemption to disclosure under the APRA. Again, this would defeat the purpose of the executive session.

Accordingly, leaking information from an executive session would also serve only to frustrate the process. Unless there is board consensus that information be disclosed, executive sessions should be like Vegas: what happens there stays there.

These means that texting or emailing during the session about details of the gathering is considered poor practice, as is verbally communicating those details to others after the meeting.

A proper executive session should be held in a vacuum with particulars only privy to those in the room. While information may be brought to a subsequent public meeting, that is the decision of the board and not an individual member.

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