

Ms. Pam Young, President
Johnson County Council
8959 S. Peoga Road
Trafalgar, Indiana 46181

Re: PAC Opinion 99-3; Attendance of a majority of a governing body at workshop conducted by a private consulting firm and the Open Door Law.

Dear President Young:

You have asked for an opinion as to whether the attendance of a quorum of the Johnson County Council or the Johnson County Board of Commissioners at a workshop sponsored by a private firm constitutes a meeting subject to the requirements of the Indiana Open Door Law, Indiana Code §§5-14-1.5, et seq. For the reasons set forth below, it is my opinion that, if a majority of any governing body attends such a workshop, that gathering is a meeting subject to the requirements of the Open Door Law.

Background

According to your letter of April 30, 1999, and the attachments, a private consulting firm that provides services to Johnson County Board of Commissioners has invited you and others to attend a workshop concerning human resources matters, including but not limited to medical, death and disability benefits, retirement and hiring. The cover letter for the workshop states that presenters have been asked, "especially to comment relative to the opportunity for a professional to save the County several dollars for each dollar spent specifically on Human Resources activities." You have been informed that all three members of the board of county commissioners will attend this event.

Your local attorney has advised you that this gathering is not governed by the Open Door Law because you will only be receiving information, however, he did admit that this alone constitutes official action for the purposes of the Law. Your attorney noted that since this gathering was "educational" in nature, it was not subject to the requirements of the Open Door Law. Your concern is whether such a gathering, when a quorum or majority of any one governing body is present, constitutes a meeting under the Open Door Law.

Analysis

Under the Open Door Law, a meeting is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." I.C. 5-14-1.5-2(c). For county councils and boards of county commissioners, a quorum is generally a simple majority of the members of those bodies. I.C. 1-1-4-1. "Official action" includes receiving information, deliberating, and making recommendations and decisions, establishing policy or taking final action. "Public business" includes any function upon which the public agency has the power or is authorized to take official action. I.C. 5-14-1.5-2(e).

If a gathering is a "meeting" open to the public under the Open Door Law, the governing body must post notice of the date, time and place of the meeting forty-eight hours in advance of the meeting under Indiana Code §5-14-1.5-5. There are other meetings from which the public may be excluded, or executive sessions, which require the same type of notice as public meetings under Indiana Code §5-14-1.5-6.1. In addition to notice, Indiana Code §5-14-1.5-3 states that at meetings open to the public, the public must be provided with an opportunity to observe, attend and record the proceedings.

There are gatherings when a majority of the members of a governing body may be present that do not constitute "meetings" for the purposes of the Open Door Law. These are:

1. Any social or chance gatherings not intended to avoid this chapter [the Open Door Law];
2. Any on-site inspection of a project or program;
3. Traveling to and attending meetings of organizations devoted to the betterment of government; or
4. A caucus.

Indiana Code §5-14-1.5-2(c)(1-4). The question remains whether the proposed human resources workshop fits within any of the four exceptions listed above and are, therefore, exempt from the requirements of the Open Door Law.

First, the planned workshop would not likely be considered a social occasion or a chance gathering since members of the two governing bodies would have received some type of invitation or agenda such as the one that accompanied your request for an opinion. While the dinner before the workshop may be considered social in nature, the workshop itself would not.

There is no plan to inspect any current project or program administered by the Johnson County Council or the Johnson County Board of Commissioners, rather the gathering would be focused on various issues affecting the county as an employer. The on-site inspection exception would not be applicable.

The intended gathering is also not a caucus as defined in the Open Door Law.

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

Indiana Code 5-14-1.5-2(h). This exception permits members of the governing body to meet to plan strategy and discuss matters in preparation for taking official action, which would include receiving information. If official action were taken at a "caucus," the gathering would then be considered a meeting under the Open Door Law. See, *Evansville Courier v. Willner*, 563 N.E.2d 1269 (Ind. 1990). Receiving information is official action under the Open Door Law, and therefore, the caucus exception would not apply to the proposed workshop.

The remaining exception is the exception for travel to and attendance at meetings of organizations

devoted to the betterment of government, such as the Association of Indiana Counties. These gatherings hosted by such organizations are often educational in nature. While public employers must be concerned about personnel issues, it is unlikely that the private consulting firm in question is an organization devoted to the betterment of government contemplated by this exception .

None of the exceptions to what constitutes a "meeting" under the Open Door Law apply to the facts presented. The human resources workshop proposed by the private consulting firm, according to the agenda, would provide attendees with information about various employment relations topics including items specifically directed at issues which are public business for your county-the employment of human resources professionals as a means of saving the county money. Clearly, any members of any governing bodies in attendance would be receiving information, which is considered taking official action on public business under the Open Door Law.

There are also no exceptions in the Law or any other statute that would carve out "educational" presentations from the official action of receiving information. The policy of the Open Door Law is that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the public may be fully informed...[the] provisions of [the Open Door Law] are to be liberally construed with the view of carrying out its policy.

Indiana Code 5-14-1.5-1. Therefore, if a majority of the members of either the Johnson County Council or the Johnson County Board of Commissioners attends the proposed workshop, the requirements for notice and opportunity for the public to attend, observe and record the meeting must be met.

Conclusion

It is my opinion that, if a majority of any governing body attends a workshop conducted by a private consulting firm to take official action, such as receiving information, concerning public business, that gathering is a meeting subject to the requirements of the Open Door Law.

Sincerely,

Anne Mullin O'Connor