



# STATE OF INDIANA

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October 18, 2013

Mr. Lee Jackson  
707 East 3<sup>rd</sup> St.  
Fowler, IN 47944

*Re: Formal Complaint 13-FC-281; Alleged Violation of the Open Door Law by the Otterbein Public Library Board*

Dear Mr. Jackson,

This advisory opinion is in response to your formal complaint alleging the Otterbein Public Library Board ("Library") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Library, by Mr. Jud Barce, Esq., responded to your complaint. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 18, 2013.

## BACKGROUND

Your complaint alleges the Otterbein Public Library Board violated the Open Door Law by failing to give sufficient notice of executive meetings and by creating a sub-committee the board does not feel is subject to the Open Door Law.

You allege that on or about August 13, 19, and September 16, 2013, the Library held a series of executive sessions without proper notification. You also claim the subject of those meeting was improper and would not fall under the enumerated instances in which an executive session can be held. You also claim that a private meeting with the director of the Library and the Board president was held on August 20, 2013. Additionally, the Library formed a sub-committee of three members of the Board to review job descriptions of employees and deliberate re-assignment of those employees. You claim notices of the sub-committee meetings have not been properly posted.

The Library filed its response to your complaint on October 4, 2013. The response addresses all of the alleged violations. As to the executive sessions, the Library argues the notices were posted properly; however, the notices cannot be found. With regard to the September 16, 2013 executive session, the Library stated it cancelled that executive

session. Turning to the private meeting between the director and the president of the Board, the Library admits it took place, but is not considered a meeting under the ODL. Concerning the sub-committee, the Library contends the newly created entity is not subject to the ODL, because it has not been given any powers or duties that would meet the definition of a public agency under the ODL.

## ANALYSIS

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. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* Ind. Code § 5-14-1.5-3(a).

Regarding the executive sessions, section 6.1 of the ODL addresses the requirements of notice and content of executive sessions. Under Ind. Code § 5-14-1.5-6.1(d) notice of executive sessions are required. The Library has advised our Office in their response that the notices of the executive sessions are missing.<sup>1</sup> It is clear by the establishment of this Office and the purpose of the policy of transparency of open access, I view the facts in a light most favorable to the complainant. As such, and without proof of the notice, I must find the executive sessions were not appropriately posted and a violation has occurred. Emails provided by the Library indicating the intent to post has been considered, but cannot constitute a solid fact in favor of the library. The subject matter of the session; however, does appear to be consistent with the enumerated statutory instances in which an executive session can be held.

Turning to the private meeting between the director and the president, public meetings are triggered by a quorum of a governing body. As the Library Board consists of seven members, this clearly is not a public meeting under the ODL. A majority of the Library Board did not participate in the meeting and accordingly, it is not a violation.

As for the sub-committee established by the Library, the ODL defines a public agency in Ind. Code § 5-14-1.5- (a) as

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) 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.

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<sup>1</sup> It has been implied by the Library that the records of the library, which may or may not have included notices, may have gone missing due to theft. The Public Access Counselor is not a finder of fact and will decline to address these claims.

The ODL defines a governing body as:

two (2) or more individuals who are:

(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.

See Ind. Code § 5-14-1.5-2 (b).

The Library argues the sub-committee is not a public agency or a governing body under the definitions of the ODL. They state there is no delegation of duty; however, they have identified their function as reviewing job descriptions and determining how personnel should be reassigned. Despite their contention, the sub-committee is clearly a public agency under the ODL. Ind. Code § 5-14-1.5-2 (b) defines "Official action" as (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Public business is any function upon which the public agency is empowered or authorized to take official action; Ind. Code § 5-14-1.5-2 (e). Because the Library Board has been entrusted to deliberate and make conclusions on these issues, a delegation of duty by the Board to a sub-committee subjects the Board to the ODL. Therefore, a violation has occurred pursuant to Ind. Code § 5-14-1.5-3(a).

#### CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Otterbein Public Library Board has violated the Open Door Law.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Jud Barce, Esq.