



STATE OF INDIANA

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September 15, 2014

Ms. Connie M. Morgan
107 E. Harrison St.
P.O. Box 1
Claypool, IN 46510

Re: Formal Complaint 14-FC-182; Alleged Violation of the Open Door Law by the Town of Claypool Town Council

Dear Ms. Morgan,

This advisory opinion is in response to your formal complaint alleging the Town of Claypool Town Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded via Town Council President Niki Miller. 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 August 18, 2014.

BACKGROUND

Your complaint dated July 18, 2014, alleges the Town of Claypool Town Council violated the Open Door Law by holding a meeting without posting proper notice.

You allege that on August 11, 2014, two members of the three-member Town Council met to inspect a damaged cemetery plot. There was no notice of the meeting of the majority of the Council.

The Council President responded to your complaint acknowledging the meeting. According to the Council, the Town Cemetery Sexton alerted the President to a damaged cemetery plot of a Town resident who was close to passing. Another member chanced upon the conversation and participated in the discussion. A solution was devised by the Sexton in order to expeditiously fix the problem. It appears the Town Council has jurisdiction over general administration of the cemetery but not the actual burial preparation. The repairs to the plot have been classified as burial preparation.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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).

"Meeting" means 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). "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). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14- 1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

Note that a gathering must be for the express purpose of taking official action on public business. The meeting at the cemetery appears to be a chance meeting of members during an on-site inspection of a cemetery plot. On-site inspections are not meetings for the purposes of the Open Door Law pursuant to Ind. Code § 5-14-1.5-2(c). Alternatively, as the legislative body of a town, the council may meet without notice to carry out administrative functions. The immediate need of the repair of a grave plot is not a public policy decision, but rather an operational one. Notice of administrative function meetings is not required under Ind. Code § 5-14-1.5-5(f)(2). The Open Door Law does not operate to hinder the ability of a public agency to carry out day-to-day operational issues such as this.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Town of Claypool Town Council has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Niki Miller