



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 18, 2016

Nathan B. Mantlo
7325 East County Road 800 North
Brownsburg, Indiana 46112

Re: Formal Complaint 16-FC-132; Alleged Violation of the Open Door Law by Brown Township Board and the Brown Township Trustee, Hendricks County

Dear Mr. Mantlo:

This advisory opinion is in response to your formal complaint alleging Brown Township Board and the Brown Township Trustee (collectively known as "Township") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Township has responded to your complaint via counsel, Mr. Stephen R. Buschmann, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 14, 2016.

BACKGROUND

Your complaint dated June 14, 2016 alleges the Brown Township Board and the Brown Township Trustee violated the Open Door Law by taking official action outside of a public meeting.

On May 26, 2016 a joint public meeting between the Board, the Town of Brownsburg and Lincoln Township was held to approve the Equipment Fund Replace Rate and to consider a license on a communications tower. You were present in your capacity as a member of the Brown Township Board. During the meeting you addressed the public urging them to ask for the resignation of attorneys representing the fire territory.

A letter prepared by the Board President was subsequently delivered to the Board and read into the record at the next scheduled public meeting. This letter informed the public your comments were not approved by the Board and the Board had not taken any action on the issue you raised. You contend the letter to the Board sanctioned you and the decision to sanction you via the letter was impermissible action taken outside a public meeting.

You also allege a phone conversation took place between Mr. John Gootee, Mr. Jason Welsh and Mr. Tom Kmetz where the individuals discussed the May 26, 2016 meeting. You contend this conversation was an improper meeting related to town business.

On June 27, 2016 the Township responded. The Township contends the conversation on May 2, 2016 was not official action because the conversation was merely to recite the facts of the meeting and asserts other action was taken. The Township also contends the recitation of facts can be considered political caucus because Mr. Gootee and Mr. Welsh were discussing their political stance in opposition of your comments.

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 Indiana 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 Indiana 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. Indiana 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." Indiana 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. Indiana Code § 5-14-1.5-2(d).

Indiana Code § 5-14-1.5-2(c)(4) states the definition of meeting does not include a caucus. A caucus is defined under Indiana Code § 5-14-1.5-2(h) as the "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." See also, *Evansville Courier v. Willner*, 563 N.E.2d 1269, (Ind. 1990).

In my opinion, the conversation after the board meeting can be considered a caucus. A majority of a governing body can meet to discuss political strategy behind closed doors. Discussing the events of a prior meeting within the framework of a political conversation is an acceptable caucus activity.

Generally, I consider there to be a difference between internal political agency business and official public business. Any conducting of official business must be open to the public, but censuring a member is purely a matter of internal management of the Board. In fact, the Courts have also stated the mere delivery of a letter does not rise to "official action" under the Open Door Law. See *City of Gary v. McCrady*, 851 N.E.2d 359, (Ind. Ct. App. 2006) (delivery of a letter is a "mere formality").

That being said, my exception to the Board's actions is the governing body made it public business once it was read into the record at the next public meeting. The Board is within its discretion to reprimand its members internally, but it also chose to air its political dirty laundry in public. This transforms the matter, in my opinion, into a public matter. If the Board wants to issue you a letter to censure you in

private, that is its prerogative. However, once it is made part of a governing body's official record it becomes public business. Additionally, the Board used the opportunity to reiterate its opposing stance and to punctuate that fact, the letter was read during a public meeting.

Based upon the information provided, it does not appear the intention was ever to 'caucus' behind closed doors. That argument appears to be retrofitted to the circumstances. By all appearances, the Board met to discuss all of these matters behind closed doors, decide on a course of action, and execute the plan in public. In my opinion, the manner in which the Board went about sanctioning you violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Stephen R. Buschmann, Esq.