



STATE OF INDIANA

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Ms. Debra Loveless
7285 East CR 50 South
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Re: Formal Complaint 16-FC-25; Alleged Violation of the Open Door Law by the Town of Dugger, Town Council

This advisory opinion is in response to your formal complaint(s) alleging the Town of Dugger Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. The Council responded via counsel, Mr. Richard Shagley, Esq. 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 February 8, 2016.

BACKGROUND

Your complaint(s) dated February 4, 2016 alleges the Town of Dugger Town Council violated the Open Door Law by having an executive session without proper notice.

On January 28, 2016 the Council held a meeting to appoint a replacement member, which resulted in Ms. Sandy Stinson being elected. After the meeting, one member, Mr. Larry Bedwell left the building. Council member Mr. Billy Pirtle and Clerk Treasurer, Ms. Mendy Smith remained along with Ms. Stinson. The complaint states that after the meeting, Mr. Pirtle, Ms. Stinson and Ms. Smith conducted an

executive session without proper notice. Complainant Ms. Loveless contends the door to the meeting room was locked.

On February 22, 2016 the Council responded. The Council acknowledges a meeting occurred; however, disputes it was a closed meeting, because the doors were unlocked and the public could enter the room. Instead, Council contends the meeting was either a chance gathering or an orientation for the new council member.

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).

The Council acknowledges a gathering took place. A meeting is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. See Ind. Code § 5-14-1.5-2(c). The Dugger Town Council consists of three (3) members. Therefore, any gathering of two (2) members may trigger the Open Door Law.

The Council first argues the gathering after the special meeting was merely a chance gathering. Members of the local government and the public and a majority of the Council loitered after the meeting. Once a public meeting is adjourned, members of a governing body should be mindful against discussing public business any further amongst themselves. Now, it is likely members of the public will confront those public officials after a meeting to discuss issues individually, but there is no reason two (2) or more Council members should continue to discuss public business after the conclusion of the meeting. It is true the Open Door Law contains an exception for ‘chance gatherings’, however, a chance gathering only occurs when members are not aware of each other’s presence and there is not a collective intent to take official action on public business. As this gathering occurred directly after a public meeting, it seems unlikely this discussion took place by chance or mere happenstance.

Council alternatively argues the meeting was not by chance and the meeting was permissible under the ODL to train the new council member. As stated by the Council, “This time was used for bringing [sic] everyone up to speed on the Town and its workings”. This would be permissible under Ind. Code § 5-14-1.5-2(c)(6) as an orientation of a new Council member. The Council lists a number of items which were discussed that could be considered an orientation: The history of the Town, roles of the various governmental units, etc. The Council argues there were no decisions made or official action taken. If so, a violation has not occurred.

Although it does not appear as if this ‘orientation’ was formal or even planned, it fits the definition of orientation. There is a question of fact as to whether the door to the meeting room was locked after the meeting was adjourned. If the meeting was merely an orientation session for a new member, the public does not have the right to observe and record the gathering.

Yet, if the 'orientation' session involved discussion of non-orientation issues, a violation would have occurred for having a meeting without notice.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Richard Shagley II, Esq.