

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

JOANNE BAILEY *ET AL.*,  
*Complainant,*

v.

RAILROAD TOWNSHIP TRUSTEE,  
*Respondent.*

---

Formal Complaint No.  
17-FC-192 (consolidated)

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to a collection of formal complaints alleging the Railroad Township Trustee (“Trustee”) violated the Open Door Law<sup>1</sup> (ODL). Railroad Township Trustee Mandy Thomason responded to the complaints on August 28, 2017. In accordance with Indiana Code Section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 10, 2017.

---

<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8.

## **BACKGROUND**

This case presents the latest dispute in the saga unfolding in Railroad Township, and further chronicles what seems to be uninterrupted tension involving the Trustee, the Township Advisory Board, and some township residents. This time the focus of the complaints is the sufficiency of the public notice provided by the Trustee in connection with a public hearing held by the advisory board on August 8, 2017. The hearing concerning a proposed \$60,000 additional appropriation for Railroad Township.

On August 10, 2017, Railroad Township residents JoAnne Bailey and Cassandra Hine each filed a formal complaint alleging that Railroad Township Trustee Mandy Thomason (“Trustee”) violated the Open Door Law by providing defective public notice for the public hearing concerning the additional appropriation. Although not identical, Bailey and Hine’s complaints are substantively similar in relevant part: The Trustee provided faulty public notice of the additional appropriation hearing.

Eight days after Bailey and Hine filed complaints on this matter, two more complaints arrived at this Office. Bart D. Egolf and Judith A. Egolf—who are presumptively related because of shared surname and street address—each filed formal complaints with functionally identical allegations as Bailey and Hine’s complaints.

The Trustee denies that an ODL violation occurred, and contends that she properly published the notice pursuant to Indiana law, and posted additional notice on the door of the Trustee’s office (her home) prior to the meeting. As support,

the Trustee has provided a publisher's affidavit demonstrating that she published a legal advertisement in *The Leader* newspaper on July 21, 2017. The affidavit also certifies that the public notice appeared on the newspaper's website on the same day.

In addition, the Trustee provided a copy of the notice in her that she posted on the door of Railroad Township Trustee's office from August 3, 2017 to August 9, 2017.

### **ANALYSIS**

The sufficiency of the notice provided by the Railroad Township Trustee as it pertains to the public hearing for a proposed additional appropriation is at issue here. Specifically, whether the notice published by the Trustee in *The Leader* newspaper on July 21, 2017, and the whether a separate notice posted at the Trustee's office qualify as effective public notice for purposes of the Open Door Law ("ODL").

The public policy of the ODL is that 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. Simply put, unless an exception applies, 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).

#### **Public Notice of Meetings**

As a general matter, under the ODL, a public agency must give notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meet-

ing, *at least 48 hours*—excluding Saturdays, Sundays, and legal holidays—before the meeting. *See* Ind. Code § 5-14-1.5-5. The notice must be posted at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. Ind. Code § 5-14-1.5-5(b)(1).

Even so, there are exceptions to general notice requirements under the ODL. For instance, Indiana Code Section 5-14-1.5-5(e) provides the following:

This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

In other words, if Railroad Township was required by statute, ordinance, rule, or regulation to publish notice of the public hearing concerning the additional appropriation, then the notice requirements under the ODL do not apply.

So, the question becomes: Is there a statute, ordinance, rule, or regulation that required the Trustee to publish notice of the public hearing on the additional appropriation?

In the words of Indiana Supreme Court Justice-turned-law Professor Frank Sullivan: “There’s a statute on that!”

### **The Published Notice**

Under Indiana law, the governing body of a public agency—in some situations—is required by statute to hold a public hearing prior to taking a particular action. In these situations, a public hearing guarantees constituents the opportunity to provide either written or oral feedback in support of, or in opposition to a proposed measure.

The statutory language that mandates public hearings in certain circumstances is not set out in the Open Door Law. Instead, these various statutes are scattered throughout the Indiana Code.

Indiana Code Section 6-1.1-18-5 governs the procedure for public agencies seeking an additional appropriation. As part of that procedure, the proper offices of a political subdivision *must* give notice of the proposed additional appropriation. This notice must state the time and place at which a public hearing will be held on the proposal, and must be published in accordance with Indiana Code Section 5-3-1-2(b).

Under Indiana Code Section 5-3-1-2(b), notice *must be published* one time, at least ten days before the date of the hearing or meeting, and must state the time and place at which the public hearing will be held on the proposal.

Here, there is no dispute that the Trustee wanted to appropriate an additional \$60,000 in excess of the final amount adopted and approved in the township's budget. The Trustee provided a publisher's affidavit showing the required public notice was indeed published in the *The Leader* newspaper on July 21, 2017.

The published notice included all of the information required by statute for pursuing an additional appropriation. The notice included the amount of the proposed appropriation, the date, time, and location of the public hearing. What is more, the notice was published more than ten days prior to the meeting, so the notice was timely.

If the affidavit submitted by the Trustee is accurate—and I believe it is—then, in my view, the notice published by the Trustee was effective under the law.

The Complainants in this matter rely on and repeat a set of generalized grievances about the public notice at issue:

- “No notice was provided to the public...”
- “There was NO notification of any kind [in] papers [sic] or online sites.”
- “The time and place of the meeting was not posted in any newspaper and there was no notification on any online sites...[t]he citizens of Railroad Township had no idea of this meeting.”
- “No public notice was advertised in the Market as stated by Trustee was going to due [sic].”

The fatal flaw in these claims is that the Complainants did not offer counter availing evidence that call the Trustee’s claim into doubt. The Trustee provided strong evidence by way of the publisher’s affidavit that she indeed did publish notice as required by law.

As a result, as I set out *supra*, where notice by publication is required by state statute—as it is in this case—the general notice requirements for public meetings set out in the Open Door Law do not apply.

## **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Railroad Township Trustee did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor