
OPINION OF THE PUBLIC ACCESS COUNSELOR

JASON E. JOHNSON,
Complainant,

v.

NORTH LAWRENCE COMMUNITY SCHOOLS,
Respondent.

Formal Complaint No.
19-FC-127

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the North Lawrence Community School Corporation violated the Open Door Law.¹ Attorney Greg Pittman filed a response to the complaint on behalf of the school board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by

¹ Ind. Code § 5-14-1.5-1, to -8.

the Office of the Public Access Counselor on November 19, 2019.

BACKGROUND

This case involves a dispute over access to the meetings of a body known as the “Visionary Committee” at North Lawrence Community School Corporation (“NLCS”). NLCS superintendent Dr. Thomas T. Mungle, formed the committee at the recommendation of the consulting firm that NLCS hired to help develop a plan for consolidating the elementary and middle schools in the district. The Visionary Committee is a group of community participants from different backgrounds, which Dr. Mungle invited to serve in an advisory role.

The NLCS Visionary Committee met eight times and provided three consolidation plans to NLCS.

On November 19, 2019, Jason E. Johnson (“Complainant”) filed a formal complaint with this office alleging NLCS violated the Open Door Law by failing to identify the members of the Visionary Committee and by failing to notify the public of the time and place of the committee’s meetings. Johnson contends the Visionary Committee’s meetings should have been open for the public to observe because the meetings involved the issue of school consolidation.

On December 12, 2019, NLCS filed an answer with this office disputing Johnson’s assertions. In essence, NLCS argues that the Visionary Committee is not subject to the Open Door Law; and, thus not subject to the statute’s requirements.

First, NLCS argues that the Visionary Committee is not a public agency for purposes of the Open Door Law because it was not created by statute, ordinance, or executive order as set forth in Indiana Code section 5-14-1.5-2(a)(5).

Second, NLCS contends the Visionary Committee is not a governing body because it was not directly appointed by the school board or the board's presiding officer as set forth in Indiana Code section 5-14-1.5-2(b)(3).

As a result, NLCS argues that the names of the Visionary Committee participants are not subject to public disclosure. NLCS also asserts that Johnson never requested a list of the participants of the Visionary Committee.

ANALYSIS

The principal issue in this case is whether the NLCS Visionary Committee is an entity subject to the Open Door Law.

1. The Open Door Law

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. Except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14-1.5-3(a).

There is no dispute that the North Lawrence Community School Corporation is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2(a). Additionally, the school board for

NLCS (“Board”) is a governing body of the agency for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

2. The Visionary Committee

The crux of this case is whether the Open Door Law applies to an entity known as the NLCS Visionary Committee.

The NLCS superintendent selected the group from the community to serve in an advisory capacity, which included meeting to discuss the district’s school consolidation options. NLCS contends the Visionary Committee is not subject to the ODL because the committee is neither a public agency nor a governing body of a public agency.

Similarly, groups who do not want to be accountable under the Open Door Law yet still want to take official action on public business often create a straw man argument by contending solely that a committee was not created by direct appointment of a governing body, a requirement under Indiana code section 5-14-1.5-2(b)(3). Similarly, a statute, ordinance or express written executive order under section 5-14-1.5-2(b)(5) may not be immediately apparent.

On the contrary, however, the Open Door Law includes seven definitions of public agencies and three definitions of governing body. Some of these definitions are limited and definite while several are quite broad, encompassing any manner and sort of government entities of varying origins and responsibilities. While *Frye v. Vigo County*, 769 N.E.2d

188 (2002) – also cited below – cited the “directly appointed” language, there are other elements to consider.

These shifting definitions often lead to a “*I-know-it-when-I-see-it*” judgment call. Let us consider the facts:

The superintendent hired a consulting group subject to the approval of the school corporation’s Board. Therefore the Board would have been aware of the superintendent’s actions in this regard. Upon advice from the consulting group, the superintendent selected the members of the Visionary Committee; and thus, created a 30 member committee to advise him on what is a typically a controversial public education measure: school consolidation. This committee met eight times to develop a recommendation. This recommendation is submitted to the Board for consideration. The Visionary Plan is an impressive piece of work product which is as comprehensive and detailed as it is expensive-looking.

The consulting group and the Visionary Committee were created for the very purpose of making recommendations to School Board. The superintendent may have been a proxy between the Board and the Committee, but all indication is that the consulting group – and by extension a Visionary Committee – was commissioned to do the work of the School Board. By definition, making recommendations is an official act on public business² and the Committee was delegated this responsibility. Another Open Door Law definition defines governing body simply as two or more individuals who constitute “the board, commission, council, or other body of

² Ind. Code § 5-14-1.5-2(d).

a public agency which takes official action upon public business.”³ This definition is mutually exclusive from the definition requiring direct appointment.

Informal ad hoc groups lack authority and thereby are not considered to be governing bodies, and rightfully so. If the Visionary Committee was merely a group of volunteers or staffers organically coming together to gather suggestions and support removed from the Board’s authority, they would not be subject to the Open Door Law.

It does not stand to reason that the Board was completely ignorant of the Committee’s existence and their express charge to make recommendations to it regarding consolidation.

But to accept NLCS’s argument is to ignore the authority granted to, and the Board’s reliance upon, the Committee to take official action (making recommendations) on public business. This delegation came vis-à-vis the Board’s agent and chief executive officer, the superintendent. That it came implicitly through a stand-in matters not.

Consider the Indiana Court of Appeals dicta in *Frye v. Vigo County*, 769 N.E.2d 188 (2002):

The purpose of the Indiana Open Door Law is to assure that the business of the State of Indiana and its political subdivisions be conducted openly so that the general public may be fully informed. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 70 (Ind.Ct.App.2001), *reh’g. denied, trans. denied*; Ind.Code § 5-14-1.5-1. We are required

³ Ind. Code § 5-14-1.5-2(b)(2)

to liberally construe the statute in order to give effect to the legislature's intention. *Id.* 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.” Ind.Code § 5-14-1.5-3(a). All doubts must be resolved in favor of requiring a public meeting and all exceptions to the rule requiring open meetings must be narrowly construed with the burden of proving the exception on the party claiming it. *Baker*, 753 N.E.2d at 70.

Interestingly enough, Indiana Code Title 20 has similar provisions:

[IC 20-26-1](#) through [IC 20-26-5](#), [IC 20-26-7](#), [IC 20-40-12](#), and [IC 20-48-1](#) shall be liberally construed to permit the governing body of a school corporation to conduct its affairs in a manner consistent with sound business practice to the ends that the authority of the governing body is clarified and that it is permitted to operate with the maximum efficiency consistent with accountability.

Ind. Code § 20-26-5-14. Therefore outsourcing work to a third party committee, however creatively effectuated, will not defeat the purpose of the Open Door Law. The committees in *Frye* and its sister case, *Robinson v. Indiana University*, 638 N.E.2d 435 (Ind. Ct. App. 1994), were too far removed from the original governing bodies to make a causal connection for delegation of authority. That is not the case in the current instance.

The Visionary Committee, regardless of its genesis, was created to advise the governing body on matters of school consolidation. To conclude otherwise would erode the intent of the law and is a semantic leap this office is not prepared to accept.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the NLCS Visionary Committee is subject to the Open Door Law. As a result, NLCS did not comply with the Open Door Law by holding eight separate closed door meetings.

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

Luke H. Britt
Public Access Counselor