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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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RALPH J. JACQMAIN, M.D.,  
*Complainant,*

v.

KNOX COUNTY BOARD OF HEALTH,  
*Respondent.*

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Formal Complaint No.  
19-FC-3

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Knox County Board of Health violated the Open Door Law.<sup>1</sup> The Board did not respond to the complaint despite an invitation to do so on January 18, 2019. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 16, 2019.

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

## **BACKGROUND**

This case is about whether the Open Door Law requires a county board of health to advertise, that is, publish public notice for the board's public meetings.

Ralph J. Jacqmain, M.D., ("Complainant") asserts that the Knox County Board of Health held two meetings in December 2018 that violate the Open Door Law ("ODL").

First, Jacqmain contends the Board held an executive session followed by a regular meeting on December 12, 2018. He claims the Board did not "publicly advertise" either meeting. He also maintains there was "no agenda, no time limit, a vote was taken, and a decision was made."

Second, Jacqmain claims the Board convened a meeting on December 31, 2018, that was not "properly advertised 48 hours in advance." Jacqmain says the Board published the notice in the *Vincennes Sun Commercial* on Saturday December 29, 2018, for the meeting on December 31.

Third, Jacqmain asserts that the Board has a history over the last year of having "unadvertised meetings" and scheduling meetings that had to be cancelled due to a lack of quorum. He also claims the Board takes final action in executive session and later ratifies those actions at regular meetings.

The Board did not file an answer to Jacqmain's complaint with this office, despite an invitation to do so.

## ANALYSIS

The principal issue in this case is whether the Open Door Law requires a county board of health to advertise notice of its public meetings and executive sessions.

### 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).

Knox County 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. Additionally, the Knox County Board of Health (“Board”) is the governing body of the school corporation for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, 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. Public Notice of Meetings

Jacqmian takes exception with what he refers to as “unadvertised” or “not properly advertised” meetings of the Knox County Board of Health.

Under the Open Door Law, the governing body of a public agency must give public notice of the date, time, and place

of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows:

The governing body of a public agency shall give public notice by posting a copy of the notice 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). Here, Jacqmain alleges that the Board failed to advertise its meetings in December 2018. Although Jacqmain does not expressly say it in his complaint, contextually his use of the word “advertise” appears synonymous with “publish.”

The notice provisions of the ODL do not require a public agency or governing body to publish notice of a public meeting or executive session in a newspaper. Granted, there are times where a public agency must provide notice of an event by publication. *See generally* Ind. Code § 5-3-1, to -4.

Thus, if the Board posted notice in accordance with the ODL at the principal office of Knox County, then it provided adequate public notice. Since, Jacqmain only challenges the Board’s failure to advertise, that is, publish notice of its meetings, this office cannot conclude the Board violated the ODL. If, however, the Board failed to post public notice as set forth above, the conclusion would likely be different.

### **3. Meeting Agenda**

Jacqmain contends that there was no agenda for the Board’s December 12, 2018, meetings.

Under the ODL, if the governing body uses an agenda, the agenda must also be posted at the entrance to the meeting location before the meeting. Ind. Code § 5-14-1.5-4(a). The ODL does not, however, specify what agenda items are required. Even so, the statute specifically provides that “a rule, regulation, ordinance, or other final action adopted by reference to agenda item alone is void.” *Id.*

This Office interprets Indiana Code section 5-14-1.5-4(a) to require those public agencies that regularly use an agenda to post one.

In other words, if the Board, during the ordinary course of business, uses an agenda for its meetings, then the ODL requires the Board to post the agenda at the entrance of the meeting. The reverse is also true.

Jacqmain does not argue or present any evidence that the Board typically uses an agenda but suddenly failed to at the meetings in question. Without the benefit of a response from the Board, this Office cannot determine whether the Board uses an agenda or not. As a result, based on the information presented, the lack of agenda does not constitute a violation of the ODL in this case.

#### **4. Executive Sessions**

Jacqmain also contends that the Knox County Board of Health violated the ODL by making decisions and taking votes in executive session.

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

A meeting, for purposes of the ODL, 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). “Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.

Notably, the ODL expressly states that “final action must be taken at a meeting open to the public.” Ind. Code § 5-14-1.5-6.1(c). “Final action” means “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.” Ind. Code § 5-14-1.5-2(g).

The upshot of these statutes is that a governing body must not vote on any motion, proposal, resolution, rule, regulation, ordinance, or order during an executive session. Instead, final action on public business, e.g., a vote, must occur at a public meeting.

Here, Jacqmain asserts, without specificity, that the Knox County Board of Health voted on public business during an executive session in December 2018.

Indeed, if Jacqmain’s contention is accurate, and the Board votes on items of public business during an executive session, then that would be contrary to the ODL. Without the benefit of a response from the Board, it is more difficult for this Office to provide appropriate guidance.

In sum, if a governing body is voting during an executive session, that is a violation of the ODL. It is worth mentioning that a court has authority to void a decision taken at a meeting that violates the ODL. Ind. Code § 5-14-1.5-7(a)(3).

## **5. Cooperation from Public Agencies**

Indiana Code section 5-14-5-5 expressly states that a “public agency shall cooperate with the [Public Access] Counselor in any investigation or proceeding under this chapter.”

Indeed, the chapter referenced in that statute is the one that governs the formal complaint procedure administered by this Office. In other words, public agencies must work with this Office in any formal complaint investigation or proceeding.

Here, the Board did not file an answer to the formal complaint despite an invitation to do so.

The Board should be mindful going forward that cooperating with this Office necessarily requires—at minimum—a response to the allegations raised in a formal complaint.

Otherwise, this Office will presume that the agency does not dispute a complainant’s allegations. This Office will not form and present arguments on behalf of an agency that does not file an answer to a complaint.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the Knox County Board of Health has not violated 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