
OPINION OF THE PUBLIC ACCESS COUNSELOR

RONALD L. DUNAVAN,
Complainant,

v.

NORTH VERMILLION COMM. SCHOOL CORP.,
Respondent.

Formal Complaint No.
19-FC-4

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the North Vermillion Community School Corporation violated the Open Door Law.¹ Attorney Joel Wesch filed an answer to the complaint on behalf of the school corporation. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code §§ 5-14-1.5-1 to -8

by the Office of the Public Access Counselor on January 18, 2019.

BACKGROUND

This case involves an allegation of secret ballot voting by the Board of Trustees for the North Vermillion Community School Corporation.

On January 15, 2019, the Board voted to appoint Ron Weir to fill the vacant Eugene Township seat.

Ronald L. Dunavan (“Complainant”) asserts that the Board’s action violated the Open Door Law because it voted to appoint Weir by secret ballot. Specifically, he contends the individual members voted by written ballot, but the public was not informed how the Board members voted. As a result, Dunavan filed a formal complaint with this office.

On February 22, 2019, after requesting and receiving two extensions of time, the Board filed its answer to the complaint with this office.

The Board maintains that all aspects of the process it used to appoint a board member complied with the Open Door Law, except for the anonymous ballots that prevented the public from knowing how the board members voted.

Additionally, the Board contends that during a subsequent board meeting that it made the ballots used for the vote public and required board members identify themselves on the ballots in order to allow the public to know how each member voted.

ANALYSIS

At issue in this case is whether the action of the Board of Trustees for the North Vermillion School Corporation constituted voted by secret ballot in violation of 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).

It is undisputed that the North Vermillion 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. Additionally, the Board of Trustees for North Vermillion Community School Corporation (“Board”) is the agency’s governing body 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. Secret Ballot Voting

Dunavan maintains that the final action taken by the Board on January 15, 2019 constituted a secret ballot vote in violation of the Open Door Law. Under the Open Door Law, “[a] secret ballot vote may not be taken at a meeting.” Ind. Code § 5-14-1.5-3(b).

The term “secret ballot” is not defined in the ODL. Still, if the legislature has not provided a definition, this Office—similar to our courts—will interpret a word or phrase by considering its plain, ordinary, and usual meaning, consulting English language dictionaries when helpful in determining that meaning. *Moriarity v. Indiana Dep’t of Nat. Res.*, 113 N.E.3d 614, 621 (Ind. 2019).

Contextually, there is no need to dwell on defining secret ballot for purposes of the Open Door Law. *Black’s Law Dictionary* defines “secret ballot” to mean:

A vote cast in such a way that the person voting cannot be identified.²

Here, the Board used a ballot that listed the names of the five applicants and a space for a write-in candidate. Each board member cast a vote by marking their choice in the available space next to the candidate’s name or by writing in a name. The ballots did not include the board members’ signatures or initials. The individual board members then gave their ballots to the Board president, who determined that Rick Weir received four votes, and the appointment to the vacant seat.

Notably, the Board concedes that this procedure violated the ODL’s prohibition on voting by secret ballot.

This office agrees. Simply put, the Board members casted their votes in a way that the person voting could not be identified.

² *Black’s Law Dictionary*, 64 (4th pocket ed. 2011).

The Board maintains that an expert authority from the Indiana School Board Association advised it to conduct the vote in this manner, which it now acknowledges is contrary to the ODL.

Even if the Board has wide discretion to determine the method it will use to fill a vacancy, it has no authority or discretion to vote by secret ballot on anything.

Although the ODL does not expressly mandate it, it is good practice for a governing body to avoid even the appearance of taking final action on public business *sub rosa*. In truth, this is probably even more important when selecting the person who will finish a term in office.

3. Civil Action and Judicial Remedies

Under the Open Door Law, any person may file an action for declaratory or injunctive relief to ensure compliance with the statute. Ind. Code § 5-14-1.5-7(a). In certain circumstances, a court may void a decision taken at a meeting that violates the statute. Ind. Code § 5-14-1.5-7(a)(3).

It is also important to remember that subsequent remedial measures do not automatically fix ODL violations if the matter ends up in court. For instance, the ODL provides:

If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

Ind. Code § 5-14-1.5-7(c). Additionally, the ODL provides that a court shall award reasonable attorneys' fees, court

costs, and other reasonable expenses of litigation, to a prevailing plaintiff. Ind. Code § 5-14-1.5-7(f). The ODL also authorizes civil penalties in certain circumstances for violations. *See* Ind. Code § 5-14-1.5-7.5.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Board of Trustees for the North Vermilion School Corporation violated the Open Door Law by conducting a vote by secret ballot.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish extending from the bottom.

Luke H. Britt
Public Access Counselor