
OPINION OF THE PUBLIC ACCESS COUNSELOR

RICHARD E. VOLBRECHT JR.,
Complainant,

v.

TOWN OF HIGHLAND,
Respondent.

Formal Complaint No.
19-FC-56

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Highland, through its town council, violated the Open Door Law.¹ Attorney Rhett L. Tauber filed a response to the complaint on behalf of the town. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the amended formal complaint received

¹ Ind. Code § 5-14-1.5-1 to 8.

by the Office of the Public Access Counselor on July 23, 2019.

BACKGROUND

Richard E. Volbrecht Jr. filed a formal complaint alleging the Highland Town Council violated the Open Door Law by holding a meeting after the council's regular session on July 22, 2019.

Volbrecht asserts that on the night in question four members of the town council assembled and discussed an issue that a local resident presented to the council during the regular meeting earlier that night.

Volbrecht further contends that the council routinely rendezvous in an upstairs room at town hall after the council's public meetings end for what council members refer to as "gatherings" to avoid the reach of the ODL.

The Town denies that it violated the ODL. In essence, the Town asserts that no meeting subject to the ODL occurred. The Town claims the gathering was to discuss an industrial or commercial prospect, specifically, an offer for alternative locations by two private owners for the relocation of the Town's Public Works Facility.

ANALYSIS

The principal issue in this case is whether a gathering to discuss the relocation of the Town's Public Works Facility meets the exception of the definition of a meeting found at Indiana code section 5-14-1.5-2(c)(5).

1. The Open Door Law (“ODL”)

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.

Toward that end, 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 Town of Highland 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, both the town council and the redevelopment commission are governing bodies of the town 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 Highland Town Council and the Highland Redevelopment Commission must be open at all times to allow members of the public to observe and record.

2. Meetings

The crux of Volbrecht’s complaint is the Highland Town Council violated the Open Door Law by reassembling in an upstairs room at town hall after the council’s regular meeting ended on July 22, 2019. The Town argues that the gathering did not constitute a meeting for purposes of the Open Door in accordance with Indiana Code section 5-14-1.5-2(c)(5).

The Open Door Law defines “meeting” as 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). At the same time, the ODL also specifically excludes certain things from the definition of “meeting.” *See* Ind. Code § 5-14-1.5-2(c)(1)–(8).

The Town of Highland bases its denial of Volbrecht’s claim of an ODL violation on Indiana Code section 5-14-1.5-2(c)(5), which excludes the following from the ODL’s definition of “meeting:”

A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

Stated differently, a gathering to discuss an industrial or commercial prospect is not a meeting for purposes of the ODL so long as it does not include a conclusion as to recommendations, policy, decisions, or final actions on the terms of a request for public financial resources.

Here, the Town contends that its Redevelopment Commission, which consists of four council members and the clerk-treasurer, gathered to discuss an offer for alternative locations by two private owners for the relocation of the town’s public works facility.

So, the question becomes: is a discussion with two private landowners about relocation alternatives for the town’s public works facility constitute a discussion about an industrial or commercial prospect?

Notably, the ODL does not define industrial prospect or commercial prospect. “Generally, when construing a statute, the interpreting body attempts to give words their plain and ordinary meanings.” *Indiana Wholesale Wine v. State of Indiana, Alcoholic Beverage Commission*, 695 N.E.2d 99,103 (Ind. 1998). Non-technical, undefined words are to be defined by their ordinary and accepted dictionary meaning. *Bulkomatic Transport v. Department of Revenue*, 629 N.E.2d 955, 957 (Ind. Tax 1994).

General provisions of public works projects are codified in Indiana Code section 36-1-12, and do not make mention of commerce or industry, e.g. buying, selling or manufacturing goods or services for a revenue.

Courting a private sector partner to bring jobs or income revenue into a community (before an offer) is allowed to take place outside of a public meeting. But discussion of an infrastructure project – which is paid for with taxpayer funds – is something this office believes the Open Door Law requires to be transparent.

This office has historically considered public works to be infrastructure issues and to be mutually exclusive from commercial or industrial prospects. However, it has not done so demonstratively. Therefore it would be disingenuous of the public access counselor to impose that view on a municipality who was not aware of this nuanced interpretation.

The arguments made by the Town have been in good faith, but I simply have an alternative interpretation. Therefore I recommend going forward that the Town either hold public works discussions in public meetings or identify a separate

exception to hold them in executive session, such as the transfer of real estate.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of Highland should revise the manner in which it holds discussions about infrastructure and public works projects.

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

Luke H. Britt
Public Access Counselor