
OPINION OF THE PUBLIC ACCESS COUNSELOR

SARAH L. DUFFY,
Complainant,

v.

FRANKLIN COUNTY BD. OF COMMISSIONERS,
Respondent.

Formal Complaint No.
19-FC-65

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Franklin County Board of Commissioners violated the Open Door Law.¹ Attorney Grant M. Reeves filed an answer to the complaint on behalf of the county. 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 August 12, 2019.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

This case involves a dispute about the sufficiency of public notice provided by the Franklin County Board of Commissioners for two meetings in July.

Sarah Duffy, a reporter for the *Franklin County Observer*, asserts that the Board failed to post public notice for its meetings on July 16 and July 30, 2019 and did not notify the media.

The two meetings in question were properly noticed regular meetings of the Board of Commissioners in that they were announced 48 hours in advance. The agendas for those meetings, however, involved zoning map changes which required notice in accordance with Indiana Code section 36-7-4-608(g)(1). The Complainant considers the notice deficient for these two meetings.

The Board of Commissioners responded by conceding the first two meetings may not have met the technical requirements of the law, but argues the situation was resolved by a follow-up “reconsideration” meeting which was thoroughly noticed.

ANALYSIS

The primary issue is the requirements of notice for zoning map amendments and how they square with 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 Franklin 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 Franklin County Board of Commissioners (“Board”) is a governing body of the county 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. Public Notice

Generally, under the ODL, public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting must be posted at the agency’s principle office at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* Ind. Code § 5-14-1.5-5.

Additionally, the ODL requires public agencies to deliver notice to all news media that deliver an annual written request for the notices before the end of the preceding year.

Public notice disputes are typically easy to resolve because the statutory requirements are straightforward. Here, the

situation is more complex because of conflicting statutory language.

Duffy correctly notes that Indiana Code section 36-7-4-608(g) governs the procedure when a county area plan commission submits a proposed zoning map change to the board of commissioners with no recommendation about whether to adopt or reject the proposal. Here, based on the information provided to this office, the Board received a zoning map proposal with no recommendation from the APC.

The statute in question provides, in relevant part, the following:

At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting

Ind. Code § 36-7-4-608(g)(1). So, the zoning statute directs the legislative body (e.g., the commissioners) to give notice in accordance with section 5 of the Open Door Law, which governs public notice for meetings.

From an ODL compliance standpoint, the language in zoning statute is problematic.

First, section 5 of the ODL does not require a governing body to announce its intentions to consider anything in a public notice for a meeting, far less a proposed zoning map

change. As set forth above, a public notice is required to include the date, time, and place of the public meeting.

In other words, the zoning statute commands a legislative body to post notice in accordance with ODL, but simultaneously requires more information than standard ODL notice.

Next, the zoning statute authorizes the legislative body to take action on the zoning proposal at its first regular meeting—or any subsequent meeting in the next 90 days—after the APC certifies the proposal.

Section 5 of the ODL authorizes governing bodies to give notice of regular meetings only once each year. Ind. Code § 5-14-1.5-5(c). The exception, of course, is that the statute requires additional notice for date, time, and place if a regular meeting changes.

Here, the Board contends that it considered the rezoning issue at its regularly scheduled meetings in July. And why should it not? The zoning statute says the Board may do just that if it provides notice in accordance with section 5 of the ODL. Nonetheless, Duffy's policy argument is compelling and well received.

The dissonance between the ODL and the zoning statute is palpable. Going forward, this office recommends the Board treat meetings of this sort as a special meeting as they would pursuant to Indiana code section 36-2-2-8² and provide a separate notice announcing its intention to consider.

² An officer calling a special meeting of the executive shall give at least forty-eight (48) hours notice of the meeting...The notice must include a specific statement of the purpose of the meeting, and the executive may not conduct any unrelated business at the meeting.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Franklin County Board of Commissioners did not violate the Open Door Law but should take measures to give separate notice under Indiana code section 5-14-1.5-5 when considering zoning amendments in the future.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the right.

Luke H. Britt
Public Access Counselor