
OPINION OF THE PUBLIC ACCESS COUNSELOR

RICK MATHIAS,
Complainant,

v.

WINSLOW TOWN COUNCIL,
Respondent.

Formal Complaint No.
19-FC-78

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Winslow Town Council violated the Open Door Law.¹ Council President Joshua Popp filed a response to the complaint on behalf of the council. 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 26, 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 Winslow Town Council (“Council”) for a meeting held on August 22, 2019 to discuss matters relating to Winslow volunteer Fire Department and the Patoka Volunteer Fire Department.

Rick Mathias (“Complainant”) alleges that the Council not only failed to post public notice for the meeting, but that Council President Popp ignored concerns voiced by meeting attendees regarding the legality of a meeting where proper notice had not been given to the public. Mathias also adds that the Council convened the meeting to discuss the “take-over of the Winslow Volunteer Fire Department, which [the Complainant is an] Assistant Chief of, by the Patoka Volunteer Fire Department...” According to Mathias, only members of the Patoka Fire Department, a Patoka Township Trustee, Joshua Popp, and Council Vice President Debra Lamb attended the meeting in question.

On August 26, 2019, Mathias filed a formal complaint with this office alleging the Council violated the Open Door Law.

Two days later, Council President Popp responded to the Mathias’s complaint asserting that the meeting was open to the public and that proper notice had been posted at Winslow Town Hall 48 hours before the meeting, in compliance with the ODL. The town provided a copy of the notice to this office.

Popp also denies that anyone at the meeting ever raised concerns about a lack of public notice or that he purposefully

ignored any such comments. Finally, Popp disputes Mathias's claim that only two members of the Council were present at the meeting. Instead, Popp asserts that all three members of the Council attended the meeting.

ANALYSIS

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 Town of Winslow 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 Winslow Town Council ("Council") is a governing body of the town for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Council 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.

Public notice disputes are typically easy to resolve because the statutory requirements are straightforward. Here, the situation is more a factual dispute with contrary positions taken by the Mathias and Winslow Town Council.

The Council appears to concede that the meeting was one in which public notice was required. This office agrees. Upon request, it provided a notice of the meeting. Whether this is a true and accurate copy is a question of fact, but it is the sincere hope of this office that the notice was actually and physically placed 48 hours in advance of the meeting.

Mathias does not appear to have first-hand knowledge of the lack of notice making the proving of the existence of a negative nigh impossible.

Truth be told, in disputes involving these types of situations, the governing body typically doubles down on bad actions and attempts to justify them. This office has no reason to conclude that the Council president would be untruthful in representing the notice was placed.

Make no mistake, had the Council held a meeting without posting public notice where it took official action public business, there would be cause for concern. That does not appear to be the case in this circumstance.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of Winslow did not violate 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