

OPINION OF THE PUBLIC ACCESS COUNSELOR

AMY DRAKE,
Complainant,

v.

ST. JOSEPH COUNTY COUNCIL,
Respondent.

Formal Complaint No.
20-FC-117

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the St. Joseph County Council violated the Open Door Law.¹ Attorney Michael A. Trippel filed an answer 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 20, 2020.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether the St. Joseph County Council (Council) held a meeting without providing adequate public notice.

Amy Drake (Complainant), alleges that on August 18, 2020, the Council conducted a special meeting after a prior meeting was rescheduled due to lack of a quorum. She contends the Council did not post public notice online and did not send notice to certain local media outlets. Furthermore, Drake is not certain whether the Council posted physical notice at the location of the meeting. She also contends that public comment was not available. As a result, Drake filed a formal complaint with this office two days later.

For its part, the Council argues that it posted public notice of the August 18, 2020, meeting 48 hours in advance as required by law at the location of the meeting. The Council provided no other details about the content of the notice. It does not utilize any virtual meeting programs. The Council asserts that the media referenced in the complaint did not request individualized public notice as required by the Open Door Law. Finally, the Council argues that the Open Door Law does not require public comment at meetings.

While the complaint itself did not identify the subject matter of the meeting, Drake clarified that the Council was contemplating a local mask mandate ordinance with a fine for noncompliance. Drake argues this amounted to a hearing, which would require the Council to publish notice in the newspaper.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, 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. *See* Ind. Code § 5-14-1.5-3(a).

St. Joseph County is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The St. Joseph County Council (Council) is a governing body of the County for purposes of the ODL². *See* Ind. Code § 5-14-1.5-2(b). As a result, 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.

1.1 Meeting

Under the ODL, a meeting is “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-

² The St. Joseph County Council is the legislative body of the County pursuant to Indiana Code sections 36-2-3.5-1 & 5. Therefore it, and not the Board of Commissioners, is responsible for the passage of ordinances.

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. Ind. Code § 5-14-1.5-2(d).

Moreover, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

1.2 Public notice

Generally, under the ODL, the governing body of a public agency must provide 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).³ Additionally, if local media request individualized public notice in writing during the previous year, they are entitled to direct notice. *See* Ind. Code § 5-14-1.5-5(b)(2).

Here, it appears as if the meeting was rescheduled, but the Council contends it posted appropriate notice. While Drake disputes this, she does not provide any substantive or

³ Executive Order 20-04, Sec. 5, for the duration of the current public health emergency, allows an agency to post notice electronically as well

circumstantial evidence that the Council did not provide notice. No other complainants have come forward to take issue with the notice.

Drake also takes exception that *The Mishawaka Enterprise* did not receive individualized notice. Although the Council sends such notice to other media outlets, the Council contends that the Enterprise did not qualify for individualized notice under the ODL because it did not request it in writing the prior year.

The question then becomes whether additional notice was required under another statute and if the mask mandate ordinance required a hearing.

1.3 Hearings

This office does not have exclusive jurisdiction over hearings or ordinance procedures as a matter of law. The public access counselor's enabling statute only grants the office jurisdiction over meetings and public records. *See* Ind. Code § 5-14-5-6. While some hearings are also meetings, not all meetings are hearings. That said, this opinion will discuss the issue for educational purposes.

In accordance with Indiana Code section 36-2-4-8(b), an ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two consecutive weeks. Notice publication provisions are governed by statute. *See generally* Ind. Code § 5-3-1.

Drake contends the mask mandate carried a \$250 fine for noncompliance. If this is the case, St. Joseph County must publish the ordinance for two consecutive weeks before it takes effect after passage. *See* Ind. Code § 36-2-4-8(b).

What the statutes do not mandate, however, is published notice of a meeting before a legislative body passes an ordinance. Additionally, it does not require a public hearing to pass an ordinance. Therefore an ordinary Open Door Law meeting is sufficient to pass an ordinance. The publication piece comes afterward.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the St. Joseph County Council has not violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned to the right of the text.

Luke H. Britt
Public Access Counselor