
OPINION OF THE PUBLIC ACCESS COUNSELOR

DON HURD,
Complainant,

v.

TWIN LAKES SCHOOL CORPORATION,
Respondent.

Formal Complaint No.
20-FC-177

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Twin Lakes School Corporation violated the Open Door Law.¹ Attorney Jonathan Mayes filed an answer on behalf of the Board. 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 December 23, 2020.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether the superintendent of the Twin Lakes School Corporation (TLSC) violated the Open Door Law (ODL) by telling a reporter he could not live stream a school board meeting.

Don Hurd (Complainant) alleges that on December 21, 2020, a news reporter approached TLSC's superintendent for permission to live stream that evening's board meeting. This conversation took place minutes before the meeting was to begin. The superintendent was hesitant to allow the practice without first speaking to the school board's attorney. While he did not do so right away, he did reach out to the attorney the next day.

As a result, Hurd filed a formal complaint dated the next day alleging a violation of the ODL. Hurd argues the right to record a public meeting under the ODL implicitly includes the right to live stream.

For its part, TLSC agrees with Hurd and acknowledged that live streaming would be appropriate at board meetings. The school corporation recognizes the practice as legitimate. TLSC contends that the superintendent wanted verification from the school board's attorney.

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).

Twin Lakes School Corporation 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 TLSC board is a 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. 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 § 5-14-1.5-2(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).

Unless an exception applies, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. Ind. Code § 5-14-1.5-3(a).

3. Live-streaming a public meeting

As an initial matter, it is worth mentioning that the superintendent of a school corporation is neither a governing body nor a member thereof. Therefore, an Open Door Law complaint cannot be filed against the unilateral actions of a superintendent. Nevertheless, as counsel for TLSC notes, this appears to be a novel issue that has not gone addressed by this office. Hurd indicates some trial courts have, but this office is unaware of any cases directly on point.

As such, it is a worthwhile exercise for this office to take a position on the issue for posterity’s sake.

And that may very well be the reason why the superintendent clutched up on the issue in the moment. This office does not fault him for doing so and ultimately agrees with the response of TLSC. It does not appear to be a stutter step with the intention of frustrating access.

The legislature did not define the verb “record” in the Open Door Law. In the view of this office, the legislature left open the possibilities for emerging technology by leaving certain access provisions indefinite. Toward that end, the provisions of the ODL are to be interpreted liberally in favor of transparency. *See* Ind. Code § 5-14-1.5-1.

Definitively, live-streaming should be allowed at a public meeting so long as the device capturing the footage is not disruptive or intrusive. It is virtually the same as recording and should make no functional difference to the board at the dais. It is a benefit to the public when a reporter does so and is able to broadcast it in real time to subscribers or the public-at-large.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Twin Lakes School Corporation did not violate the Open Door Law. Additionally, this office agrees with the school corporation's determination that live-streaming should be allowed at public meetings going forward.

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

Luke H. Britt
Public Access Counselor