
OPINION OF THE PUBLIC ACCESS COUNSELOR

SARA L. NEWTON,
Complainant,

v.

POSEY COUNTY BOARD OF COMMISSIONERS,
Respondent.

Formal Complaint No.
20-FC-79

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Posey County Board of Commissioners violated the Open Door Law.¹ Attorney Joseph H. Harrison, Jr. filed an answer 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 June 1, 2020.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute over the Posey County Board of Commissioners' use of an administrative function meeting under the Open Door Law.

On May 19, 2020, the Posey County Board of Commissioners held one of the board's two regular monthly public meetings. After the meeting, the three commissioners, the Posey County Auditor, the Posey County Council president gathered to discuss the commissioners' preliminary budget estimates for 2021.

Sarah L. Newton (Complainant) attended the board's meeting and stayed around for the subsequent 2021 preliminary budget discussion.

Newton emailed the auditor's office to request a copy of the public notice the county provided for the preliminary budget meeting and the meeting minutes for the budget meeting when available.

The next day, Posey County Auditor Maegen Greenwell emailed Newton stating there was no need for the county to provide public notice because the preliminary budget meeting constituted an administrative function meeting under the Open Door Law.

On June 1, 2020, Newton filed a formal complaint alleging the commissioner's preliminary budget discussion constitutes a violation of the Open Door Law because the board failed to provide public notice of the meeting and failed to create meeting minutes.

On June 19, 2020, the Posey County Board of Commissioners filed a response to Newton's complaint disputing that the board's preliminary budget meeting violated the Open Door Law.

Essentially, the board argues that it was not required by the ODL to provide public notice for the preliminary budget meeting because it amounted to an administrative function meeting. The board contends that Indiana Code section 5-14-1.5-5(f)(2) authorized it to forego providing public notice.

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).

Posey 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 Posey 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). 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.

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 § 5-14-1.5-2(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).

Here, there is no dispute that all three Posey County Commissioners gathered—along with the auditor and county council president—to discuss preliminary budget estimates for 2021.

The parties disagree about whether this gathering required public notice.

2. Public notice

Generally, under the ODL, a governing body is required to provide public notice for all meetings. *See* Ind. Code § 5-14-1.5-5. More specifically, the ODL provides:

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

Ind. Code § 5-14-1.5-5(a). The ODL’s public notice requirement is subject to some limited exceptions. For instance, public notice is not required for meetings of the county executive if the meeting is only for carrying out administrative functions.

3. Administrative function meetings

The crux of this dispute is whether the Posey County Board of Commissioners' meeting to discuss preliminary budget estimates for 2021 required public notice or if the administrative function exception applies.

Under the ODL, the public notice requirement does not apply, in relevant part, to the following:

The executive of a county... if the meetings are held solely to carry out the administrative functions related to the county executive or town legislative body's executive powers.

"Administrative functions" means only routine activities that are reasonably related to the everyday internal management of the county or town, including conferring with, receiving information from, and making recommendations to staff members and other county or town officials or employees.

"Administrative functions" does not include:

- (A) taking final action on public business;
- (B) the exercise of legislative powers; or
- (C) awarding of or entering into contracts, or any other action creating an obligation or otherwise binding the county or town.

Ind. Code § 5-14-1.5-5(f). Here, the Board contends that it may carry out administrative functions outside of a public meeting.

That is not true. The administrative function exception applies only to the advance public notice requirement. If a

meeting is truly administrative in nature, the Board is not required to provide notice 48 hours in advance. All the other requirements of the ODL apply. Administrative function meetings must be open to the public and there must be meeting memoranda (e.g., minutes).

Equally problematic for the Board is that it makes no argument in support of its conclusion that the commissioners' gathering to discuss preliminary budget estimates for 2021 is an administrative function.

This office cannot agree that the commissioners' meeting to discuss budget matters, even if preliminary, constitutes a routine matter related to the everyday internal management of the county. What is more, this office must interpret exceptions under the ODL narrowly. It follows that budget planning for the next year is not an operational or daily internal management action for the county commissioners. Budgets have county-wide ramifications for every county department and office and is very much external to the executive branch of county government. Even preliminary discussions of budgetary concerns are not exclusively internal in nature. It should be noted that the examples give in the statute is not an exhaustive list of non-administrative functions; merely a limited sample of those matters which are outside the scope of the statute.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Posey County Board of Commissioners violated the Open Door Law by failing to provide public notice for the preliminary budget planning meeting.

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

Luke H. Britt
Public Access Counselor