
OPINION OF THE PUBLIC ACCESS COUNSELOR

JEFFREY W. BANKS,
Complainant,

v.

UNION-NORTH UNITED SCHOOL CORP.,
Respondent.

Formal Complaint No.
21-FC-155

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Union-North United School Corporation violated the Open Door Law.¹ Attorney Jonathan L. Mayes filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

¹ Ind. Code § 5-14-1.5-1 to -8.

the formal complaint received by the Office of the Public Access Counselor on September 23, 2021.

BACKGROUND

This case involves a dispute about whether the Union-North United School Corporation, through its board of trustees, violated the Open Door Law by secretly approving changes to the corporation's mask mandate, and improperly taking official action on public business without a public meeting.

On September 23, 2021, Jeffrey W. Banks filed a formal complaint against Union-North United School Corporation (UNUSC) alleging violations of the Open Door Law.

First, Banks asserts the school board violated the ODL by secretly voting to approve a change in the school corporation's mask mandate. As support, Banks relies on an email sent by Interim Superintendent Diane Woodworth announcing Union-North would require the use of masks beginning September 7, 2021. Woodworth's email stated, in relevant part, the following:

The board has discussed this situation informally and we all believe that the prior resolutions that they passed allow us to move forward in the implementation of the Governor's proposal.

Based on the information presented, it is unclear whether Union-North had a mask mandate in place at the time of Woodworth's email. Banks contends Woodworth's email in conjunction with certain UNUSC policies show a violation of the ODL because the mask policy change required ratification by the board, which he contends did not happen.

Second, Banks argues that the informal discussions referenced by Woodworth in the email amounts to the board taking official action on public business (i.e., deliberating) without a public meeting.

On October 13, 2021, Union-North United School Corporation filed an answer to Banks' complaint denying any violation of the Open Door Law.

Specifically, UNUSC argues the school board adopted a resolution in September 2020 authorizing the superintendent to implement all measures necessary to ensure health and safety of students and staff in all operational aspects of the school district.

Although UNUSC concedes that the previously adopted resolution was "forgotten," it argues the school board never rescinded the resolution; and thus, the interim superintendent properly exercised delegated authority to reinstate the mask mandate at Union-North. Toward that end, UNUSC contends the school board did not convene a meeting because it was not necessary. This opinion will include additional facts as necessary.

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 Union-North United School Corporation (UNUSC) 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(a). Additionally, the UNUSC school board (“Board”) is a governing body of the agency 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.

Here, Banks asserts that UNUSC, through the school board, committed two violations of the Open Door Law. First, Banks argues the school board held a secret vote on public business. Second, Banks contends the school board took official action on public business in executive session without providing public notice of the meeting, without publishing the agenda or minutes, and without providing the opportunity for public access.

2. Banks’ claims

Banks argues the Union-North school board secretly voted to approve changes to district’s mask mandate. UNUSC disputes Banks’ claim. Notably, Banks bases his argument on two board policies and the email referenced above from interim superintendent Woodworth.

As a preliminary matter, it is important to note that the Open Door Law requires a governing body to take final action (i.e., a vote on a resolution, policy, etc.) at a public meeting. Ind. Code § 5-14-1.5-6.1(c). The upshot of that statute

is the ODL prohibits a governing body from taking final action on public business in executive session or without a public meeting.

Banks' argument may be more compelling if the Union-North School Board did not adopt a resolution in September 2020 delegating certain authority to the superintendent. Granted, since the corporation apparently forgot about the resolution it is unclear if the school board intended for that authority to automatically extend to an interim superintendent without additional action by the board.

Banks also contends that the Union-North school board violated the ODL by taking official action (i.e., deliberating) on public business at an improperly convened executive session. Again, Banks bases his argument, at least in part, on the email sent by the interim superintendent referencing informal discussions with the board.

It is true that the Open Door Law includes "deliberating" within the statute's definition of "official action." *See* Ind. Code § 5-14-1.5-2(d)(2).

Even so, the ODL applies to gatherings of a majority of a governing body for the purpose of taking official action on public business. The Union-North School Board has five members, which means at least three of them must gather for the purpose of taking official action on public business to trigger the ODL.

The interim superintendent's email referencing informal discussions with or between school board members, without

more, is not enough to conclude a meeting of the board occurred subject to the Open Door Law. Banks has not offered sufficient evidence of an improper gathering in this case.

Still, Banks' concern is understandable. This is especially true when Union-North relies so heavily on what it describes as a forgotten resolution delegating authority to the superintendent as proof the school board complied with the Open Door Law.

Even so, this office's review is limited to the evidence presented by the parties. There is not enough to conclude the Union-North School Board violated the ODL in this case.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Union-North United School Corporation's Board of Trustees did not violate the Open Door Law.

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

Luke H. Britt
Public Access Counselor