
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEPHEN R. STIMLEY,
Complainant,

v.

MICHIGAN CITY FIRE MERIT COMMISSION,
Respondent.

Formal Complaint No.
21-FC-160

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Michigan City Fire Merit Commission violated the Open Door Law.¹ Attorney Cory Shoffner filed an answer on behalf of the Commission. 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 September 29, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

In this case we consider whether the Michigan City Fire Merit Commission (Commission) acted in accordance with the Open Door Law (ODL) by holding an executive session to discuss a city code.

According to Stephen Stimley (Complainant), on September 21, 2021, the Commission held an executive session to discuss section 54-176 of the Fire Merit Ordinance. The notice for this executive session stated that the meeting was being held privately so that the Commission could discuss records classified as confidential by state or federal statute. Stimley argues that the Commission was discussing this part of the ordinance to see if they had to comply with it, and the meeting was private because they did not want to solicit public input and extend the meeting. Stimley contends the Commission inappropriately applied the executive session exception because the document being discussed was not confidential.

Furthermore, Stimley alleges the Commission held a special meeting, which was open to the public, right after the executive session to receive public comment even though they had already made their decision.

On October 18, 2021, the Commission filed a response to the complaint. The Commission contends that it held the executive session on September 21, 2021, to obtain background on the best practices and application of Section 54-176 of the Fire Merit Ordinance. During the meeting, those present discussed the next person on the list that would be promoted

to fill the vacancy created by the promotion of the Fire Chief. The Commission maintains that this information is confidential in accordance with Indiana Code section 36-8-3.5-14, and that the executive session was conducted to discuss the promotion of the Fire Chief. Also, the Commission contends there was no vote or official action taken during the executive session.

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).

Michigan City is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the Michigan City Fire Merit Commission (Commission) 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 Commission must be open at all times to allow members of the public to observe and record.

1.1 ODL definitions

Under the ODL, "meeting" means "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). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “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).

2. Executive sessions

Despite the ODL’s general rule of open meetings, the public may be excluded from certain meetings known as executive sessions. A governing body may only hold an executive session in the specific instances set forth under section 6.1 of the ODL. *See* Ind. Code § 5-14-1.5-6.1(b).

This office scrutinizes executive sessions a bit more closely than other types of gatherings simply because it is the exception to the presumption of openness. Accordingly, when an access law is to be liberally construed, its exceptions shall be narrowly constructed. *See Indianapolis Newspapers v. Ind. State Lottery Comm’n*, 739 N.E.2d 144, 154 (Ind. Ct. App. 2000).

3. Michigan City Fire Commission's Executive Sessions

Based on the information provided, the Commission held two executive sessions on September 21, 2021. The Commission invoked statutes justifying the sessions were Indiana code sections 5-14-1.5-6.1(b)(7) and (9):

For discussion of records classified as confidential by state or federal statute.

To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

The Commission suggests that it held the sessions to review the application of a local ordinance and invited past members of the Commission and an employee union to weigh in.

Notably, this reason alone does not qualify as justification for an executive session. Mere discussion of an ordinance is not enough to invoke the above statutes.

Seemingly, however, it appears as if the substantive discussion revolved around the personnel about whom the ordinance would address. In that regard, the conversation could be framed appropriately for an executive session.

Given the circumstances, a candidate for a promotion was being considered. Naturally job performance would be germane to the promotion. Furthermore, Indiana Code section 36-8-3.5-14 allows a written competitive examination to be given before a promotion is granted. The written results are confidential to the public and would also be ripe for discussion in executive session.

While no final action can be taken at an executive session, a public meeting was held immediately following the session to vote on the promotion.

Based upon the information provided, it appears as if the discussion was more than mere analysis of a local ordinance but rather how the ordinance would interplay with other subject matters that do qualify for an executive session. The Commission seemingly followed the Open Door Law in regard to these meetings.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Michigan City Fire Merit Commission did not violate the Open Door Law.

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