
OPINION OF THE PUBLIC ACCESS COUNSELOR

CASEY R. SAMSON,
Complainant,

v.

CENTER TOWNSHIP BD. – BOONE COUNTY,
Respondent.

Formal Complaint No.
22-FC-132

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging Center Township Board of Boone County violated the Open Door Law.¹ Attorney Thomas Whitsitt 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 September 20, 2022.

¹ Ind. Code § 5-14-1.5-1—10.

BACKGROUND

In this case we explore whether the Open Door Law (ODL) requires a governing body of a public agency to cite a specific executive session statutory exception in the meeting notice, while also considering what discussion topics fall under the umbrella of “personnel matters.”

On September 19, 2022, the Center Township Advisory Board (Board) met in executive session to discuss, according to the posted notice, “personnel matters.”

The next day, Casey R. Samson (Complainant) filed a formal complaint with this office alleging the Board violated the Open Door Law (ODL). Samson contends the Board considered a proposal and discussed the potential merger of fire departments, which he argues does not constitute a personnel matter. Multiple non-Board members were also in attendance

Moreover, Samson claims that the Board also violated the ODL because the meeting notice did not state the subject matter by reference to the enumerated instance or instances for which executive sessions may be held.

On October 17, 2022, after this Office tried and failed on multiple occasions to solicit a response from the Township Trustee, the Board filed a response to Samson’s complaint through attorney Thomas Whitsitt.

The Board reiterated the facts of the executive session, confirming that multiple individuals listed in the complaint were present for the executive session and that the Fire Chief did present a proposal for a merger of the city and township fire departments. The Board maintains that this

topic of discussion was appropriate for an executive session because a potential merger of the departments includes personnel matters.

Included with the response was a copy of the meeting notice, which did not have the relevant statutory exception listed. The Board did not respond to Samson's argument that an executive session notice without statutory citation constitutes an ODL violation.

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).

Center Township 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 Township 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.

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). “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).

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). Additionally, the ODL mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

2. Executive sessions

Under the Open Door Law, “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. The governing body may also admit an individual who has been elected to the governing body but has not been sworn in as a member of the governing body.” Ind. Code § 5-14-1.5-2(f).

The ODL authorizes executive sessions in limited, specific circumstances, which must be properly and specifically noticed by reference. *See* Ind. Code § 5-14-1.5-6.1(b)(1) to – (15).

The reason for specifically referencing the statutory justification for an executive session is to give the public assurances that no other topic is discussed other than that which is allowed by law. The list of enumerated subject matters is narrow and specific.

Here, “personnel matters” is a generic label, which could ostensibly apply to any number of subject matters. And so it is in this case as well. The Board is using “personnel matters” to tie in a potential merger of fire departments, a subject matter than is not authorized for an executive session.

The Open Door Law is specific when it comes to personnel, which limits the number of issues a governing body may discuss in executive session. Those are: (1) receiving information about and interview prospective employees;² (2) to receive information about alleged misconduct;³ and (3) to discuss job performance of individual employees.⁴

None of these potential justifications include fire department mergers, even if “personnel matters” are tangentially implicated.

Our General Assembly has expressly declared that the Open Door Law “shall be liberally construed” in favor of transparency. *See* Ind. Code § 5-14-1.5-1. The courts have recognized this tenet as well and called for exceptions to be narrowly and conservatively construed. *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995). In the

² Ind. Code § 5-14-1.5-6.1(b)(5).

³ Ind. Code § 5-14-1.5-6.1(b)(6).

⁴ Ind. Code § 5-14-1.5-6.1(b)(8).

future, the Board should be mindful of the narrow scope of the executive session provisions of the Open Door Law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Center Township Board violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Issued: November 2, 2022