
OPINION OF THE PUBLIC ACCESS COUNSELOR

JULIUS M. HACKER,
Complainant,

v.

FRANKLIN COUNTY BOARD OF COMMISSIONERS,
Respondent.

Formal Complaint No.
24-FC-09

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Franklin County Board of Commissioners, violated the Open Door Law.¹ Commissioner Tom Wilson filed an answer on behalf of the library. 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 January 10, 2024.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

The issue in this case is whether the Franklin County Commissioners terminated the contract of the county attorney outside of a public meeting.

On January 10, 2024, Complainant Julius Hacker alleges that he discovered that two of three Franklin County Commissioners met in private to terminate the contract of the former county attorney and hired a replacement. He filed his formal complaint that same day.

Tom Wilson, Commissioner, responded on behalf of the County. He explained that the former county attorney's contract was not terminated early, however, it was not renewed when it expired on December 31. The contract for the new attorney was voted on and accepted at the January 10 meeting. The new attorney candidate submitted her own proposed contract and met individually with the Commissioners.

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).

Franklin County 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. The Board of Commissioners is a governing body of the County; and thus, subject to 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). 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).

"Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. Ind. Code § 5-14-1.5-2(g).

2. Final action outside of a public meeting

Under the ODL, final action must be taken outside of a public meeting. Ind. Code § 5-14-1.5-6.1(c). This includes a prohibition on taking final action at an administrative function meeting as well. Ind. Code § 5-14-1.5-5(f)(2).

Here, the Complainant alleges a contract was terminated and a new one accepted outside of a public meeting.

Notably, not every decision requires final action in the form of an official vote. Put another way, *inaction* does not always qualify as final action either². In the context of the expiration of a service provider’s contract, without more, inaction to renew is not proof positive of action outside of a public meeting.

Were the contract to be terminated early and replaced with a new contract outside a meeting, the Complainant would be

² There can be circumstances where inaction or omission could rise to the level of final action, but not here.

correct that violation most likely occurred. That does not appear to be the case based upon the County's response.

So long as the timeline provided by the Commissioner's is true and accurate, their course of action was legally permissible.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Franklin County Board of Commissioners did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor

Issued: April 4, 2024