
OPINION OF THE PUBLIC ACCESS COUNSELOR

DEBORAH JOHNSON,
Complainant,

v.

MARSHALL COUNTY PLAN COMMISSION,
Respondent.

Formal Complaint No.
24-FC-11

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Marshall County Plan Commission, violated the Open Door Law.¹ Attorney Derek R. Jones 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 January 30, 2024.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

The issue in this case is whether the Marshall County Plan Commission (Commission) held an executive session in accordance with the Open Door Law (ODL).

On January 25, 2024, at 6 p.m., the Commission held an executive session. The posted notice for this session stated the purpose for the meeting was to discuss personnel matters pursuant to Indiana code section 5-14-1.5-6.1(b)(5). Following discussion of personnel reviews, the Complainant Deborah Johnson – a member of the MCPC present at the gathering – alleges other projects including the work of the ‘Technical Review Committee.

Johnson filed her complaint on January 30, 2024.

On February 15, 2024, Attorney Derek R. Jones of Jones Huff & Jones, LLP submitted a response on behalf of the MCPC. In the response, Jones advised that topics did deviate from what was noticed but that no votes or final action was 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).

The Marshall County Plan Commission 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.

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). 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

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 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. Notably, the statute cited on the notice allows a board to “receive information about and interview prospective employees”. See Ind. Code § 5-14-1.5-6.1(b)(5).

It appears the true purpose of the meeting was to discuss job performance of employees. This is permissible, but the correct statute to cite is Indiana code section 5-14-1.5-6.1(b)(9).

This alone is a technicality and does not appear to be an egregious mistake.

Nonetheless, an executive session is not an opportunity to hold a closed meeting for other discussion items not on the notice. The Commission, via its response, admits to discussing several items including Utility Scale Battery Storage Systems, a rewrite of the subdivision and zoning ordinance, and ethics.

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

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).

Given that executive sessions are the exception to the general rule of open meetings, they are closely scrutinized by this office. Therefore, the subject matters discussed in executive session must snugly fit within the statutory parameters. "All doubts must be resolved in favor of requiring a public meeting and all exceptions to the rule requiring open meetings must be narrowly construed with the burden of proving the exception on the party claiming it." *Baker v. Town of Middlebury*, 753 N.E.2d 67, 70 (Ind.Ct.App.2001).

Here, it appears the Commission generously interprets the ODL's executive session provisions to include matters not specifically enumerated so long as no final action is taken.

The law does not support such a position.

Simply put, most of the discussion items broached falls outside the bounds of propriety for an executive session. A governing body may only discuss the items enumerated on an executive session notice and those discussion items must be permitted by the statute.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Marshall County Plan Commission violated the Open Door Law by discussing unauthorized topics in an executive session.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Issued: March 11, 2024