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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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MARK E. GOURLEY,  
*Complainant,*

v.

STARKE COUNTY COUNCIL,  
*Respondent.*

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Formal Complaint No.  
24-FC-71

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Starke County Council violated the Open Door Law.<sup>1</sup> The Town responded through attorney Justin Schramm. 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 17, 2024.

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<sup>1</sup> Ind. Code § 5-14-1.5-1-8.

## **BACKGROUND**

The issue in this case is whether the Starke County Council violated the Open Door Law by taking official action outside of a public meeting.

According to complainant Mark Gourley, a member of the Starke County Council held one-on-one meetings with fellow council members to secure a vote on an item of business that was subsequently removed from a meeting agenda on September 16, 2024.

In a social media post prior to that meeting, a councilmember indicated that she and three fellow councilmembers agreed to an intention to downvote a battery storage proposal.

The complaint was filed on September 17, 2024.

The Council responded on October 24, 2024. For its part, the Council contends no vote was taken and the matter was initially addressed formally at the October 21, 2024 meeting. Based on timing, final action on the matter could not take place until December 16 when a public hearing was set.

The Council argues that any one-on-one conversations would not trigger the Open Door Law due to lack of a quorum.

## 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).

Starke 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 Starke County Council 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 Council 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).

What is more, the Open Door Law prohibits final action taken outside of a public meeting. See Ind. Code § 5-14-1.5-6.1(c). 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).

Here, by telegraphing a majority’s intention to downvote a proposal it seemingly gives the impression that a vote was taken outside of a public meeting. This may not have had the force of an official decision, but it certainly provides a perception that a result was a foregone conclusion. One cannot say whether a court would consider this rising to the level of final action, but this kind of messaging may be ill-advised.

That stated, legislators at all levels of state government announce their intentions on issues all the time. This is merely politics. What brings it into the world of the Open Door Law is when a majority of a governing body coalesce and appear to prognosticate as a collective.

In the future, it may be best to signal intentions individually so that the public is not misled into thinking that a public hearing and eventual vote is just a rubberstamped and performative exercise.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Starke County Council did not technically violate the Open Door Law as plainly written.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name Luke H. Britt.

Luke H. Britt  
Public Access Counselor

Issued: December 15, 2024