
OPINION OF THE PUBLIC ACCESS COUNSELOR

MORGAN COUNTY CORRESPONDENT,
Complainant,

v.

BOARD OF EDUCATION OF THE MOORESVILLE
CONSOLIDATED SCHOOL CORPORATION,
Respondent.

Formal Complaint No.
24-FC-88

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Board of Education of the Mooresville Consolidated School Corporation (Board) violated the Open Door Law.¹ The School responded through counsel Michelle Cooper. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code § 5-14-1.5-1-8.

by the Office of the Public Access Counselor on December 13, 2024.

BACKGROUND

The issue in this case is whether the Board of Education of the Mooresville Consolidated School Corporation (Board) violated the Open Door Law by holding closed door meetings to fill a Board vacancy and not taking public comment before final action.

According to Complainant, the *Morgan County Correspondent*², the Board held an executive session on November 25, 2024 to discuss the appointment of member to replace a deceased incumbent. It properly noticed the meeting. Nonetheless, Complainant alleges that the Board subsequently held a public meeting where it unanimously voted in favor of one of the five applicants without discussion and without public comment. The Complainant argues that the lack of discussion beforehand is proof positive that the decision was made in executive session and the vote was merely a perfunctory rubberstamp final action. Additionally, the statutorily required oral public comment period was not extended to the audience in attendance.

The *Correspondent* filed its complaint on December 13.

The Board submitted its response on December 17. It argues that there was a sign-up sheet for public comment and no one exercised their option to do so. Therefore, the Board did not open the floor to the audience even though public comment was on the agenda and both the itinerary and the

² The Reporters Committee for Freedom of the Press filed the complaint in a representative capacity on behalf of the *Correspondent*.

sign-up sheet conspicuously extended the invitation to the audience for input. A *Correspondent* reporter was the only non-staff attendee.

The Board denies that any vote took place in the executive session and that the individual that was the most qualified of the five applicants was quickly voted in unanimously.

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 Mooresville Consolidated Schools Corporation 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 School's Board 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).

Under the ODL, the term “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.” Ind. Code § 5-14-1.5-2(f).

1.2 Executive Sessions

While most official action is authorized in executive session, final action is expressly prohibited. See Ind. Code § 5-14-1.5-6.1(c).

Here, the Complainant contends that a final decision must have been made in executive session because the Board entered into the public meeting portion of the evening and made its decision in under two minutes. While the executive session was justified pursuant to Indiana code section 5-14-1.5-6.1(b)(10), it suggests final action must have been taken and then procedurally ratified after-the-fact.

The Board argues that a vote did not take place behind closed doors and suggests that finding otherwise could create challenges to executive sessions Statewide.

I disagree with that implication.

The entire point of the Open Door Law is that “the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed”. Ind. Code § 5-14-1.5-1.

Implicit in that goal is that the Open Door Law requires some discussion of non-confidential matters before a decision is made.

While most of the executive session topics have confidentiality considerations, the applicant of appointees discussion is not one that carries much by way of sensitivity. Hired employees, yes, but applicants to public boards, no.

To the Board’s point, the process of filling vacancies on school boards does have some timeliness requirements and toward that end, the law allows some winnowing of applicants and pre-appointment discussion in executive session to streamline the process.

But to suggest that the significant exercise of appointing a representative on a school board merely requires hasty, obligatory vote is not consistent with the theme of the access laws. This is especially so when this individual will directly represent a portion of the population.

Consider that post-meeting memoranda must document the general substance of all matters discussed, proposed, or decided. See Ind. Code § 5-14-1.5-4(b)(3). To fulfill this, a meeting must indeed have *substance*. This is even more so when meetings are sparsely attended. Preserving the record for those *in absentia* and for posterity is critical.

Confidential or routine, administrative matters notwithstanding³, any final action concerning items of significance needs to be accompanied by robust discussion of the underlying subject matter. The appointment of a public official is one of those.

It is true that the law does not provide a checklist of how a discussion is to be conducted or even that interviews are absolutely necessary. At the very least, however, a brief summary or description of the chosen candidate's qualification should have been stated and some commentary as to why he rose to the top.

There may not have been formal yays and nays in the executive session. And while only the Board members truly know their intentions and actions behind closed doors, it would be naïve for the public access counselor to come to

³ For efficiency's sake, some routine action items can be included on a consent agenda and, within reason, discussion would be unnecessary. See *Opinion of the Public Access Counselor* 23-INF-10.

any other conclusion that the subsequent vote was an inevitability.

1.3 Public Comment

Beginning in 2022, the governing bodies of school corporations are required to invite public comment before final action takes place⁴.

The *Correspondent* complains that the public comment forum was not extended to the audience during the meeting. The Board argues that the public comment was posted on the sign-up sheet but no one exercised that option.

The office of the public access counselor does not typically dictate what an agenda or itinerary should look like, nor does it favor one form of parliamentary procedure over another. Nonetheless, the law is clear that a public comment forum must take place at a school board meeting.

And while it may be a performative exercise when no one signs up to speak, it should at least be name checked during the meeting itself, even if it ends up being lip service.

But here, the rushed nature of the agenda item and the vote – less than two minutes according to the *Correspondent* – is indicative of the desire to open and close the topic with as little fuss as possible.

There is nothing necessarily wrong with sign-up sheets for comment and I take the Board at their word when it says

⁴ Ind. Code § 5-14-1.5-3(d)

that it has the good-faith intention to go above and beyond even what the law requires.

Nonetheless in this case, I find fidelity to the statutory intent lacking.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the vote to appoint a new board member to be a foregone conclusion after an executive session based on the information provided. What is more, I encourage the Board to be more mindful of the public comment considerations in future meetings. The Board did not carry the burden of compliance with the Open Door Law in either of these matters.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

Issued: February 18, 2025