



STATE OF INDIANA

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February 16, 2017

Jeff Ratliff
Via email

Re: Informal Inquiry 18-INF-02; Open Door Law Matters

Dear Mr. Ratliff,

This informal opinion is in response to your inquiry regarding several issues raised regarding the Open Door Law. You preface your questions by stating a local town council holds a "work session" in a restaurant outside of town limits. You question the propriety of this if notice is posted at the town hall but not on the restaurant itself. The remainder of your questions are as follows:

1. Does a public agency, by definition, refer to the Municipal Corporation, a Town Council, or Individual Councilmembers?
2. If the Public Agency is a Municipal Corporation, Town Council or Individual Councilmember how is the location of their principal office determined?
3. Does town hall constitute the principal office of the "Municipal Corporation," "Town Council," or Councilmembers for purposes of posting meeting notice?
4. Should every public agency post meeting notice at the physical location of all public meetings?
5. If a decision is made during what may or may not constitute an illegal meeting and a member of the public decides to challenge said decision, what steps should that individual take to begin the process?

Analysis

The Open Door Law ("ODL") generally requires the meetings of the governing bodies of public agencies to be open to the public. Ind. Code § 5-14-1.5-3(a). The purpose of the ODL is to ensure the official action of public agencies is conducted and taken openly so the general public may be fully informed. *See* Ind. Code § 5-14-1.5-1.

1. Public Agency vs. Governing Body

"Public agency" means the following: Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power. *See* Ind. Code § 5-14-1.5-2(a). Therefore in your

example, the City is the public agency and the council would be the governing body of the public agency. “Governing body” means two (2) or more individuals who are the board, commission, council, or other body of a public agency which takes official action upon public business. See *Id.* at 2(b).

Individual councilmembers, although not defined by statute, are public officials in representative capacities or “agents” of the council. Therefore when acting on public business, individual councilmembers can, amongst other things, create public records, act on behalf of the agency, etc.

2. Principal Place of Business

Ind. Code § 5-14-1.5-5(b)(1) states the governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. “Principal office of the public agency” is not a term defined by the Open Door Law but it generally means the town hall, courthouse, school or building where the majority of a governing body’s meetings are held. Councilmembers do not always have brick-and-mortar offices in a municipality, but council chambers are generally situated at the seat of government within a political subdivision.

3. Location of notice

Preferably, if a meeting was held remotely, notice of the meeting would be posted both at the principal place of business and at the meeting location. With private businesses—restaurants, airports, etc.—this isn’t always practicable. The statute only mandates one location for the notice: the principal office of the agency. That notice must give the exact location of the meeting, the date and the time where they will meet. Additionally, the public must have full access to the councilmembers during the meeting to observe and record them. A restaurant is appropriate for a meeting, although it may provide logistic challenges. This Office has recognized the legitimacy of a meeting in a non-traditional locations so long as the public has access. See *Opinion of the Public Access Counselor* 04-FC-84.

4. Requirement for every agency

The provision in Ind. Code § 5-14-1.5-5(b)(1) applies to the governing body of any public agency, and notice must be given anytime a majority meet to take official action on public business unless it does not qualify as a meeting under Ind. Code § 5-14-1.5-2(c). Agencies should also be mindful that, if used, an agenda must be made available at the actual meeting location pursuant to Ind. Code § 5-14-1.5-4(a).

5. Consequences of an “illegal meeting”

If a meeting fails to comply with the Open Door Law, there are remedies available for any individual denied access to a meeting. The formal complaint process is available through this Office as the exhaustion of the administrative remedy. Regardless if a complaint is filed with the Public Access Counselor, an affected individual may file a lawsuit under Ind.

Code § 5-14-1.5-7. Remedies available at the trial court level include an injunction enforcing the Open Door Law; overturning a vote; assessment of civil penalties; and the awarding of attorney fees. Civil penalties and attorney fees, however, may only be levied against a public agency if the individual seeks an opinion first from this Office.

Please do not hesitate to contact me with any questions.

Best regards,

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

Luke H. Britt
Public Access Counselor