
OPINION OF THE PUBLIC ACCESS COUNSELOR

RAYMOND J. COONEY,
Complainant,

v.

JAY COUNTY COMMISSIONERS,
Respondent.

Formal Complaint No.
24-FC-38

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Jay County Commissioners violated the Open Door Law.¹ Attorney Wesley A. Schemenaur filed an answer on behalf of the Commissioners. 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 May 14, 2024.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

The issue in this case is whether the Jay County Commissioners (Commissioners) wrongfully took non-administrative final action outside of a public meeting.

The following facts in this case are not necessarily in dispute: On May 2, 2024, the Jay County Board of Commissioners met to discuss terms of a contract, notably a counterproposal to a contract with the Jay County Development Corporation, a local non-profit organization. They did so under the auspice of an administrative function meeting, therefore notice was not given.

The facts in dispute concern an email sent to the local newspaper citing a “2-1 decision” made by the Board voting not to renew a contract.

Subsequent to receiving the email, Ray Cooney, the editor of the Jay County Commercial Review, contacted this office as asked for guidance as to whether this was an acceptable use of the administrative function meeting exception for Commissioners pursuant to Indiana code section 5-14-1.5-5(f)(2). The question was presented as a final action on the terms of a request of public financial resources. This type of action clearly falls into the definition of a public meeting pursuant to Indiana code section 5-14-1.5-2(c)(8) and Cooney was advised accordingly.

After Cooney filed his formal complaint on May 14, 2024, the Board submitted its response on June 12, 2024. It argues that administrative function meetings can include discussions and negotiations of contracts because it is a power of the county executive to do so under Title 36 of the Indiana

code. Additionally, the Board argues the administrative function meeting provisions does not expressly prohibit it².

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).

Jay County is a public agency for the purposes of ODL; and thus its governing body – the Board of Commissioners – is subject to the law’s requirements. Ind. Code § 5-14-1.5-2.

² The Board’s response also takes exception to this Office’s request for assistance from the Commercial Review and implies that the provided quote telegraphed the outcome of this Opinion. The Board would be well served to note that the public access counselor’s duties include providing education and interpretations to the public upon request pursuant to Indiana code section 5-14-4-10. As a complaint had not yet been filed, guidance was provided. Even though the PAC is advisory only, it would have deferred a statement if the complaint had been filed first. As always, all due consideration and weight has been given to the Board’s response.

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).

2. Administrative Function Meetings

Under ODL, certain governing bodies are permitted to hold meetings regarding administrative functions without providing a 48-hour notice. The statute states:

The executive of a county or the legislative body of a town if the meetings are held solely carry out the administrative functions related

to the county executive or town legislative body's executive powers. "Administrative functions" means only routine activities that are reasonably related to the everyday internal management of the county or town officials or employees. "Administrative functions" does not include:

- A) taking final action on public business;
- B) the exercise of legislative powers; or
- C) awarding of or entering into contracts, or any other action creating an obligation or otherwise binding the county or town.

Ind. Code § 5-14-1.5-5(f)(2). Consistent with the statute and court holdings, this office has traditionally narrowly applied the exceptions laid out in ODL³.

At issue here is discussion and a decision made by a county executive in an administrative function meeting regarding a local economic development corporation.

The Indiana General Assembly mandated that the APRA "be liberally construed" in favor of transparency. See Ind. Code § 5-14-3-1. Our courts have recognized this tenet as well and called for disclosure exceptions to be narrowly construed. *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. App., 1995).

³ *Robinson v. Indiana University*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995)

Administrative functions are an exception to the general rule that meeting notice must be posted 48 hours in advance. As a functional result, administrative function meetings are rarely attended by the public.

While it is true negotiation of contracts are matters within the purview of the county executive pursuant to Indiana code section 36-2-3.5-4(a)(9), that does not qualify any action an executive may take as “administrative.”

The law does not explicitly cite “contract negotiations” as off-limits in its non-exhaustive list of prohibited activities. Similarly, it does not cite discussions of litigation strategy, personnel performance and discipline, real estate transactions, etc. That is because other statutes address those things, contracts included.

When considering matters of statutory construction, the entirety of a statute is to be read to contextualize its individual provisions. Statutes relating to the same general subject matter are *in pari materia* and should be construed together so as to produce a harmonious system. *Indiana Alcoholic Beverage Commission v. Osco Drug, Inc.*, 431 N.E.2d 823 (Ind. App. 1982).

Hints abound in the law regarding the legislature’s intent regarding negotiations. Most notably, there is an express executive session statute – Ind. Code § 5-14-1.5-6.1(b)(4) – for that very purpose. In the event that a private negotiation session was necessary, there’s a statute for that.

Additionally, Indiana code section 5-14-1.5-2(c)(5) allows discussion of commercial prospects outside of a public meeting, yet it prohibits a conclusion as to recommendations, policy, decisions, or final action on terms.

Here, there appears to be the development of a counteroffer for a request for public resources. A 2-1 decision was made, outside of a noticed meeting, to present that offer. If accepted, it would have bound the County to certain terms and had both operational and fiscal ramifications. There is nothing routine or administrative about such an action.

Decisions such as these are beyond administrative, and directly affect the County's budget, funded by County taxpayers. Consistent with prior opinions, "anytime there is the slightest hesitation on whether an administrative meeting would be appropriate, a meeting should not occur."⁴

When the administrative function language was amended in 2019, lawmakers attempted to strike a balance between allowing county and town executives some latitude in conducting routine and internal management operations, yet also prohibiting official action on matters of public interest. One of the informal questions asked was: *would a reasonable member of the public have a legitimate interest in having notice of the discussion?* If that answer is "yes" and it does not fall into an executive session or any other non-meeting definition, the meeting should be public.

⁴ Opinion of the Public Access Counselor 12-INF-36

CONCLUSION

Based on the foregoing, it is the opinion of this office that discussions or negotiations of unexecuted contracts is not appropriate for an administrative function meeting.

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

Luke H. Britt
Public Access Counselor

Issued: July 31, 2024