
OPINION OF THE PUBLIC ACCESS COUNSELOR

KENNETH W. DAVIDSON,
Complainant,

v.

LAKE COUNTY BOARD OF COMMISSIONERS,
Respondent.

Formal Complaint No.
17-FC-183

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Lake County Board of Commissioners (“Commissioners”) violated the Open Door Law¹ (“ODL”). The Commissioners responded to the complaint through attorney Tramell Raggs. His response is enclosed for review. 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 July 27, 2017.

¹ Ind. Code §§ 5-14-3-1.5-1 to -8.

BACKGROUND

Kenneth W. Davidson (“Complainant”) claims the Lake County Board of Commissioners violated the Open Door Law by transferring commissioner sale certificates to the City of Gary without public discussion.

At a public meeting on July 19, 2017, the Commissioners transferred fourteen Commissioner Sale Certificates to the City of Gary. The agenda did not refer to the transfer nor were any of the properties specifically discussed. Davidson takes exception with the lack of discussion or notice on these transfers.

The Commissioners dispute Davidson’s claim of noncompliance and argue that the board followed all appropriate provisions of the ODL in this case.

ANALYSIS

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so the people may be fully informed. The ODL’s provisions are to be liberally construed with the view of carrying out its policy. *See* Ind. Code § 5-14-1.5-1.

Under Indiana law, ratification of a prior action by a governing body is permissible *if that action could have been taken otherwise outside of a public meeting*. Ind. Code § 36-1-4-16 (Emphasis added). The condition precedent in that statute presumes the action outside the meeting is otherwise within

the bounds of the law. In Opinion of the Public Access Counselor 17-FC-113, I opined that the retroactive application of an amendment to a zoning ordinance via the ratification mechanism was inappropriate because final action is prohibited outside of a public meeting. In that specific instance, the ordinance necessitated a vote; and approval of the ordinance was conducted over email and made effective before a public meeting. In my opinion, the ratification did not absolve the fact the vote was taken outside of a public meeting,

In contrast, Indiana Code § 6-1.1-24-6.2 governs the last step in the process for divesting a county's interest in properties on a tax delinquency list. Multiple notices are published and opportunities are plentiful for someone with a pending or potential property interest in a sale certificate to exercise any rights to retain or purchase those properties before transfer to a municipality. The negotiations between the county and city are complete and the transfer merely a formality. No public interest is at stake at the time of the transfer.

These two actions are worlds apart. The latter is purely administrative in nature while the former is substantive public business affecting tangible and present interests. After some initial consternation, Lake County was gracious enough to further solicit my clarification as it pertains to 17-FC-113. I am confident that the Commissioners are now aware of the delineation between substantive public business necessitating public discussion and votes, and administrative or operational formalities which can be preliminarily approved outside of a meeting. Indiana Code § 36-1-4-16 would certainly

apply to those non-policy-based decisions and tasks such as the transfer of sale certificates to a municipality.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Lake County Board of Commissioners has not violated the Open Door Law.

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

Luke H. Britt
Public Access Counselor