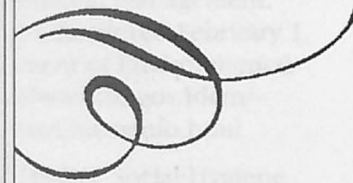


UNDERSTANDING THE ROLE OF PUBLIC LIBRARIES UNDER INDIANA'S OPEN DOOR LAW

by Dragomir Cosanici



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Since its passage some thirty years ago in 1977, the Indiana Open Door Law¹ has been a fountain of confusion for public libraries and a source of litigation for many public bodies and public officials. This brief article will clarify the major roles and responsibilities of Indiana public libraries to the public under the Indiana Open Door Law. The Indiana General Assembly enacted the Open Door Law to ensure that the business of the State of Indiana and its political subdivisions will be conducted openly so that the general public may be fully informed.² Courts have interpreted that the provisions of this statute are to be liberally construed in order to give full effect to the legislature's intent.³ The intended beneficiaries of this law are members of the public, and the aim is to make the business of state government and its subdivisions as transparent to the public as possible. But how does this translate, in practical terms, to public libraries in Indiana?

I. COVERAGE

The Indiana Open Door Law applies to all meetings of the governing bodies of public agencies so that the public may observe and record them.⁴ Three factors must be closely analyzed in order to understand how the Open Door Law requirements translate to public libraries in Indiana. First, it must be determined whether the Indiana Open Door Law specifically applies to public libraries. Second, there must be a determination of whether a meeting took place as defined by the statute, that is, whether there is a "gathering of a majority ... for the purpose of taking official action upon public business."⁵ Finally, if there is a meeting of an appropriate governing body, then it must be determined whether any exceptions exist permitting the meeting to be closed.

It is first important to mention that public libraries in Indiana are generally municipal corporations which provide library services and are organized under Indiana Code chapters 36-12-2, 36-12-4, 36-12-5, 36-12-6, or 36-12-7.⁶ Library boards are the fiscal, administrative,⁷ and governing bodies of public libraries.⁸ Since

public agencies in Indiana are defined as "any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of executive, administrative, or legislative power of the state,"⁹ it remains indisputable that the Open Door Law applies to all public libraries in Indiana.

II. MEETINGS

A meeting, under section 2 of the Open Door Law, means a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business."¹⁰ The statute expressly excludes social or chance gatherings not intended to evade the statute. In addition, it excludes any social gatherings not intended to circumvent on-site inspection of any project or program, traveling to and attending meetings of organizations devoted to betterment of government, or a political caucus.¹¹ It is clear by its very definition that the legislature has not attempted to prevent officials from conferring privately and informally among themselves because it does not prevent small group gatherings of less than a majority.

The confusing statutory definition of governing bodies still leaves the question of how many board members constitute a quorum. A "governing body" is generally defined as two or more individuals who are the board of a public agency which takes official action upon public business.¹² Does this somehow mean that a meeting between two board members can satisfy the statutory requirements? No, the Indiana Court of Appeals has recently concluded that without a majority present, no meeting occurs in the state of Indiana for purposes of the Open Door Law.¹³ Does this mean that committees, such as finance or technology, that often make up less than a quorum do not have to abide by the Open Door Law? Committees that are directly assigned or delegated authority by the library board are subject to this act and they must fully abide by it.¹⁴ In order for the Open Door Law to apply, the library board must not only hold a meeting, but it must also meet with the purpose of taking official action. Official action means that the library board will either receive

information, deliberate, make recommendations, establish policy, make decisions, or take final action.¹⁵ In short, a majority of the board meeting for coffee or to discuss the latest news on the library staff, does not trigger the Open Door Law.

All meetings of the public library board, as the governing body, must be open at all times for the purpose of permitting the public to observe and record these meetings.¹⁶ The word "record" has not been defined in the Indiana Open Door Law, so many have wondered what are the appropriate methods of recording. The Indiana Attorney General answered this question in a formal advisory opinion in 1984. The official conclusion was that a citizen has the right to be present at a public meeting, other than an executive session, and he/she has the right to record the meeting by videotaping, shorthand, or any other recognized method of recording devised by evolving technology subject to reasonable restrictions as to equipment and use which may be imposed by the public agency.¹⁷ Not only does the public have the right to record a public meeting, but it may do so by any means, traditional and yet-to-be determined, as long as the methods meet reasonable equipment and use restrictions set by the library board.

The Open Door Law requires that notice of any meeting of the public library board be posted at least forty eight (48) hours before the meeting, excluding Saturdays, Sundays, and legal holidays.¹⁸ When the library board calls a meeting to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity then the time requirements of notice under this section do not apply.¹⁹ Instead, the library board has to provide the public notice of the emergency meeting as soon as possible. The news media which have requested notice of meetings must be contacted in the same fashion and in the same time frame as the individual board members.²⁰

III. EXCEPTIONS TO OPEN MEETINGS

The Open Door Law provides for some meetings of the public library board at which the public is excluded. Section 6.1 of the act outlines the exact parameters of executive sessions. Some specific instances which allow for executive sessions: (1) where authorized by state or federal law; (2) for discussion of collective bargaining strategy, (3) discussion related to the initiation of litigation that is either pending or has been threatened in writing, (4) the implementation of security systems, (5) the purchase or lease of real estate.²¹ Such discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.²² Executive sessions are also allowed for receiving information about and interviewing prospective employees.²³ It is also important to mention that

executive sessions are permitted in instances where the library board has jurisdiction over a library employee and is to receive information concerning that employee's misconduct or to discuss, before a determination, an employee's status.²⁴

It is also important to note that interviews of prospective appointees to library staff such as directors must be conducted at a meeting that is open to the public.²⁵ Also, there must be adequate notice to the public about the subject matter of the executive session to be held by the public library board, but there is no requirement that the board inform the public about the actual deliberations during the executive meeting.²⁶ The minutes and memoranda taken at the executive session must identify the subject matter considered by specific reference to the enumerated instances for which public notice was given.²⁷ The library board must certify by a statement in its memoranda and minutes that no subject matter other than the one specified in the public notice was discussed during the executive session.²⁸

POSTING OF THE AGENDAS, MINUTES, AND PUBLIC NOTICE

Public library boards must post, prior to their meeting, their agendas at the entrance of the library, which is the location where those meetings will be held.²⁹ Although technically the board is not required to keep minutes of the meetings, it must keep a memorandum of the meeting. It must contain: (1) the date, time, and place of meeting, (2) the members of the board recorded as either present or absent, (3) the general substance of all matters proposed, discussed, or decided, (4) a record of all votes taken, by individual members if there is a roll call.³⁰ These memoranda must be available to the public within a reasonable period of time after the meeting.³¹ The minutes are to be open for public inspection and copying.

As earlier mentioned, public notice of the date, time, and place of any meetings, executive sessions, or any rescheduled or reconvened meeting, must be given at least 48 hours before the meeting. This does not include Saturdays, Sundays, or legal holidays. The notice must be placed at the public library and delivering the notice to all news media who have requested such notification in writing is a must; the notice must be for all meetings of the year.³² The method of giving such notice must be by regular U.S. postal mail, by electronic mail, or by facsimile (fax).³³ Notice of regular meetings need only be provided once per year, except if a meeting time or date has been changed.³⁴

V. USE OF TECHNOLOGY

Library board members often wonder if they can participate in a meeting by using telephone or

videoconferencing equipment. This would make public meetings accessible for any homebound board members, reduce travel time, and make it possible for the board members to meet during bad weather conditions. Unless specifically provided for in the Open Door Law, the public library board must meet in person. Since the Open Meetings Law lacks such provisions, and the rules of statutory construction require the application of the statutory language in a logical manner consistent with the statute's underlying policy and goals, public library meetings are not to be conducted by phone or videoconferencing.³⁵ It is also important to mention that recorded board meetings are part of the public record and must be kept and released to the public upon request. The length of time for keeping such records is set by the retention schedule of the local clerk of the court. Libraries should check with the clerk of the court for the retention schedule of such records. Finally, electronic messages of the employed library staff and the library director are subject to disclosure. The content of the specific message is the determining factor of whether it should be released to the public upon request. Check with the library board's attorney before deciding whether to release or withhold releasing the content of any electronic messages.

VI. VIOLATIONS AND REMEDIES UNDER THE OPEN DOOR LAW

The State of Indiana affords the public the opportunity to consult with the Public Access Counselor. This individual establishes and administers programs to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws.³⁶ Moreover, the Public Access Counselor responds to informal inquiries made by the public and public agencies by telephone, in writing, in person, by facsimile, or by electronic mail concerning public access laws.³⁷ Finally, the Public Access Counselor issues advisory opinions to interpret the public access laws upon the request of a person or a public agency. The Counselor, however, may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed.³⁸

Alleged violations of the Open Door Law also give rise to legal actions by any person in state court. The library board may be sued so that the plaintiff may obtain a declaratory judgment, stop future violations or declare void any actions, final decisions, or policy set by the board.³⁹ The person seeking a judicial remedy must file an action in state court within thirty (30) days of the alleged violation.⁴⁰ The court may void the policy, decision, or final action of the library board and may decide to prevent the board from subsequently acting upon the subject matter of the voided act until it has given substantial reconsideration at a meeting that complies with the law.⁴¹ The prevailing party may be

also awarded attorney's fees and court costs, but the plaintiff may forfeit such award if s/he bypassed the Office of the Public Access Counselor.⁴² An exception to this forfeiture of fees is made in instances where the plaintiff has shown that filing the suit was necessary to prevent a violation of the Open Door Law by the library board.⁴³

REFERENCES

- ¹ Ind. Code Ann. § 5-14-1.5 *et seq.* (West Supp. 2006).
- ² *Gary/Chicago Airport Bd. of Authority v. Maclin*, 772 N.E.2d 463, 468 (Ind. Ct. App. 2002); Ind. Code Ann. § 5-14-1.5-1 (West Supp. 2006).
- ³ *Id.*
- ⁴ Ind. Code Ann. § 5-14-1.5-3(a).
- ⁵ Ind. Code Ann. § 5-14-1.5-2(c).
- ⁶ Ind. Code Ann. § 36-12-1-5.
- ⁷ Ind. Code Ann. § 36-12-1-3.
- ⁸ Ind. Code Ann. § 5-10.3-1-4; 1985-1986 Ind. Op. Atty. Gen 132 (November 15, 1985).
- ⁹ Ind. Code Ann. § 5-14-1.5-2(a)(1).
- ¹⁰ Ind. Code Ann. § 5-14-1.5-2(c).
- ¹¹ Ind. Code Ann. § 5-14-1.5-2(c) (1)-(4).
- ¹² Ind. Code Ann. § 5-14-1.5-2(b).
- ¹³ *Dillman v. Trustees of Indiana University*, 848 N.E.2d 8348, 351 (Ind. Ct. App. 2006).
- ¹⁴ Ind. Code Ann. § 5-14-1.5-2(b)(1)(A); *Robinson v. Indiana University*, 638 N.E.2d 435, 438 (Ind. Ct. App. 1994).
- ¹⁵ Ind. Code Ann. § 5-14-1.5-2(d).
- ¹⁶ Ind. Code Ann. § 5-14-1.5-3(a).
- ¹⁷ 1983-1984 Ind. Op. Atty. Gen 117 (July, 6, 1984).
- ¹⁸ Ind. Code Ann. § 5-14-1.5-5(a).
- ¹⁹ Ind. Code Ann. § 5-14-1.5-5(d).
- ²⁰ Ind. Code Ann. § 5-14-1.5-5(d)(1).
- ²¹ Ind. Code Ann. § 5-14-1.5-6.1(b)(1)-(b)(2)(D).
- ²² Ind. Code Ann. § 5-14-1.5-6.1(b)(2)(D).
- ²³ Ind. Code Ann. § 5-14-1.5-6.1(b)(5).
- ²⁴ Ind. Code Ann. § 5-14-1.5-1.6.1(b)(6)(A)&(B).
- ²⁵ Ind. Code Ann. § 5-14-1.5-1.6.(b)(10)(C).
- ²⁶ Ind. Code Ann. § 5-14-1.5-1.6.(d).
- ²⁷ *Id.*
- ²⁸ *Id.*

- ²⁹ Ind. Code Ann. § 5-14-1.5-4(a).
- ³⁰ Ind. Code Ann. § 5-14-1.5-4(b)(1)-(4).
- ³¹ Ind. Code Ann. § 5-14-1.5-4(c).
- ³² Ind. Code Ann. § 5-14-1.5-5(b)(1)-(2).
- ³³ Ind. Code Ann. § 5-14-1.5-5(b)(2)(A)-(C).
- ³⁴ Ind. Code Ann. § 5-14-1.5-5(c).
- ³⁵ See, e.g., *Chavis v. Patton*, 683 N.E.2d 253, 257 (Ind. Ct. App. 1997).
- ³⁶ Ind. Code Ann. § 5-14-4-10(1).
- ³⁷ Ind. Code Ann. § 5-14-4-10(5).
- ³⁸ Ind. Code Ann. § 5-14-4-10(6).
- ³⁹ Ind. Code Ann. § 5-14-1.5-7(a).
- ⁴⁰ Ind. Code Ann. § 5-14-1.5-7(b)(2).
- ⁴¹ Ind. Code Ann. § 5-14-1.5-7(e).
- ⁴² Ind. Code Ann. § 5-14-1.5-7(f).
- ⁴³ Ind. Code Ann. § 5-14-1.5-7(f)(2).

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