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January 7, 2022

Kyle Kershaw

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VIA MA [REDACTED]

RE: Informal opinion 21-INF-13; School Advisory Committees

Dear Mr. Kershaw:

This informal opinion examines whether an advisory committee established by a school board is subject to the Open Door Law, and if so, whether the committee's closed meetings constitute a violation of the law.

According to your inquiry, at the start of 2020 the Vigo County School Corporation Board of Trustees approved a strategic plan that called for the creation of a task force comprised of teachers, administrators, staff, and citizens to identify a consolidation plan. Beginning in late 2020, this task force was mentioned during various school board meetings. At one point the Superintendent described the purpose of this task force as helping with decisions regarding closing of buildings in the district and that the Board authorized the establishment of the group.

Moreover, while the task force was established by the school board, you assert that their meetings were closed to the public, notice for those meetings was never posted, and committee members were apparently warned to not disclose what was discussed in the meetings. Furthermore, when you requested copies of meeting minutes you were told that none existed. Therefore, you inquire whether this task force is subject to the Open Door Law, and also whether the actions by the gathering constitute a violation of the law.

1. Open Door Law

The Open Door Law ("ODL") requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* 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 Vigo County School Corporation (School) is a public agency for purposes of the ODL; and thus, subject to the law's requirements. *See* Ind. Code § 5-14-1.5-2. The boards, councils, and commissions of the School are governing bodies for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of these governing bodies must be open at all times to allow members of the public to observe and record.

1.1 Defining “meeting”

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).

In other words, unless an exception applies, any time a majority of the members of any of the School's governing bodies gather to take official action on public business it will constitute a meeting for purposes of the Open Door Law; and thus, must be open to the public.

Here, the issue presented involves delegation of actions to a task force.

2. Committees in general

This office has explored the issue of committees several times over the past few months. What you posited in your inquiry will be taken as true for the purposes of crafting this opinion, although it should be noted that informal opinions do not always involve position statements by agencies.

Your question is relatively straightforward: Is a task force formed by a governing body subject to the Open Door Law?

Under the ODL, “governing body” means two or more individuals who are any of the following:

- (1) A public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business.
- (2) The board, commission, council, or other body of a public agency which takes official action upon public business.
- (3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Ind. Code § 5-14-1.5-2(b). In this context, the only public agency at play is the school corporation itself. Therefore, subsection (b)(1) can be eliminated from the discussion leaving the latter two definitions.

Turning then to subsection (b)(2), the task force is, unquestionably, a deliberative assembly akin to a board, commission, council, or other body.

“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). “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).

Identifying a consolidation plan certainly qualifies as taking official action on the School’s public business.

If that is not enough, subsection (b)(3) is even more explicit in that the committee is appointed directly by the governing body to take official action on public business.

Here, the task force appears to be a direct offshoot of the School board. If so, there can be no question that the task force is a governing body subject to the Open Door Law. Therefore, to the extent the task force meets behind closed doors without the requisite notice being posted, it will be violating the Open Door Law.

As an aside, these types of governing-by-proxy arrangements have always been a great curiosity to this office. Not that they exist – delegation of responsibility is not inherently a bad thing – but rather the legal liberties agencies take to keep them secret. This is especially true for committees who discuss controversial subject matters. The secrecy does nothing but invite more suspicion and scrutiny.

The point of open meetings is to keep the public informed, yes. But it has a dual purpose. Those who serve on boards can use public meetings as a platform to demonstrate that a task force’s work is positively benefitting the public, the right people make up the task force, and to communicate that the task force is thoughtfully deliberating the issues at hand. To do otherwise is usually indictive of poor governance and a disregard of the community it serves.

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