
OPINION OF THE PUBLIC ACCESS COUNSELOR

SARA E. ARBUCKLE; ET AL.¹

Complainants,

v.

HAMILTON EAST PUBLIC LIBRARY,

Respondent.

Formal Complaint No.

23-FC-79

Luke H. Britt

Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to four formal complaints alleging the Hamilton East Public Library, through its board of trustees, violated the Open Door Law.² Attorney Christopher P. Greisl filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received

¹ Michelle L. Fullhart, Leah L. Leach, and Michael L. McMann each filed substantially similar formal complaints against HEPL.

² Ind. Code § 5-14-3-1-10.

by the Office of the Public Access Counselor on August 22, 2023, and August 23, 2023.

BACKGROUND

In this case we explore whether the Hamilton East Public Library (HEPL) Board of Trustees violated the Open Door Law by holding a meeting in a local coffee shop with its legal representation.

On August 18, 2023, Sarah Arbuckle (Complainant) witnessed two members of the HEPL Board—Ray Maddalone and outgoing board president Laura Aldering—sitting down with the Board attorneys in a local coffee shop to discuss, among other things, the transition of the Board President from her role³ and other officer positions going forward. Notably, Maddalone and Aldering constituted a majority of the HEPL Board’s “Nominating Committee.”

Arbuckle took notes of the conversation and contends she overheard one of the board members referring to himself as successor Board President and his ideological contemporaries as fellow officers. Additional context into the nature of the Board can be found in *Opinion of the Public Access Counselor 23-FC-67* (2023).

On August 22, 2023, Arbuckle filed a formal complaint against the HEPL Board. The other named complainants did so throughout the following week with similar allegations.

³ On August 15, 2023, then-President Laura Aldering had been removed by her appointing agency, Noblesville Schools, effective August 24, 2023

A week later, the HEPL Board filed an answer to the complaints arguing no ODL violation occurred because Maddalone and Aldering did not amount to a majority of the seven-member Board. Additionally, the Board asserts that Maddalone and Aldering did not discuss Nominating Committee business, despite Arbuckle's claims.

After the coffee shop gathering, the HEPL Nominating Committee held a public meeting on August 24 to discuss the slate of officers.

ANALYSIS

1. 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).

The Hamilton East Public Library is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the Board of Trustees (Board) is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

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). “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).

The ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). Additionally, the ODL mandates a governing body to take all final action at public meeting. See Ind. Code § 5-14-1.5-6.1(c).

2. Matters of law

In this case, two of the seven HEPL Board members met with two attorneys for a discussion outside of a properly noticed public meeting.

These facts alone are not enough to trigger the Open Door Law because two of seven do not equal a majority, which is a necessary ingredient of the ODL meeting recipe.

Nevertheless, the term “governing body” also applies to “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.” See Ind. Code

§ 5-14-1.5-2(b)(3). In other words, the three-member HEPL Nominating Committee is subject to the Open Door Law just like the full HEPL Board.

Here, there is no dispute that Maddalone and Aldering qualified as a majority of the Nominating Committee. It is also undisputed that the full HEPL Board directly appointed Nominating Committee.⁴ The issue of deciding who will serve as officers on public governing body is unequivocally public business because it is germane to how the Board operates on behalf of its constituents.

The question therefore pivots to the subject matter discussed during the coffee shop gathering.

3. Matters of fact

In this case the parties disagree about the substance of the discussion and the topics addressed during the coffee shop assembly.

Arbuckle informally transcribed the meeting in real time as she overheard the discussion. She contends that one of the topics addressed by Maddalone was his anticipation of becoming HEPL Board president. He purportedly stated his colleagues Tiffany Ditlevson and Micah Beckwith would join him as officers. Arbuckle's loose transcription was posted on social media but not submitted as part of Arbuckle's complaint. This office discovered it during our investigation, which also included viewing subsequent HEPL

⁴ "[The Open Door Law] is intended to include not only public boards, committees, etc., within the Act's coverage, but also advisory committees directly appointed by them". *Indiana State Board of Health v. Journal-Gazette Co.*, 608 N.E.2d 989 (Ind.Ct.App.1993).

Board meetings, including the Nominating Committee meeting on August 24, 2023.

The HEPL Board, however, claims “no official action was taken regarding nominations, or any other matter related to the library Board or the Nominating Committee.” *See* HEPL response at 2.

Nonetheless, this assertion conflicts with the Board’s prior statement that the two members did indeed discuss the “transition of the Board President from her role, a request for review of a proposal for the board meeting on August 24, 2023, and ongoing concerns regarding the implementation of HEPL’s Policy.” *Id.*

Since official action under the ODL includes discussion and deliberation,⁵ if the issue of officer positions was indeed broached by Maddalone, an Open Door Law violation occurred because public notice was not given of the discussion and two-thirds of the Nominating Committee was present.

Because this office cannot order sworn testimony or authenticate evidence, it is impossible to substantively prove either the allegation or the defense when there are he-said, she-said factual disputes.

Even so, the totality of the circumstances make it nearly impossible to conclude that the discussion did not involve—at least in part— HEPL Nominating Committee business.

⁵ “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).

Consider the following: tensions on the Board and in the community were exceedingly high in that moment; Aldering's ousting came just three days prior to the coffee shop meeting; her official exit was to become effective the following week; and the very next scheduled event was a Nominating Committee meeting where Maddalone and Aldering were to participate.

The inference that the Nominating Committee conducted business on that day has not been overcome by HEPL's summary denial. It may not have been the primary purpose of the meeting, and indeed other matters may have been discussed, but it would be naive for this office to conclude—based on the evidence provided—that the officer slate was not discussed.

Even if the two Board members were disciplined enough to avoid discussing the matter of officers, the mere existence of the meeting only served to fuel speculation and rumor.

Ultimately, it simply strains credulity that the purpose of the coffee shop get-together was not, at least to some degree, for the purpose of planning for officer vacancies and consider potential nominations.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the coffee shop meeting violated the Open Door Law. The gathering was subject to the ODL because it constituted a majority of the HEPL Nominating Committee taking official action on public business.

This office recommends the HEPL Board, and all related committees act in accordance with the law and this opinion going forward.

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

Luke H. Britt
Public Access Counselor

Issued: October 5, 2023