

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

KEN DAVIDSON,  
*Complainant,*

v.

SCHOOL CITY OF HAMMOND,  
*Respondent.*

---

Formal Complaint No.  
18-FC-55

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the School City of Hammond (“School”) violated the Open Door Law<sup>1</sup> (“ODL”). The School responded to the complaint through attorney Emma Jay. 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 April 11, 2018.

---

<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8

## **BACKGROUND**

The Complainant, Ken Davidson, alleges the School City of Hammond Board uses a “Consent Agenda” to approve a list of contracts. Complainant speculates this vote by “consent” is proof positive of a closed door meeting via which the Board discussed and preemptively approved the contracts and ratified them after-the-fact. Furthermore, the Board has a “Consent Agenda” policy which states the Board may approve items as a whole rather than one-by-one. Board members can request that an item be removed from a consent agenda and consider them separately.

In turn, the School qualifies the matters on the consent agenda as routine items and justifies its use. It argues that deliberation is not a prerequisite to taking final action and denies any action was taken outside a public meeting.

## **ANALYSIS**

### **1. The Open Door Law (“ODL”)**

It is the intent of the Open Door Law (“ODL”) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1, 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 parties do not dispute that the School City of Hammond is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Thus, unless an exception applies, all meetings of the School Board must be open at all times to allow members of the public to observe and record.

### **1.1 Consent Agendas**

Ind. Code § 5-14-1.5-4(a) has a general prohibition against a sweeping vote to take final action without discussion of the items voted upon:

A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

The purpose of such a provision is to foster communication and dialogue between Board members during a public meeting. In turn, the fundamental purpose of the Open Door Law is that the public may be informed as to the decision-making processes of the Board as a whole. It is an opportunity not only for accountability and transparency, but also a chance for Board members to showcase their thoughtfulness and mindful consideration of the stewardship of public resources.

That written, not every single item can possibly be discussed at length. School boards are not put in place to micromanage the everyday goings-on of a school corporation. They set policy, drive innovation, set parameters on spending, and put the people in place to execute their vision. Day-to-day processes are delegated to superintendents and administration much like a city or town council defers to a mayor or town manager for the implementation of operational matters. A school board, city council, or other governing body intervenes as necessary, but generally they do

not interfere with processes as a bottleneck. Controlling routine duties on a granular level would be poor management and governance.

Therefore, consent agendas as a construct for approving routine items are not prohibited by the Open Door Law nor does this Office believe they are antithetical to transparency. Items such as payroll approval, minute approval, claims under current contracts and the like can all qualify as routine items which do not require much, if any, discussion or deliberation.

Substantive items though, including large contracts, indeed merit more than mere cursory reflection. If thoughtful discussion is not a condition precedent for taking final action in these types of matters, then the entire construct of the Open Door Law is rendered useless. Therefore, I cannot agree with the blanket statement that board members are never required to deliberate before taking action. On routine matters, perhaps yes, but not on issues of substance.

The difference between what is and is not a routine matter is largely fact-sensitive; however, it is somewhat analogous to administrative function meetings for town boards and county boards of commissioners. Although they do not apply to schools, the idea is certainly instructive in distinguishing between weighty matters and those which can be addressed summarily.

The items that the Complainant is concerned with do appear to be elevated above normal "routine" matters. Whether those were discussed at a prior meeting would buttress an argument suggesting redundant deliberation is unnecessary. As stated above, while the School Board members may not be intimately familiar with the details of those items and

contracts, perhaps inviting an administrator to give a presentation of those details would satisfy the public's curiosity.

The contracts in question do appear to be the end result of the preliminary stages of the project – the particulars of which had been discussed in meetings prior. The Board merely was deferring to the administration's recommendations as to the general contractor, underwriters and architects. The School has indicated deliberations regarding the project as a whole had taken place in past meetings and it isn't as if the project was a surprise foisted upon an unsuspecting public. Even still, my recommendation stands that a vote predicated upon *some* discussion or presentation of details would go a long way in placating an inquisitive public.

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

Luke H. Britt  
Public Access Counselor