

## PUBLIC BOARDS, PUBLIC MEETINGS

by David L. Ferguson

**M**aking difficult decisions about public funds and public services is not an easy assignment, and doing it in the fishbowl of a public meeting makes it all that much tougher for many public library trustees. The Indiana Open Door Law covers many of the situations that board members often worry about, from which meetings must be open to the public and which may be closed to how to handle committees and public comment.

### INDIANA'S OPEN DOOR LAW

I suspect the typical Indiana public library trustee is unprepared for one important aspect of the job; an understanding of the Indiana Open Door Law.<sup>1</sup> The law requires that when the "governing body" of a public entity performs an "official action" it shall comply with the Open Door Law. Requirements of the law include that public notice of the meetings be given 48 hours prior to the meeting, and that the meetings be held in a place accessible to the public. Library directors and attorneys should be respectful of the law and help trustees to be diligent in compliance, but some knowledge of this statute will help trustees to insist on the sometimes convoluted process of a democratic and public government.

When appointed to the public library board of trustees, I expected some orientation to service on the governing board of a public body in Indiana, the importance of that service, and the rules for serving on a public body that differ from private organizations. I received none. I admit I spent much of my time wondering how (and if) the other trustees and the staff knew about the Open Door Law.

I was already familiar with the Open Door Law because I serve as the attorney for a local school board. I found my best and briefest training on the rules of the statute came from a training session by the Indiana School Boards Association which, regrettably, was done in a private "executive" session. The Open Door Law has a specific exception for the training and orientation of school boards in executive session.

### COMMITTEES

I was intrigued by the concept of committees to study issues and report back to the full board. Board members are tempted to use the committee system, given their desire to keep meetings of manageable

length in the face of issues requiring investigation and discussion. Moreover, committee assignments allow each board member the opportunity to weigh in more heavily than our usual single vote on an issue, given that the board often adopts the committee's recommendation without much discussion.

The Open Door Law defines a "governing body" to include committees appointed by the board or its presiding officer to which authority to take official action has been delegated. This doesn't sound like a tough restriction, and a board often justifies committees by arguing that the board itself has the "final" decision or that the committee does not violate the Open Door Law because "the committee has less than a quorum." However, when we realize that a committee takes "official action" by (among other things) the seemingly innocuous acts of receiving information, deliberating and making recommendations, we see that all committees are subject to the restrictions of the Open Door Law.

We appoint committees because we expect them to spend time investigating possible solutions, receiving information from third parties, discussing alternatives, dismissing alternatives as unworkable, and finally returning to the board with a recommendation. After all that work, it can seem that board discussion of the delegated issue is considered meddling. Why ask a committee to look into the issue, if the board is just going to quibble with its recommendations? The recommendation of a committee is the practical equivalent to a decision by the board, and thus the Open Door Law tells us its committee meetings must also be open.

The Open Door Law states that anytime a committee "receives information," it is "taking action" and the meeting at which that occurs is to be public, with the requisite public notice and accessibility. Without public notice of the times and places of meetings, the committee system violates the intent and the spirit of the Open Door Law and the concept of openness in government. While this adds to the burden of governing the library, the benefits of an open government are well worth the expense of time and effort.

### PUBLIC COMMENT AT PUBLIC MEETINGS

One issue that arises at public committee meetings, given the lessened formality of those meetings, is that the public in attendance may want to have input on the matters

being discussed. While the Open Door Law grants the public the right to attend and observe all public proceedings, there is no right to address the board or a committee or to join in the board's or committee's discussions. It is helpful to designate in the public notice that no comment will be allowed, or that a certain limited right of comment will be allowed at a designated time.

## **BACKGROUND ON THE OPEN DOOR LAW**

An excellent resource on the Open Door Law is the pamphlet recently published by the Indiana Attorney General and the Hoosier State Press Association.<sup>2</sup>

## **ABOUT THE AUTHOR**

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## **REFERENCES**

1. The Indiana Open Door Law is found in IC 5-14-1.5-1 et seq.
2. Indiana Attorney General Jeff Modisett and Hoosier State Press Association. "The Open Door Law and the Access to Public Records Act."