

NLCS Press Release

1-8-2020

NLCS respectfully disagrees with the Public Access Counselor's Advisory Opinion. Indiana Code § 5-14-1.5-2(b)(3) of the Open Door Law includes among the definitions for a governing body "[a]ny committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated" within the definition of a governing body. The state legislature added the word "directly" to the statute after the Riggin v. Board of Trustees of Ball State University, 489 N.E.2d 616 (Ind.Ct.App.1968) decision.

In *Riggin*, the Indiana Court of Appeals determined that Ball State could not escape the operation of the Open Door law merely by appointing a committee to appoint another committee to conduct an employment hearing. In *Riggin*, Ball State's board of trustees had established a university senate to advise the Board with respect to faculty employment issues. Riggin was a business professor who was being investigated by the University. Following a number of preliminary proceedings, Riggin was afforded a hearing before an *ad hoc* committee which had been selected by the president of the senate from members of the Ball State Senate Judicial Committee, which was a standing committee elected by the Senate. The court rejected Ball State's argument that because the board of trustees did not *itself* appoint the *ad hoc* committee, the committee failed to qualify as a "governing body" within the meaning of the Open Door Law. The court determined that the Open Door Law applied to the committee even though its authority derived from the board of trustees as a result of several delegations.

Since then, the Indiana Court of Appeals has applied this definition more narrowly in Robinson v. Indiana University, 638 N.E.2d 435 (Ind.Ct.App.1994) and Frye v. Vigo County, 769 N.E.2d 188 (Ind.Ct.App.2002) than the Public Access Counselor has applied it in this Advisory Opinion.

In *Robinson*, the court noted that the definition of "governing body" included in the Open Door Law did not include the word "directly" when *Riggin* was decided. Instead, the statute only contained the following language: "'governing body' ... includes any committee appointed by the governing body...." IC 5-14-1.5-2(b). The Robinson court further noted that at the very next session of the General Assembly, the legislature amended this portion of the Open Door Law and specified that only those committees "directly" appointed by the governing body or its presiding officer are required to hold open meetings.

The *Robinson* court, in concluding that the committee at issue did not derive its authority directly from the governing body, then ruled:

It is apparent to us that the legislature's enactment of the amendment effectively limits the types of committees that are subject to the Open Door Law. We do not agree with Robinson's contention that this amendment to the statute amounted to a mere "cosmetic and stylistic" cleaning up of the statute. We are persuaded that this change indicates the legislature no longer intended for the

construction of the term "committee," discussed in Riggin, to persist. The legislature has clearly narrowed the scope of the Open Door Law's effect as it applies to various committees.

The Robison court concluded that the trial court correctly determined that the Open Door Law did not apply, and plaintiff was properly excluded from the committee meetings.

The PAC's holding appears to be based upon the same reasoning as the Court in *Riggin*, which was legislatively overruled the year after the court issued *Riggin*. The PAC's decision disregards this statutory change and is contrary to the Court's holding in *Robinson*. The PAC's finding that the Board somehow directly appointed the members of the Visionary Committee based on a "I-know-it-when-I-see-it" standard of review is contrary to the plain language of the statute and court decisions interpreting this language.

There is no legal precedent for the position that a committee appointed by the Superintendent of Schools is subject to the Open Door Law because he is the Chief Executive Officer. The Open Door Law requires a direct appointment by the Board or its presiding officer, which is the President of the Board.

The Visionary Committee was formed by the Superintendent for the purpose of including the public in the process. It was not required. The extent to which the Public Access Counselor suggested that the Visionary Committee was created to circumvent the Open Door Law is unfair and unsupported by applicable law. All information from the Visionary Committee has been presented to the School Board in open public meetings. The School Board did not accept the plan presented by Dr. Mungle as a result of the Visionary process and adopted an alternative plan.
