

# Do Westfield meetings violate open door law?

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(Photo: Michelle Pemberton/The Star file photo)

Last month, the Westfield council voted to approve a controversial funding plan for a soccer arena — a vote that could shape the city's future but also could face scrutiny over whether it was aboveboard.

City officials acknowledge that three council members — meeting as the council's finance committee — had been meeting privately to discuss details about the proposal for months.

The city's legal counsel insists the committee meetings comply with the state's open meeting law. But the state's foremost authority on that law says otherwise.

Public Access Counselor Luke Britt told The Indianapolis Star that local governments are required to post notice of council committee meetings 48 hours in advance. And they're legally required to be open to the public. Westfield, however, does not post public notices of the committee meetings.

Communities can face stiff penalties for violating the open door law, including having decisions overturned in court.

Open door advocates say the public has a right to know what elected officials are discussing during such meetings. By the time proposals leave the committee and reach the full council, decisions could have been made — in effect if not by vote.

Many communities do post notices of council meetings, including neighboring Carmel and Indianapolis. Britt, however, thinks cities and towns across the state probably violate the law simply because no one is watching.

"It happens all the time," Britt said. "They don't understand the law."

Longtime Westfield City Attorney Brian Zaiger disagrees. He said no formal action created Westfield's committees. They don't include a majority of council members. And they take no final actions or votes.

Britt, though, said Indiana's open door laws are written broadly to ensure that such committees qualify as public agencies.

Regardless, Mayor Andy Cook and City Council President Jim Ake said the meetings aren't precisely closed to the public. They wouldn't turn away anyone who showed up, were that to happen.

No one ever has, though, possibly because no notice is provided anywhere. The city's website doesn't include any information about council committees — even to note they exist. The dates, times and locations aren't posted publicly.

Cook said residents could learn the times, dates and locations by requesting the personal calendars of elected officials from the city under a public records act.

No one has filed a complaint with the public access counselor or a lawsuit in court about Westfield's meetings. The city, though, would face serious repercussions if a court found it guilty of violating open door laws.

Steve Key, executive director and general counsel of the Hoosier State Press Association, said a judge could void decisions the council made if a significant amount of the discussion took place privately. The city would have to begin the process anew.

"Even though the final vote was at a public meeting," Key said, "it's about the transparency of the entire decision-making process."

Like the public access counselor, Key believes council committee meetings should be posted and open to the public.

In Westfield's case, the city council president can create a committee just by naming the members. No paper trail is necessary, Britt said.

Ake, Bob Smith and Chuck Lehman serve on the council finance committee. Ake said they meet at least once a month. The finance committee leads the discussion on many of the city's biggest projects and responsibilities, including big-ticket items such as the \$25 million arena and annual duties such as developing the city budget.

Britt said the committee is a public entity with a majority two of three members needed to make a quorum. It doesn't matter that the council is larger.

And committees, Britt said, legally are taking “official action” just by discussing public business — regardless of whether they vote.

In Indianapolis, the city posts notices of committee meetings and distributes agendas the prior week, said Fred Biesecker, attorney for the City-County Council.

Indianapolis committees vote on proposals and send a recommendation to the full council, but Biesecker said he would advise the committee to post notice regardless.

“We’re talking about official action,” he said, “which I think includes receiving information and deliberating, so that would put it under the open door law.”

In Westfield, the council finance committee received attention after members noted they had discussed a deal for the city to become significantly involved with the financing of the \$25 million soccer arena before it came to the full council.

Ron Thomas was one of several residents to ask the council to vote against the plan. He thinks he could have had time to prepare a more convincing argument had he known about — and been able to attend — the finance committee meetings about the project.

“I think it’s inappropriate,” Thomas said. “I think they should be open and any discussions should be public.”

The council ultimately approved the plan Oct. 27, agreeing to fund \$53 million with interest and operating expenses over 25 years. The council held a fast-tracked vote so work could start immediately, with several members saying they felt comfortable after seeing the plans the past two months in committee.

Westfield’s finance committee also helps shape and develop the city’s annual budget.

“Their main job is to propose and develop the budget,” Cook said. “Those three go back and work with their fellow councilors on an informational basis, one-on-one, never in a quorum. That’s how we develop the budget.”

But it’s done privately. Some council members think the meetings should be open. City Councilwoman Cindy Spoljaric said the finance committee members discuss information about crucial topics facing the city.

“They know much about things going on before the rest of us do,” Spoljaric said, “just like this deal with the financing of the soccer facility lease.”

Westfield also has a pre-council committee that meets the week before City Council meetings. Ake, Smith and Steve Hoover serve on that committee.

Cook and Ake said they merely go over the agenda. Key, the Hoosier State Press Association attorney, said that sounds like an opportunity to discuss public matters in private before the real meeting starts.

“Whether you call it a pre-council meeting, a retreat or a garden party,” Key said, “if they’re meeting to take on official business, it’s still a meeting.”

Ake said he would open the meetings to the public if he is informed the city should do so under open door laws. But he deferred to Zaiger’s legal opinion.

“Certainly,” Ake said, “we want to comply with open door laws. ... We’ve never been asked to open them. That’s just the way it’s always been.”

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