

# Insights

## Public Access Counselor Addresses Board's "Final Action" Under Indiana's Open Door Law

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In 2021, the IU Board of Trustees ("Board") approved an addendum to the employment contract of IU President Michael McRobbie. IU professor Stephen Sanders made a records request to obtain the agreement; he speculated it was secretly negotiated and took effect without a public meeting. Apparently, the ability to negotiate the addendum was delegated by IU some time earlier, during an executive session, to a single Board member. Mr. Sanders filed a complaint with Indiana's Public Access Counselor ("PAC"), alleging the Board violated the Indiana Open Door Law or "ODL." The PAC addressed the issue in its 21-FC-169 Opinion.

The dispositive question addressed by the PAC was: Does the extension of a university president's employment require affirmative "final action" by the governing body? If so, the final action should have occurred at a public meeting.

Some key terms governed the PAC's analysis:

- A meeting is a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Indiana Code § 5-14-1.5-2.
- "Official action" is defined broadly, and includes taking "final action." Indiana Code § 5-14-1.5-2.
- "Final action" involves a vote by the governing body on any motion, proposal, and similar matters. Indiana Code § 5-14-1.5-2.
- The ODL requires final action to be taken at a meeting open to the public unless a statutory exception applies. Indiana Code § 5-14-1.5-3.

Simply stated, if a governing body takes "final action," it must do so during a public meeting.

Among other arguments, IU claimed because the McRobbie agreement amounted to a mere \$500,000 contract (within an organization that spends hundreds of millions per year in contracts) it should not be subject to scrutiny. Moreover, statutes applicable to universities permitted delegation of certain duties, and expressly permitted

delegation of Board duties to employees or others. Indiana Code § 20-38-3-2. Therefore, according to IU, the approved agreement was proper because the power to negotiate the McRobbie contract had been properly delegated.

The PAC disagreed. Among other shortcomings and issues (such as IU's earlier "delegation" of authority during executive session), the PAC opined the ODL requires approval of a contract extension or consulting agreement worth over \$500,000 to be taken via "final action," during an open public meeting. Since that did not occur, the PAC concluded the Board violated the ODL.

For our municipal readers, PAC Opinion 21-FC-169 serves as a good reminder to follow the basic requirements of the ODL in all cases, and to take any "official action" at a meeting open to the public, unless a specific statutory exception applies.

If you have any questions about this Alert, or about Indiana's public access laws, please contact **Christopher W. Bloomer** or **Hilary K. Leighty**.

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