



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

Karen Davis

## PUBLIC ACCESS COUNSELOR

402 West Washington Street, Room W460  
Indianapolis, IN 46204-2745  
Telephone: (317) 233-9435  
1-800-228-6013  
FAX: (317) 233-3091  
[www.IN.gov/pac](http://www.IN.gov/pac)

November 30, 2005

James W. Premeske  
6425 Blaine Avenue  
Hammond, IN 46324

*Re: Formal Complaint 05-FC-229; Alleged Violation of the Open Door Law by the City of Hammond Common Council*

Dear Mr. Premeske:

This is in response to your formal complaint alleging that the City of Hammond Common Council ("Council") violated the Open Door Law ("ODL").

### BACKGROUND

On November 1, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-229. You allege that the Council has a practice of publishing vague descriptions of the business the Council intends to conduct. You also allege that, during public hearings all ordinances are addressed at once. You state that, "the result is that the citizens do not know which ordinance is being addressed."

Mr. Robert Berger, the Council attorney, responded on behalf of the Council by letter dated November 28, 2005. A copy of that letter is enclosed for your reference. Mr. Berger assumes that your complaints are 1) that the items on the agenda are misleading and confusing and 2) that public hearings on ordinances should be conducted separately. Mr. Berger asserts that there is no secret code used in the preparation of the agenda as you have alleged. He further stated that the Council does not draft the titles for the ordinances. Finally, he stated that hearings are conducted for several items at once for the convenience of the public.

### ANALYSIS

The intent and purpose of the Open Door Law is 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." Ind. Code 5-14-1.5-1. Toward that end, except under very limited circumstances, all meetings of the governing body of a public agency must be open for the purpose of permitting members of the public to observe and record the meetings. IC 5-14-1.5-3(a). A public agency conducting a meeting must post notice of the date, time, and place of a meeting or executive session. IC 5-14-1.5-5. A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting

prior to the meeting. IC 5-14-1.5-4(a). A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void. IC 5-14-1.5-4(a).

You first complain that the Council publishes vague descriptions of the business they intend to conduct. You attach copies of the agendas for the October 24 meeting. You indicated on the preprinted complaint form that “the agenda is intentionally vague.” Hence, I believe you are complaining that the agendas of the Council lack specificity and clarity. The Open Door Law does not require a governing body to utilize an agenda. However, where a governing body of a public agency uses an agenda, the governing body is required to post a copy of the agenda at the entrance of the location of the meeting prior to the meeting. IC 5-14-1.5-4(a). There are no formal content requirements for an agenda in the ODL. *See* IC 5-14-1.5-4. The Council was not required by the Open Door Law to utilize an agenda in the first instance; thus, any lack of clarity does not make out a violation of the Open Door Law. For the record, the agenda contains several categories of items for discussion or action. One portion of the meeting agenda, marked “Introduction of Ordinances” sets out each ordinance by number and gives a short statement describing the ordinance and even who petitioned for the ordinance. Mr. Berger stated in his complaint response that the ordinances are available prior to the meeting for review of the public.

Further, the Open Door Law does not prohibit the governing body from changing or adding to its agenda during the meeting. However, this office has stated that the agenda posted at the meeting place must be the same agenda that is utilized by the governing body. *See Opinion of the Public Access Counselor 05-FC-54*. Although you have alleged that the Council is deliberately misleading the public, you have not alleged that the Council used an agenda different from the one posted at the entrance to the meeting. For the foregoing reasons, I decline to find that the Council violated the Open Door Law with respect to its agenda.

Next, you protest that when a public hearing is conducted all ordinances are addressed at once. You complain that this results in the inability of the public to determine which ordinance is being addressed. Mr. Berger asserts that the Council conducts the public hearings for several ordinances at once for the convenience of the public. He states that any member of the public is free to come forward and address any or all of the items. There is no requirement in the ODL that a public hearing be conducted in a certain way. To the extent that you are complaining that the public’s comments are not taken for each ordinance separately, you have not stated a violation of the Open Door Law.

The Council may not adopt an ordinance by reference to agenda number or item alone. IC 5-14-1.5-4(a). You state that the manner in which ordinances are addressed at public hearings is such that the public does not know which ordinance is being addressed. Your allegation is ambiguous because I am not certain whether you contend that it is not clear what ordinance is being addressed during the public comment section, or whether the *Council’s* deliberations on the ordinances is confusing. However, you do not allege that the Council is adopting the ordinances by reference to agenda number or item alone. Again, I decline to find that the Council has violated the Open Door Law.

## CONCLUSION

For the foregoing reasons, I find that your allegations do not demonstrate a violation of the Open Door Law by the City of Hammond Common Council.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Daniel Repay