



STATE OF INDIANA

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June 18, 2010

Ms. Teresa L. Torres
9111 Broadway, Suite A
Merrillville, IN 46410

Re: Formal Complaint 10-FC-132; Alleged Violation of the Open Door Law and the Access to Public Records Act by the Northwest Indiana Regional Bus Authority

Dear Ms. Torres:

This advisory opinion is in response to your formal complaint alleging the Northwest Indiana Regional Bus Authority (the "Authority") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, and the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you state that the Authority is a quasi-governmental agency established by state statute. It is governed by a board of directors who are appointed by local elected officials. The board, in turn, appointed members to a "Service Development & Oversight Committee" (the "Committee") with specific responsibilities, "including the review of submitted proposals and requests for funding.

You further allege that at a meeting held April 26, 2010, (the "Meeting") the Authority's executive director announced that the Committee "had made its recommendation to select certain applicants from a number of specific entities who had submitted responses to an RFP [request for proposal] issued approximately a month before." On March 5th, you claim that the executive director and "several members" of the Committee acknowledge that no official meeting was conducted for a vote on that issue. Rather, the executive director and a staff member spoke on the phone with two members of the Committee. After that, the Authority was informed that the Committee had made a decision regarding the applications.

You also allege that the Authority has refused to provide you with memoranda of its meetings in violation of the APRA.

My office forwarded a copy of your complaint to the Authority. To date, we have not received a response.

ANALYSIS

The General Assembly enacted the ODL intending 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. I.C. § 5-14-1.5-1. Accordingly, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. § 5-14-1.5-3(a).

Here, you allege that the Committee took action outside of a public meeting. I note that you do not allege that the *Authority* took any such illegal action. Accordingly, your complaint alleging ODL violations should have been directed at the Committee rather than the Authority. Nevertheless, under the ODL, a “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g). The ODL explicitly requires that a final action be taken at a meeting open to the public. I.C. § 5-14-1.5-6.1(c).

It is important to note that the ODL does not require a governing body to hold a public meeting every time its members engage in some sort of official action. Public meetings are only necessary if the governing body engages in official action while in a meeting, which is a “gathering of the majority of the governing body.” I.C. § 5-14-1.5-2(c). Thus, even if the Committee received information, deliberated, made recommendations, established policy, or made decisions, it did not violate the ODL unless it did so during a gathering of a majority of its respective members. Here, you have not alleged that there was a gathering of members at all because previous public access counselors have opined that a “gathering” under the ODL generally does not include telephone conversations. *See Opinion of the Public Access Counselor 08-FC-208*. On the other hand, if the Committee actually *voted* on a course of action, the vote would have constituted final action that should have occurred at a public meeting under subsection 6.1(c) of the ODL. Again, nothing before me indicates the Committee held an actual vote on the applications.

You further allege that the Authority has denied you access to memoranda of its meetings. Regarding minutes and memoranda, the ODL provides the following:

- (b) As the meeting progresses, the following memoranda shall be kept:
 - (1) The date, time, and place of the meeting.
 - (2) The members of the governing body recorded as either present or absent.

- (3) The general substance of all matters proposed, discussed, or decided.
 - (4) A record of all votes taken, by individual members if there is a roll call.
 - (5) Any additional information required under IC 5-1.5-2-2.5.
- (c) **The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings.** The minutes, if any, are to be open for public inspection and copying.

I.C. § 5-14-1.5-4 (emphasis added). Thus, if the Authority has refused to make the memoranda available to you, in my opinion it has violated the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Authority has denied you access to memoranda of its meetings, it has violated the ODL.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Tim Brown