



STATE OF INDIANA

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June 14, 2012

Mr. Eric Weddle
Lafayette Journal & Courier
217 North Sixth Street
Lafayette, Indiana 47901

Re: Formal Complaint 12-FC-131; Alleged Violations of the Open Door Law by the Purdue University Board of Trustees

Dear Mr. Weddle:

This advisory opinion is in response to your formal complaint alleging the Purdue University Board of Trustees ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Thomas B. Parent, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that the Board issued a public notice for its May 23, 2012 executive session on May 19, 2012. The notice provided that the executive session would take place at the Chicago O'Hare International Airport to receive information about and interview prospective employees. No further information was provided. On May 22, 2012, you contacted the Board and inquired where specifically at the airport the meeting would occur. In response to your inquiry, Ms. Janice Beard advised that the Board believed that the notice that was provided, which specified the location as the Chicago O'Hare International Airport, was sufficient and complied with the ODL.

In response to the formal complaint, Mr. Parent advised that the ODL does not require a public notice to include the exact location; it provides that the "place" be provided. The Public Access Counselor has previously rejected the assertion that a specific location is required if a governing body provides the "place" of a meeting in a notice. *See Opinion of the Public Access Counselor 04-FC-84.* In 04-FC-84, the complaint alleged that an agency violated the ODL by providing insufficient notice as to the location of the public meeting; the notice provided that the meeting would take place at "Oakwood Inn in Syracuse, Indiana." *Id.* The notice did not provide the street address for the Inn. *Id.* The counselor opined that the complaint was without merit, and there had been no violation of the letter or spirit of the ODL. *Id.* Further, the Indiana

Supreme Court in *Pepinsky* upheld the validity of an ODL notice which did not provide the specific room the meeting was to be held. *Pepinsky v. The Monroe County Council*, 461 N.E.2d 128 (Ind. 1984).

Further, both 04-FC-84 and *Pepinsky* dealt with open, public meetings, as opposed to closed, executive sessions. The public has no statutory right to attend an executive session, further evidence that the notice requirements of the ODL do not require the “exact location.” As applicable here, the executive session was held to receive information about and interview prospective employees pursuant to I.C. § 5-14-1.5-6.1(b)(5). There is no requirement that public agencies hold executive session in a public place and can be conducted in a private location.

Requiring an exact location, such as a room number, for an executive session is contrary to the very reason why the ODL allows for executive sessions. Executive sessions to interview prospective employees are exempt from public view precisely because of the privacy concerns involved in the interview process. Though the session is statutorily guaranteed privacy, your approach would allow the press to gather at the site of the meeting and determine the identities of candidates to a confidential search. Requiring further detail regarding the exact location of the executive session is not only unnecessary under the ODL, it is contrary to the spirit of the law which allows such private session to be closed from public view.

ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). In addition to the requirements of notice provided by the ODL for all meetings, a notice for an executive session must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under I.C. § 5-14-1.5-6.1(b). *See* I.C. § 5-14-1.6-6.1(c). The counselor has consistently provided that

to comply with the requirements of notice for an executive session, the notice must recite the language of the statute and the citation to the specific instance. *See Opinions of the Public Access Counselor 05-FC-233; 07-FC-64; 11-FC-170; 11-FC-242.* Thus, “To discuss a job performance evaluation of an individual employee pursuant to IC 5-14-1.5-6.1(b)(9)” would satisfy I.C. § 5-14-1.5-6.1(c). *See Opinion of the Public Access Counselor 05-FC-233.* Although not alleged here, the notice provided with the formal complaint for the executive session provided the language of the statutory code, but failed to cite to the specific statutory citation. In the future, I would encourage the Board to provide both the language and the specific statutory citation in a notice for executive session.

The requirement of providing the “place” of the meeting applies to any meeting held by a governing body, whether the meeting is an executive session or an open, public meeting. *See* I.C. § 5-14-1.5-5(a). In 04-FC-84, Counselor Hurst addressed a similar issue regarding a defective notice for a public meeting. *See Opinion of the Public Access Counselor 04-FC-84.* The notice provided that the place of the meeting was “Oakwood Inn in Syracuse, Indiana” The complaint alleged that the notice was defective due to it failed to provide the street address for the Oakwood Inn. Counselor Hurst opined that allegation did not violate the letter or spirit of the ODL. “Depending on the specific facts, detailed information regarding the place of a meeting, including the street address, room number, and other identifying characteristics may be vital to include in a meeting notice.” *Id.* However, as applicable to the facts presented, there was no indication that there was more than one Syracuse, Indiana or more than one Oakwood Inn in Syracuse. Further, there was no indication that anyone reading the notice would not know where the meeting was to take place.

In *Pepinsky*, the Indiana Supreme Court analyzed the issue of proper notice as it related to an open, public meeting. *Pepinsky*, 461 N.E.2d at 135-36. The notice was posted by the Auditor on the bulletin board on the main floor of the county courthouse where notices of the type were customarily placed; the meeting was held on the second floor of the courthouse, where the body typically met; the notice provided the time of the meeting and the subjects to be covered, but did not provide what room the meeting would be held and did not indicate it was a meeting of the county council. *Id.* The Auditor informed the local newspaper regarding the meeting and the meeting was publicized in news articles prior to its occurrence. *Id.* No witnesses testified that they hoped to attend the meeting and failed to do so due to lack of proper notice. *Id.* The Court upheld the ruling of the trial court, which provided that proper notice had been given under the ODL. *Id. at 136-37.*

As applicable here, the Board’s notice provided that the “place” of the meeting was the “Chicago O’Hare International Airport” which is nearly identical to “Oakwood Inn in Syracuse, Indiana” provided in 04-FC-84. There is no allegation that there are multiple O’Hare International Airport’s in Chicago or there was any confusion regarding the exact location in Chicago where the O’Hare Airport was located. As opposed to public meetings, executive sessions are closed to the public and only those persons necessary to carry out the governing body’s purpose are admitted. *See* I.C. § 5-14-1.5-

2(f). There has been no showing that a member of the Board, or any other party invited by the Board to attend the executive session, was denied admission due to lack of proper notice. The notice provided by the Board was posted at least forty-eight (48) hours prior to the executive session, complied with the requirements of I.C. § 5-14-1.5-5(b)(2) in regard to informing the media, and listed the date, time, and general place of the executive session. As such, it is my opinion that the Board did not violate the ODL by failing to provide in the notice the actual room where the executive session was to occur. I would agree with Counselor Hurst that there may be instances where detailed information regarding the place of the meeting may be vital to include in a proper meeting notice. However as to the facts presented, I do not believe withholding the room number of the executive session violated the ODL.

CONCLUSION

Based on the foregoing, it is my opinion that the Board did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: Thomas B. Parent