



STATE OF INDIANA

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October 1, 2012

Mr. Max J. Greene
10130 W Suder Lane
Campbellsburg, Indiana 47108

*Re: Formal Complaint 12-FC-252; Alleged Violation of the Open Door Law by
the Washington County Planning Commission*

Dear Mr. Greene:

This advisory opinion is in response to your formal complaint alleging the Washington County Planning Commission ("Commission") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Our office forwarded a copy of your formal complaint to the Commission. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you provide that on August 6, 2012, the Washington County Land Use Planning Board ("Board") held a meeting where it was scheduled to vote on the issue of reciprocal setbacks. During the meeting, members of the public spoke against the issue and the Board decided to table the matter to the Ag Advisory Subcommittee ("Committee"). The Committee's meetings are closed to the public. You allege that no notice is provided due to a quorum of the Commission has never been present at the Committee's meetings.

The Committee thereafter met on August 21, 2012. The morning of August 21, 2012, at the Washington County Commissioner meeting, Commissioner John Mishler stated that "this controversy would be hashed out at that evening's meeting." Commissioner Mishler was asked when the meeting was to be held by Byron Green, a Commissioner candidate. Commissioner Mishler responded that it was a Committee meeting. At the Committee meeting that evening, a quorum of the Commission was present. During this meeting, the facilitator stated that a member of the public had contacted her and asked if they could attend. The facilitator advised the person that the public could not attend because it was a Committee meeting. You were present at the meeting as the only citizen member of the Committee. You provide that the Commission violated the ODL by failing to provide proper notice of the meeting that was held on August 21, 2012, as a majority of the members of the Commission was present at the Committee meeting for the purpose of taking official action on public business.

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).

A “meeting” is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* 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. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action. Thus, in order for the ODL to apply, the meeting must be held by a governing body of a public agency. A governing body is defined as:

- (b) "Governing body" means two (2) or more individuals who are:
 - (1) a public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business;
 - (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
 - (3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter. *See* I.C. § 5-14-1.5-2(b)

Although not alleged in your formal complaint, if the Committee was appointed directly by a governing body or the governing body’s presiding officer and authority to take official action upon public business had been delegated, the Committee would be required to comply with the ODL.

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).

In your formal complaint, you allege that a quorum of the Commission was in attendance at the August 21, 2012 Committee meeting. You further provide that the members of the Commission received information regarding the public's desire to attend the Committee meeting and discussions occurred regarding reciprocal setbacks. As taken from your formal complaint, if a majority of the Commission attended the Committee meeting for the purpose of taking official action on public business, not only was the meeting a Committee meeting, pursuant to the ODL it was also be considered a meeting of the Commission. Without the benefit of a response from the Commission, it is my opinion that as the Commission is required to comply with the ODL, it acted contrary to the law by failing to provide notice for the August 21, 2012 meeting and by not having the meeting open to the public.

CONCLUSION

Based on the foregoing, it is my opinion that the Commission violated the ODL by failing to provide proper notice for the August 21, 2012 meeting and having said meeting open to the public.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Washington County Planning Commission