



STATE OF INDIANA

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April 16, 2012

Mr. Maurice M. Eisenstein
11 Beverly Place
Munster, Indiana 46321

*Re: Formal Complaint 12-FC-91; Alleged Violation of the Open Door Law by
Purdue University – Calumet.*

Dear Mr. Eisenstein:

This advisory opinion is in response to your formal complaint alleging Purdue University Calumet (“University”) violated the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et seq.* Lia Hanson, Attorney, responded on behalf of the University. Her response is enclosed for your reference. I have granted your request priority status pursuant to 62 Indiana Administrative Code 1-1-3(2).

BACKGROUND

In your formal complaint you provide that on April 4, 2012 you attended the regular monthly meeting of the Faculty Senate, of which you are a member. The meetings are advertised as “Open Meetings” that are held the first Wednesday of every month.

On April 4, 2012, you allege that you were unjustly removed from the Faculty Senate meeting. You were told the reason for your removal was due to comments made at the March 7, 2012 meeting regarding Professor Joyce. The minutes from that meeting characterize your comments as insulting and disrespectful, but not disruptive. You left the meeting on April 4, 2012 for approximately 20 minutes. Upon researching the basis for your removal, you decided that you were removed improperly and returned. At that point, you allege you were threatened with physical harm and that law enforcement would be called regarding your actions. The Faculty Senate refused to continue the meeting while you were in the room.

You provide that at no time during April 4, 2012 meeting were you disorderly. You did not interrupt the meeting, speak out of turn, or otherwise prevent business of the Faculty Senate from being conducted. There are currently no minutes of the April 4, 2012 meeting. You believe that your removal is a blatant violation of the ODL.

In response to your formal complaint, Ms. Hanson advised that the ODL does not apply to the Faculty Senate. The Faculty Senate is not a governing body of the University; further the Faculty Senate is not a committee appointed directly by the governing body of the University or its presiding officer. The governing body of the University is the Board of Trustees. The presiding officer of the Board is the Chair. Members of the Faculty Senate are elected by the Faculty as described in Article V of the Constitution of the Faculty of Purdue University Calumet. Each academic department elects a faculty representative to serve on the Faculty Senate. Previous opinions of the Public Access Counselor's Office have held that an elected representative committee was not a governing body because neither the governing body, nor its presiding officer appointed the committee. *See Opinion of the Public Access Counselor 03-FC-87*. Further, the Indiana Court of Appeals held in *Robinson* that a committee appointed by the campus chancellor, via authority from the University President, did not derive its existence from the University's Board of Trustees; therefore the ODL did not apply. *Robinson v. Indiana Univ.*, 638 N.E.2d 435 (Ind. Ct. App. 1994).

Your description of the events that occurred on April 4, 2012 is disputed. The Faculty Senate operates under Robert's Rules of Order, which provide that if disorderly words are of a personal nature, after each party has been heard, and before the assembly proceeds to deliberate, both parties to the personality should retire, as it is a general rule that no member should be present when any matter relating to him is under debate. You were requested to leave the room on April 4, 2012 while the Senate debated a resolution asking that you apologize for your prior remarks; however you were permitted to make an initial response to the resolution. Thereafter, you did return to the meeting and were present for most of the discussion. The Faculty Senate voted on the resolution and you were given a ballot and allowed to participate in the vote. Former opinions of the Public Access Counselor's Office have provided that the ODL does not prohibit the use of Robert's Rules of Order, particularly to prevent disruption, provided that such actions are reasonable. *See Opinion of the Public Access Counselor 06-FC-96*.

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)*.

There is no question that the University is considered to be a public agency pursuant to the ODL. *See I.C. § 5-14-1.5-2*. If the Faculty Senate is considered to be a governing body of the University, then it would be required to comply with all requirements of the ODL. 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)

You have not alleged that the Faculty Senate, by itself, would be considered a public agency; nor do I believe that it would qualify as a public agency as it is not subject to audit by the State Board of Account by statute, rule, or regulation. *See* I.C. § 5-14-1.5-2(a)(3)(B). Accordingly, the Faculty Senate would not be qualify as a governing body pursuant to I.C. § 5-14-1.5-2(b)(1).

Subsection (2) provides that a governing body is any “board, commission, council, or other body of a public agency which takes official action upon public business. . .” *See* I.C. § 5-14-1.5-2(b)(2). “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. The Faculty Senate was not created by statute or administrative rule governing the University. Further, from what you provided, I cannot conclude that the Faculty Senate takes official action on public business. As such, the definition of a governing body provided under subsection (2) would not be applicable to the Faculty Senate.

Subsection (3) provides that 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 would be considered a governing body. *See* I.C. § 5-14-1.5-2(b)(3). Here, the members of the Faculty Senate are elected by the Faculty; not appointed by either the Board of Trustee or its presiding officer. Thus, subsection (3) is not applicable.

The plaintiff in a lawsuit under the Open Door Law has the burden of proving that the defendant entity is a “public agency” within the meaning of the statute. *Perry County Dev. Corp. v. Kempf*, 712 N.E.2d 1020 (Ind. Ct. App. 1999); *See Informal Opinion of the Public Access Counselor 09-INF-29*; *See Opinion of the Public Access Counselor 11-FC-95*. You allege that the Faculty Senate must comply with the ODL solely due to the fact that it advertises its meeting as being “open meetings.” I do not believe that that you have not met the burden to show that the Faculty Senate would be considered a governing

body of the University; as such it is my opinion that the University did not violate the ODL.

CONCLUSION

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

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Lia Hanson