



STATE OF INDIANA

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April 30, 2013

Ms. Rhonda A. Greene
10130 W. Suder Lane
Campbellsburg, Indiana 47108

*Re: Formal Complaint 13-FC-108; Alleged Violation of the Open Door Law by
the Washington County Board of Commissioners*

Dear Ms. Greene:

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

BACKGROUND

In your formal complaint, you allege that on March 4, 2013 public notice for the Board's executive session to be held on March 5, 2013 had yet to be posted. You addressed this issue at the County Council meeting held on March 4, 2013; however the Board's executive session was still held on March 5, 2013 despite the fact that notice had not been posted for 48 hours.

In response to your formal complaint, Mr. Scifres advised that the County Auditor has been assigned the task of preparing the notice and agenda for all Board meetings, including executive sessions. Occasionally, Mr. Scifres will assist in the drafting of the notice; however members of the Board do not participate in the preparation or posting of the Board's meeting notices. The Board does not maintain an office; its meetings are held in the public meeting room at the Washington County Government Center ("Center"). The Center is approximately one mile away from the Auditor's offices. In order to post notice, the Auditor will fax a copy of the notice to the Washington County/Purdue Agricultural Extension Agent, whose office is located at the Center. The Extension Agent will then post the notice outside the public meeting room.

As to the March 5, 2013 executive session, on March 4, 2013 the Auditor arrived at the Center to, amongst other things, post an amended notice for the Board's March 5, 2013 executive session/public meeting. In addition to an executive session being held on March 5, 2013, the Board also conducted a public meeting. Annual notice for the

Board's meetings was published in the local newspaper at the beginning of the year and announced during a public meeting of the Board. Upon approaching the requisite area where notices are posted at the Center, the Auditor did not see the original notice that was to have been posted. Assuming that it had been removed, the Auditor posted the amended notice. The Auditor does not keep its fax confirmation reports. The Auditor has no recollection of either faxing or failing to fax notice for the March 5, 2013 executive session. The Extension Agent is confident that she posted the notice 48 hours prior to the executive session and that it had been removed.

There is no doubt that the notice for the March 5, 2013 executive session was not posted on March 4, 2013 at the Center prior to the Auditor posting the updated copy. However, it is believed that the notice had been posted and thereafter removed. Mr. Scrifes noted that in addition to posting the notice at the Center, the notice was also posted in the newspaper, on the County's website, and on your website, IndianaProud.com. The Board has received no complaints from those that desired to attend the meeting, but were unaware. To address this situation in the future, the County is looking into purchasing a locked showcase so that the notices may not be improperly removed.

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).

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). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). A governing holding an executive session may admit those persons necessary to carry out its purpose. *See* I.C. § 5-14-1.5-2(f). The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c).

Notice of an executive session must be given 48 hours in advance of every session and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, "To discuss a job performance evaluation of an individual employee pursuant to I.C. § 5-14-1.5-6.1(b)(9)" would satisfy the requirements of an executive session notice. *See*

Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39; 12-FC-209.

Here, the issue is whether the notice for the Board's March 5, 2013 executive session was posted 48 hours in advance, minus weekends and holidays. You provide that the notice was not posted on March 4, 2013. In response, the Board has provided that the Extension Agent is confident that the notice was posted 48 hours prior to the meeting and that the notice was improperly removed at some point prior to March 4, 2013. Further, the amended notice was posted approximately 24 hours prior to the March 5, 2013 executive session. However, the Board does not dispute your claim that the notice was not posted on March 4, 2013. As such, it is my opinion that the Board acted contrary to section 5 of the ODL by failing to post notice 48 hours in advance of the March 5, 2013 executive session. However, I would agree with the Board that in light of the Extension Agent's belief that the original notice was removed, the updated notice was posted approximately 24 hours prior to the executive session, the Board did not receive any complaints from any party that they were unaware of either the executive session or public meeting, and all of the other steps taken by the Board to ensure the public is aware of all of its meetings (e.g. internet postings and newspaper announcements), that the Board did not intentionally violate the ODL and the violation that has occurred was technical in nature.

CONCLUSION

Based on the foregoing, it is my opinion that the Board acted contrary to the requirements of section 5 of the ODL by failing to provide notice 48 hours prior to the March 5, 2013 executive session. In light of the factors cited *supra*, it is my opinion that the Board's actions were not intentional.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Thomas E. Scifres