



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317) 234-0906  
Fax: (317) 233-3091  
1-800-228-6013  
www.IN.gov/pac

August 29, 2013

Mr. Bentley Ellis  
2267 Carolina Street  
Gary, Indiana 46407

*Re: Formal Complaint 13-FC-223; Alleged Violation of the Open Door Law by the Gary Housing Authority*

Dear Mr. Ellis:

This advisory opinion is in response to your formal complaint alleging the Gary Housing Authority Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Board has not provided a response. Our office forwarded a copy of your formal complaint to the Board on July 31, 2013. The Board's response was due no later than August 23, 2013. As of today's date at 1:00 p.m., I have yet to receive any response from the Board.

## BACKGROUND

You allege that you were denied access to the Board's public meeting held on July 3, 2013 at 10:00 a.m., wherein a vote was conducted to extend the contract of the Authority's Interim Executive Director.<sup>1</sup>

## 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).

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<sup>1</sup> Please note that the portion of your complaint requesting that the Public Access Counselor initiate an investigation and a cease and desist action is beyond the scope of this Office. The Public Access Counselor is not a finder of fact and therefore any injunctive relief cannot be adjudicated by the Counselor. A local trial court would be the appropriate entity to grant or deny that request.

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. *See* I.C. § 5-14.1.5-2(e).

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 not 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 notice, generally nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

The Board is a public agency for the purposes of the ODL and is bound by its provisions. Your complaint did not mention any violations of the notice requirements, however, the Board is subject to compliance with the other considerations of the ODL.

In the absence of a response to your formal complaint, the allegations of your exclusion from the Board’s meeting and vote are deemed accurate. The burden is on the Board to refute any claims and address any concerns from a complainant. The exclusion of any individual, absent any justifiable reason, disregards the objectives of transparency and openness of the Open Door Law. Local governments have an obligation to espouse those considerations unless another statute or law permits a discretionary exception.

#### CONCLUSION

Based on the foregoing, it is my opinion that the Gary Housing Authority Board of Commissioners did violate the Open Door Law by excluding you from their July 3, 2013 meeting.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

cc: Mike Brown