



STATE OF INDIANA

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December 6, 2013

Norman Noe
6671 Grizzly Ct.
Nineveh, IN 46164

Re: Formal Complaint 13-FC-323; Alleged Violation of the Open Door Law by the Cordry-Sweetwater Conservancy District Board of Directors

Dear Mr. Noe,

This advisory opinion is in response to your formal complaint alleging the Cordry-Sweetwater Conservancy District Board of Directors ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board responded to your complaint via Mr. Larry Kolar, Chairman. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 8, 2013. Please be advised your request for priority status has been denied, as there is no pending proceeding which would meet the standards enumerated in 62 IAC 1-1-3.

BACKGROUND

Your complaint alleges the Cordry-Sweetwater Conservancy District Board of Directors violated the Open Door Law by conducting a meeting without notice.

You speculate in your formal complaint the Board met behind closed doors in an executive session to discuss the issuance of building permits. A number of people attempted to enter this meeting, however, they were denied because they were told it was a closed executive session. No notice was given of the executive session.

The Board responded by contending the gathering was not a meeting subject to the Open Door Law, because a majority of the Board was not present. Furthermore, they maintain the meeting was never declared an executive session, which would normally require specific notice.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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 Ind. Code § 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 Ind. Code § 5-14-1.5-3(a).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

The Board is a public agency subject to the ODL and its response provides a clarification as to the individuals gathered at the meeting. Of the seven members of the Board, the Chairman has indicated only three of the members were present at the meeting. Other non-Board public officials and attorneys were also present.

You acknowledge in your complaint only three members of the Board were present during the meeting. The requirements of the Open Door Law are only triggered when a majority of the public agency gather. The lack of a quorum is not a meeting as intended by the ODL. Therefore, the non-majority can take official action on public business. It should be noted it is doubtful a non-majority gathering would take *final* action, i.e. a vote, on public business because the Board's governance would likely require a quorum in order to vote. It is unclear from your complaint if the "agreement" you reference between the Board and the County is something that would necessitate a vote to finalize.

The Board denies the meeting was an executive session. If they had held an executive session, they would need to abide by the notice requirements of the ODL. Your analysis in your complaint regarding executive sessions is accurate. But the Board contends they did not declare it an executive session. It is unclear from your complaint who told the interested members of the public the meeting was an executive session. I cannot ascertain with certainty if that person had the authority to do so.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Cordry-Sweetwater Conservancy District Board of Directors did not violate the Open Door Law, as no meeting of the majority of its members took place. Additionally, the Board did not declare it an executive session; therefore notice of the meeting was not required.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Larry Kolar