



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

April 19, 2013

Ms. Sandy Rogers
1254 S. Main Street
Dunkirk, Indiana 47336

*Re: Formal Complaint 13-FC-94; Alleged Violation of the Open Door Law by the
Dunkirk Public Library Board*

Dear Ms. Rogers:

This advisory opinion is in response to your formal complaint alleging the Dunkirk Public Library Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Tony Phillips responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

You provide that on February 27, 2013, you were contacted via telephone by Board President Tommy Phillips and asked what your vote would be on appealing the decision to grant unemployment benefits to a former employee. At that time, you served as a member of the Board. You informed Mr. Phillips that you would vote "no" to appealing the decision, to which Mr. Phillips advised that was be the second "no" vote he received. Mr. Phillips informed you that he would let you know what the Board would decide. On February 28, 2013, you were contacted by Mayor Dan Watson and asked to resign from the Board. You turned in your letter of resignation the same day. You provide that as to your knowledge, no Board vote was ever taken on the initial denial of the unemployment claim.

In response to your formal complaint, Mr. Phillips advised that he did not speak with you on February 27, 2013 concerning any vote, potential vote, or any other matter. Mr. Phillips last conversation with you occurred on February 20, 2013, at which time he relayed to you that unemployment benefits had been granted to the former employee as of February 15, 2013. During the conversation Mr. Phillips advised that the Board had the option of appealing the decision. You stated that if there was a vote to be taken on the matter it would be against appealing the decision. Mr. Phillips then advised that he believed there would be at least one other board member who would also vote to not appeal the decision. At no time did Mr. Phillips contact any board member to solicit or receive any kind of vote on the issue.

Thereafter, the Board attorney contacted Mr. Phillips and asked to be forwarded the employee's information regarding the receipt of unemployment. The attorney advised that the Board should appeal the decision. On February 22, 2013, you resigned from the Board. Mr. Phillips noted that the Board cannot grant or deny unemployment; the decision is made by the State. The issue of employment compensation or appeal was never brought to or voted on by the Board. The library director processing the handling of the unemployment compensation paperwork and all other administrative matters related to the former employee. After a new interim director was appointed, the paperwork was forwarded to Mr. Phillips to handle due to the inexperience of the interim director on these types of matters. Mr. Phillips filled out the requested paperwork and the employee was ultimately denied compensation.

After the denial of compensation, documentation was received informing the Board that an appeal hearing would be conducted on January 16, 2013. On February 15, 2013, the Board was informed that the original decision was overturned and the employee was granted unemployment compensation. Mr. Phillips individually informed the other board members of the appeal. No vote was taken or solicited at any time.

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. *See* I.C. § 5-14-1.5-2(e). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). The ODL does not instruct governing bodies as to what actions require the governing body to vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-144.*

The basis of your formal complaint is that the Board's vote whether to appeal the decision to grant unemployment benefits to a former employee was not taken at a public meeting. The Board has denied that a vote was ever taken or that Mr. Phillips privately solicited a vote on this issue. The Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80.* Thus, if a vote was never taken by the Board or

privately solicited by Mr. Phillips as to whether to appeal the decision that granted the former employee unemployment benefits, it is my opinion that the Board did not violate the ODL (emphasis added).

CONCLUSION

Based on the foregoing, it is my opinion that *if* a vote was never taken by the Board or privately solicited by Mr. Phillips as to whether to appeal the decision that granted the former employee unemployment benefits, it is my opinion that the Board did not violate the ODL (emphasis added).

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 "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Tony Phillips