



# STATE OF INDIANA

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April 16, 2013

Mr. Scott B. Smith  
916 Monon Road  
Lowell, Indiana 46356

*Re: Formal Complaint 13-FC-95; Alleged Violation of the Open Door Law by the Valparaiso Community School Board of Trustees*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging that the Valparaiso Community Schools Board of Trustees ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* David L. Hollenbeck, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that the Board held an executive session on March 19, 2013 to which proper notice was not provided. While the notice provided the specific statute that would allow the Board to meet in executive session, the language of the statute was not included.

In response to your formal complaint, Mr. Hollenbeck acknowledged the requirements of I.C. § 5-14-1.5-6.1(d), which provided that the notice of an executive session shall identify the subject matter of the executive session "by specific reference to the enumerated instances for which executive sessions may be held" under the ODL. Although Mr. Hollenbeck would argue that the language of the statute to be significantly ambiguous as to the need to include the statutory language as well as the statutory cite, the Board does acknowledge the comments contained in a previous advisory opinion issued by the Public Access Counselor that addressed this issue. *See Opinion of the Public Access Counselor 12-FC-209.* The notice for the Board's executive session held on March 19, 2013 failed to include the statutory language, although the statutory cite was included. The failure was inadvertent, unintentional, and inconsistent with the practices of the Board since the prior formal complaint. Since receipt of the formal complaint, Mr. Hollenbeck has met with School staff responsible for preparing the notice and has emphasized the need to comply with the Counselor's opinion on this matter.

## 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 Board acted contrary to the requirements of section 6.1(d) of the ODL by failing to include in the March 19, 2013 notice the language of the specific statute that would allow the Board to meet in executive session.

## CONCLUSION

Based on the foregoing, it is my opinion that the Board acted contrary to the requirements of section 6.1(d) of the ODL by failing to include in the March 19, 2013 notice the language of the specific statute that would allow the Board to meet in executive session.

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" following.

Joseph B. Hoage  
Public Access Counselor

cc: David L. Hollenbeck