



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 3, 2014

Mr. Nathan Mantlo
7325 E. County Road 800 North
Brownsburg, IN 46112

Re: Formal Complaint 14-FC-198; Alleged Violation of the Indiana Open Door Law by the Town of Brownsburg

Dear Mr. Mantlo,

This advisory opinion is in response to your formal complaint alleging the Town of Brownsburg ("Town") violated the Indiana Open Door Law ("ODL"), Ind. Code § 5-14-3-1 *et. seq.* The Town has responded to your complaint via Kevin Koons, Esq., Town attorney; I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 22, 2014.

BACKGROUND

Your complaint dated August 28, 2014, alleges the Town violated the ODL by (1) failing to provide the required notice of the Town Council's special meeting on August 25, 2014 and (2) the Town may be in violation of the ODL by holding an internal meeting prior to the special meeting.

In support of claim (1), you indicated notification was not posted on the town's web site until August 22, 2014. Additionally, you provided a link to the Town's website where the notice was posted. In support of claim (2), you allege an archived video recording of the Town Council's special meeting indicated the appearance of a private internal meeting between Council members prior to the special meeting to "inform the council members of the details of the situation at hand, and to provide details as to whom and why the town would be hiring a consultant, as the rationale wasn't provided to the public."

On September 15, 2014, the Town responded to your formal complaint. The Town claims it did not violate the ODL because physical notice of the Town Council's special meeting was timely posted on the public notice bulletin board outside the Council's chambers at Town Hall at 9:45 a.m., on Thursday, August 21, 2014. Additionally, the

Town claims the same notice was sent via email on August 20, 2014, at 3:00 p.m., to the news media and those members of the public who signed up for 2014 public notices at the end of calendar year 2013.

The Town also disputes your claim alleging the Town Council may be in violation of holding an internal meeting prior to the special meeting because a majority of the Council did not participate in any meeting or discussion outside of a noticed public meeting.

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 governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. Ind. Code § 5-14-1.5-5(b)(1).

The Open Door Law does not consider web site notice as official notice. A municipality may not rely on internet notice alone to constitute appropriate notice. It appears in this case the Town Council physically posted notice and provided additional, voluntary notice via the web site and email. This is acceptable under the ODL as long as physical, conspicuous notice was posted 48-hours in advance of the meeting at the place where the meeting was to be held.

Please also note the Open Door Law is only triggered in the case of a majority gathering of a governing body. The Town Council acknowledges there may have been a non-majority group of individuals discussing public business prior to the meeting; however, this also is not violative of the Open Door Law.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Town of Brownsburg Town Council did not violate the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Kevin D. Koons, Esq.