



STATE OF INDIANA

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March 20, 2014

Mr. Keith J. Benman
601 W. 45th Ave.
Munster, IN 46321

Re: Formal Complaint 14-FC-33; Alleged Violation of the Open Door Law by the Northwest Indiana Regional Development Authority

Dear Mr. Benman,

This advisory opinion is in response to your formal complaint alleging the Northwest Indiana Regional Development Authority (“Authority”) violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Authority has responded via Mr. David L. Hollenbeck, Esq. 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 February 24, 2014.

BACKGROUND

Your complaint dated February 24, 2014, alleges the Northwest Indiana Regional Development Authority violated the Open Door Law by providing improper notice of their executive meetings.

The Authority published a notice for a February 5, 2014 executive session and cited Ind. Code § 5-14-1.5-6.1(b)(5) as justification for the meeting. That specific statute states an executive session may be held to receive information about and interview prospective employees. You inquired with regard to the session by contacting the Authority’s Chief Operative Officer who stated the Authority would be discussing a personnel compensation issue for a current employee, which would be inconsistent with the published notice. Subsequent notices were later published and the session was moved to February 7, 2014 due to inclement weather. The subsequent notices did not state the language for the justification for an executive session under the Open Door Law.

The Authority responded to your complaint and conceded the notice for the February 5, 2014 was improperly labeled. The intent of the session was apparently to discuss items authorized under Ind. Code § 5-14-1.5-6.1(b)(9) – to discuss performance of an

employee. The Authority also concedes the subsequent notices did not cite the proper subsection of the Open Door Law and maintains it was an inadvertent omission.

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).

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. All of the subject matters intended to be discussed fall under the permissible discussion topics for a closed door executive session under the ODL.

Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, 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 Ind. Code § 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 Ind. Code § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice.

I received many inquiries during the recent harsh winter months regarding the rescheduling of meetings and executive sessions during times of inclement weather. Due to these extenuating circumstances, many agencies were forced to cancel and reschedule meetings. I am not as concerned about these cancellations and rescheduling if arrangements were made to substantially comply with the Open Door Law.¹

However, in regard to executive sessions I am quick to scrutinize these gatherings due to their very nature of being closed-door meetings. I do not consider the rescheduling of the executive session to be improper in this case, but I am concerned about the meeting notice itself. While not an egregious error to omit the statutory language in an executive session notice, I do interpret the Open Door Law to require both the citation and the language. While I hold executive sessions to a strict standard, the Courts allow minor technical deviations from the Open Door Law if it involves harmless error.

¹ "Substantial compliance" includes: (1) the extent to which the violation denied or impaired access to a meeting; and (2) the extent to which the public knowledge or understanding of the public business conducted was impeded. (Emphasis added.) *Town of Merrillville v. Blanco*, 687 N.E. 2d 191 (Ind. App. 1998).

The Authority has stated they will be more diligent about published notices in the future and I encourage them to keep their word. While I do not think the public has been radically prejudiced by the Authority's improper notice, I caution all agencies to follow the strict letter of the law when it comes to executive sessions. Justifications for closed door meetings under the executive session statute are narrow and I construe those justifications according to principles of transparency and openness.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Northwest Indiana Regional Development Authority technically violated the Open Door Law by publishing improper notice of an executive session.

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. David L. Hollenbeck, Esq.