



STATE OF INDIANA

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May 9, 2014

Mr. David F. Hacker
3740 N. Norwood Rd.
P.O. Box 430
Huntington, IN 46750

Re: Formal Complaint 14-FC-75; Alleged Violation of the Open Door Law by the Norwood Regional Water and Sewer District

Dear Mr. Hacker,

This advisory opinion is in response to your formal complaint alleging the Norwood Regional Water and Sewer District ("District") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The District has responded via the three District Board members, Mr. Jeff Shoup, Ms. Vicki Allen and Mr. Wayne Spencer. 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 April 7, 2014.

BACKGROUND

Your complaint dated April 3, 2014, alleges the Norwood Regional Water and Sewer District violated the Open Door Law by providing improper notice of public meetings and potential discussions behind closed doors. Your complaint also references a compensation issue which is outside my purview as Public Access Counselor and will not be addressed. Such issues should be directed to the Indiana Division of Local Government Finance or the State Board of Accounts.

You allege generally the District fails to regularly post agendas and notices as required by law. Additionally, at the February meeting of the district, there was indication certain items had been discussed beforehand by two of the three members of the District board which was not open to the public. The District concedes its shortcomings under the Open Door Law and has stated its intention to educate itself on the ODL and take remedial measures.

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).

While I cannot condone the actions of the District in the past or excuse it for lack of awareness of the law, I can certainly appreciate its willingness to accept responsibility for failing to adhere to the strict guidelines of the ODL. It appears the District is making a good faith effort to bring itself in accordance with the ODL and has availed itself of the resources on the Public Access Counselor's website, including the Public Access Handbook. Furthermore, I am always willing to personally present to the District and its staff and constituents on Indiana's public access laws and how they apply to their operations.

As stated above, the ODL places strict guidelines on public agencies and governing bodies as to how to conduct their business in the full light of public scrutiny. Part of that process is notifying the public of the time, location, and nature of meetings. It is my expectation and sincere hope the District will re-commit to educating itself on these considerations.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Norwood Regional Water and Sewer District has acted contrary to the Open Door Law. They have indicated, however, they will make best efforts to remedy those shortcomings in the future.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Jeff Shoup; Ms. Vicki Allen; Mr. Wayne Spencer