



STATE OF INDIANA

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May 29, 2014

Ms. LaVetta L. Sparks-Wade
3957 Martin L. King Dr.
Gary, IN 46409

Re: Formal Complaint 14-FC-97; Alleged Violation of the Open Door Law by the Gary Economic Development Corporation

Dear Ms. Sparks-Wade,

This advisory opinion is in response to your formal complaint alleging the Gary Economic Development Commission (“Commission”) violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Commission has not responded to your complaint despite being invited to do so on May 5, 2014. 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 29, 2014.

BACKGROUND

Your complaint dated April 28, 2014, alleges the Gary Economic Development Commission violated the Open Door Law by failing to provide notice of an April 14, 2014 public hearing and also for not posting notice of an executive session held to discuss matters presented at the April 14, 2014 meeting.

According to your formal complaint, on April 9, 2014 the Commission held a public meeting to discuss and vote on a TIF District Revenue Bond for a renovation project. The vote was deadlocked at 2-2, so the meeting was adjourned and rescheduled for April 14, 2014. You allege that sometime before the reconvened meeting on April 14, 2014 an executive session was held to receive information from the contractor who would perform the work if the vote passed.

The April 14, 2014 meeting was advertised to the public using the required 48-hour notice. Similarly, the Commission did not give notice of the executive session nor did they post an agenda. You speculate both of these meetings were contrary to the Open Door Law.

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).

Some local economic development corporations in Indiana are public agencies under the obligations set forth in the Open Door Law and some are organized as non-profit organizations. One defining characteristic of a public agency is its status as being subject to an audit by the Indiana State Board of Accounts (“SBOA”). See Ind. Code § 5-14-1.5-2(a)(3). I have been unable to confirm if the Gary Economic Development Commission is subject to SBOA. Please note, however, that if the Commission is the same entity referenced in Opinion of the Public Access Counselor 14-FC-51 (therein called the Gary Economic Development Corporation), the City of Gary’s Attorneys did not object to the Commission being considered subject to the ODL.

"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).

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.

If the Commission held an executive session to receive information from the contractor and if no notice was given, it is in potential violation of the Open Door Law. Ind. Code § 5-14-1.5-6.1(b)(4) allows executive sessions of local economic development corporations to take place when interviewing commercial prospects. The subject matter of the meeting was appropriate for an executive session; however, it also requires 48-hour notice advising the public of the meeting.

Please note Ind. Code § 5-14-1.5-2(c)(5) excludes from meetings “A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources”. Without the benefit of a response from the Commission, I cannot determine if the discussion at the executive session would be exempt from the ODL under this subsection. In any case, the president of the Commission allegedly declared the meeting an executive session, thereby availing the Commission of the notice requirement.

As to the meeting reconvened on April 14, 2014, the ODL permits agencies to reconvene public meetings under Ind. Code § 5-14-1.5-5(a) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda. Note that this does not apply to executive sessions. While I cannot conclude if the reconvened meeting was in the minutes of the April 9, 2014 meeting, but there is no allegation they are not. The ODL does not require a vote to be taken for reconvening the meeting as that is a matter of local governance.

Alternatively, you suggest the reconvened meeting is a serial meeting under Ind. Code § 5-14-1.5-3.1. Serial meetings apply to a meeting of less than a majority of a governing body. This would not apply under the circumstances. See subsection (a)(1).

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Gary Economic Development Commission violated the Open Door Law by not providing notice of an executive session. It does not appear they violated the ODL by holding a reconvened or serial meeting.

Regards,

A handwritten signature in black ink, appearing to be the initials 'JTB' with a long, sweeping underline.

Luke H. Britt
Public Access Counselor