



# STATE OF INDIANA

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July 8, 2016

Mr. David W. Huckleberry  
700 Park Avenue  
Attica, Indiana 47918

*Re: Formal Complaint 16-FC-153; Alleged Violation of the Open Door Law by the Attica Consolidated School Corporation (Priority)*

Dear Mr. Huckleberry:

This advisory opinion is in response to your formal complaint alleging the Attica Consolidated School Corporation ("Corporation") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Council has responded to your complaint via Mr. Derek Marshall, Superintendent. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 3, 2016.

## BACKGROUND

Your complaint dated July 3, 2016, alleges the Attica Consolidated School Corporation violated the Open Door Law by conducting an improper executive session.

The Attica Consolidated School Corporation has been undergoing an audit by the State Board of Accounts. An executive session was scheduled to be conducted on July 5, 2016 to discuss the auditor's findings. Notice for the session cited Indiana Code § 5-14-1.5-6.1(b)(7), discussion concerning records deemed confidential by state or federal statute. You contend this citation was improper because the auditor's findings are public records.

On July 5, 2016 the Corporation responded. The Corporation notes the meeting was considered an "exit conference conducted by an examiner on behalf of the State Board of Accounts." The Corporation notes that Indiana Code § 5-11-5-1(b)(3) does not require notice for an exit conference.

## 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 Indiana Code § 5-14-1.5-1*. Section 6.1 provides an exception, allowing public agencies

to conduct executive sessions which are closed to the public in order to discuss strategies with respect to certain specified topics.

The exceptions to this policy are called executive sessions. Executive sessions are subject-matter-contingent scenarios, which have heightened sensitivity above and beyond regular public business. The Indiana General Assembly has recognized the need for privacy when it comes to these very narrow situations and has carved out executive sessions as instances when it is appropriate for a governing body to meet behind closed doors.

Indiana Code § 5-11-5-1(b) requires an examiner from the State Board of Accounts to hold a gathering with the public agency to discuss the audit. Indiana Code § 5-11-5-1(b)(3) reads

If a majority of a governing body (as defined in IC 5-14-1.5-2(b)) is present during an exit conference, the governing body shall be considered in an executive session under IC 5-14-1.5. **However, the governing body has no obligation to give notice as prescribed by IC 5-14-1.5-5 when it participates in the exit conference.** (Emphasis added)

Because the majority of the Corporation's governing body was present, the exit conference was considered an executive session. However, Indiana Code § 5-11-5-1(b)(3) applies and no notice was required. In this case, the Corporation took the additional step to post notice and did so improperly, citing Indiana Code § 5-14-1.5-6.1(b)(7) in lieu of Indiana Code § 5-11-5-1(b)(3). Because notice was not required, there is no violation of the Open Door Law. However, the Corporation should remain cognizant of the potential appearance of impropriety. I commend the Corporation's willingness to go beyond the requirements of the audit statute, but recommend future notices properly cite Indiana Code § 5-11-5-1(b)(3) under those circumstances.

### CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Attica Consolidated School Corporation did not violate the Open Door Law because notice was not required in this situation.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Mr. Derek Marshall