



STATE OF INDIANA

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December 12, 2016

Mr. Ken Davidson
7407 Montana Avenue
Tennyson, Indiana 47367

Re: Formal Complaint 16-FC-282; Alleged Violation of the Open Door Law by the Northwest Indiana Regional Development Authority

Dear Mr. Davidson:

This advisory opinion is in response to your formal complaint alleging the Northwest Indiana Regional Development Authority (“NWRDA”) violated the Open Door Law (“ODL”), Indiana Code § 5-14-1.5-1 et. seq. The Council has responded to your complaint via Mr. David Hollenbeck, Esq., Attorney for the NWRDA. 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 August 5, 2016.

BACKGROUND

Your complaint dated October 25, 2016, alleges the NWRDA has violated the ODL by entering into negotiation with KPMG for a public-private partnership on July 12, 2016. Your complaint alleges there was not a request for proposals and there was no mention of the discussions in any meetings of this year.

The Attorney for NWRDA has responded to your complaint stating that the consulting services discussed with representatives of KPMG fall within the definition of services as found in Indiana Code. 5-22-2-30, which are specifically exempt from the statutory procurement requirements by Indiana Code 5-22-6-1. With regard to your complaint that there was “never a request for proposal” is without merit in that the NWRDA was not required to utilize the request for proposal process for merely consulting services. Furthermore, the matter in which you are concerned about was on the agenda and considered by the NWRDA Governing Board at a meeting on August 18, 2016.

ANALYSIS

It is the intent of the Open Door Law (“ODL”) that 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.

Although this Office is not an authority on public purchasing or procurement, the plain reading of Indiana Code § 5-22-6-1 is clear that consulting services can be procured by the purchasing agency in any manner the agency deems appropriate. No request for proposals is necessary. Additionally, in the meeting minutes provided from August 18, 2016, it appears that is when final action took place on the issue of an engagement with the consulting firm KPMG. No official action or vote had taken place until the public meeting in August. Moreover, a gathering to discuss an industrial or a commercial prospect which 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 does not constitute a meeting pursuant to Indiana Code § 5-14-1.5-2(c)(5).

CONCLUSION

Based on the aforementioned, it is the Opinion of the Public Access Counselor the Northwest Indiana Regional Development Authority did not violate the Open Door Law as to your allegations.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. David Hollenbeck, Esq.