

January 9, 2001

Mr. Richard E. Frost
507 Stonehedge Drive
Carmel, Indiana 46032-7400

Re: Advisory Opinion 00-FC-44; *Alleged Violation of the Indiana Open Door Law by the Hamilton County Board of Commissioners.*

Dear Mr. Frost:

This is in response to your formal complaint, which was received on December 22, 2000. You have alleged that the Hamilton County Board of Commissioners ("Commissioners") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. According to your complaint, a quorum of the Commissioners met on December 12, 2000 without posting notice. Mr. Steven Holt, President of the Commissioners responded in writing to your complaint. A copy of his response is enclosed for your reference.

It is my opinion that an informal gathering of the Commissioners at which two members were present and at which official action was taken on public business was a meeting under the ODL. For this reason, the Commissioners should have posted notice in accordance under Indiana Code section 5-14-1.5-5 and followed all other requirements of the ODL with respect to the December 12, 2000 meeting. The failure to do so was a violation of the ODL.

BACKGROUND

In your complaint, you stated that Commissioner Sharon Clark called an informal gathering for December 12, 2000 to discuss road projects. According to the information you provided, two Commissioners attended, along with representatives of the Hamilton County Council and the Carmel City Council. With respect to the city and county councils, the informal gathering was attended by less than a majority of the members of those governing bodies. You have alleged that since a majority of the Commissioners was present, the informal gathering was a meeting under the ODL and that the requirements of the ODL, including the posting of notice of the date, time and place of the meeting, should have been met. You also enclosed a copy of a news article concerning the December 12th meeting and whether it complied with the ODL from the *Indianapolis Star, December 16, 2000, Pages NI-2*. Commissioner Clark was quoted as stating that "no votes were taken or decisions made" and that the purpose of the gathering was "strictly an exchange of information."

In his response, President Holt stated that Commissioner Clark did not schedule the December 12th gathering with the intent of violating the letter or the spirit of the ODL. To illustrate this point, he noted that a local newspaper reporter was present at the December 12th gathering. Commissioner Clark called the informal gathering for the benefit of informing local officials in the Carmel area of certain county road improvement plans. According to President Holt, Commissioner Clark was not aware that he himself would attend the gathering.

ANALYSIS

The intent and purpose of the ODL is that "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." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Board of Commissioners is a public agency and a governing body subject to the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b).¹

A meeting for the purposes of the ODL is defined as "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). There are three elements to this definition: a majority, official action and public business. If all three elements are met, the December 12th gathering was a meeting for the purposes of the ODL and, therefore, the requirements of the ODL should have been met.

While it was clear that Commissioner Clark did not invite other members of the Board of Commissioners to attend, with the attendance of President Holt, there were two members present at that gathering. Two members of the Commissioners constitute a majority and this element of the definition of a meeting subject to the ODL was met.

The December 12th gathering must have also been for the purpose of taking "official action" by the Commissioners in order to have been subject to the ODL.

Official action means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

Indiana Code §5-14-1.5-2(d). The purpose of the December 12th gathering according to Mr. Holt's letter and the newspaper article provided to me indicate that Commissioner Clark intended it to be informational in nature, to provide and exchange information between the Hamilton County officials and City of Carmel officials about road projects. In fact, in response to concerns about whether this gathering was subject to the ODL, Commissioner Clark was paraphrased in the news article as stating that no votes were taken or decisions made. As you will note from the definition of official action, even

receiving information, which apparently occurred at the December 12th gathering, is official action that triggers the requirements of the ODL. It appears that the Commissioners did take official action as defined under the ODL during the December 12th gathering.

The final point of analysis in the determination of whether the December 12th gathering was a meeting subject to the ODL is whether it concerned public business. Public business is defined in the ODL to mean "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). According to the information provided by President Holt, the purpose of this meeting was to inform local officials "of certain county road improvement plans." Additionally, the news article written about the December 12th gathering stated that Commissioner Clark "was interested in finding out the status of Carmel's annexation plans in light of short-term road project decisions." *Indianapolis Star, 12/16/00, Page N-2*. The subject matter discussed, specifically concerning road projects in Hamilton County, appear to clearly fall within the definition of what constitutes the public business of the Commissioners.

Since a majority of the Commissioners were present and official action was taken on public business, it is my opinion that the December 12th gathering was a meeting of the Commissioners for the purposes of the ODL. The fact that Commissioner Clark did not intend that a majority of the Commissioners attend does not change the fact that they did attend. The attendance of a majority of the members of the Commissioners triggered the requirements of the ODL.

Consequently, the Commissioners should have complied with the requirements of the ODL, including but not limited to the forty-eight (48) hour notice provisions under Indiana Code section 5-14-1.5-5 and the requirements for the preparation of memoranda under Indiana Code section 5-14-1.5-4. The failure to do so constituted violations of the ODL.

CONCLUSION

It is my opinion that the December 12, 2000 meeting of the Hamilton County Board of Commissioners was subject to the requirements of the Open Door Law. The failure to comply with these requirements constituted violations of the Open Door Law.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: President Steven Holt, Hamilton County Commissioners w/out enclosures

1 Since only the Commissioners had a majority of their members present at the December 12, 2000 gathering, this opinion is limited to whether or not the Commissioners were required to comply with the ODL.
