

October 4, 2001

Ms. Teresa L. Torres  
9111 Broadway, Suite A  
Merrillville, IN 46410

*Re: Advisory Opinion 01-FC-55; Alleged Violation of the Open Door Law by the Indiana Council on Independent Living.*

Dear Ms. Torres:

This is in response to your formal complaint, which was received in this Office on September 6, 2001. You have alleged that the Indiana Council on Independent Living ("ICOIL") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. According to your complaint, ICOIL and its committees have been conducting business and making decisions about expenditures of public dollars without complying with the ODL, in particular the notice requirements. Mr. Mark Bair, Chairperson of ICOIL, responded by email to your complaint. A copy of his response is enclosed for your reference.

It is my opinion that it is a violation of the ODL for a majority of the members of a governing body to take official action upon public business during a meeting held without proper notice. It is also my opinion that a social gathering conducted with the intent of circumventing the ODL constitutes a meeting subject to all the requirements of the ODL. Finally it was not a violation of the ODL for the chair to merely suggest that committee members meet after the cancellation of a public meeting when they in fact never met.

### BACKGROUND

According to the facts as you have presented them, ICOIL and its committees have made decisions in recent months outside of public meetings. You contend that these decisions were made via telephone conference or through face-to-face meetings of a select group of individuals. You alleged that decisions were made outside of a public meeting regarding the following:

1. Financial sponsorship of a national conference;
2. plans to hold and pay for a "retreat" that will potentially involve approximately half of ICOIL's annual budget;
3. approval to pay costs associated with sending two members to a workshop in Reno, Nevada; and
4. approval to pay for hotel rooms for committee members.

You further contend that Mr. Al Tolbert, ICOIL member and chair of several committees, stated his intent to hold a "social gathering" at which decisions would be made regarding the above mentioned

retreat rather than conducting a committee meet for the purpose of avoiding the ODL. Finally, you allege that in one case, a committee chair encouraged members of a committee to meet despite the cancellation of the scheduled public meeting and that this was also a violation of the ODL.

In his response to your complaint, Mr. Bair did not deny any of the allegations raised in your complaint and stated in his response that he has admonished those who did not follow the ODL with respect to their committee meetings. He also stated that he spoke publicly at the ICOIL meeting on September 19, 2001 to apologize and seek a reconciliation between ICOIL, your group and others who have been at odds in the past. He further stated that he has spoken with you and Ms. Pat Stewart of ATTIC and pledged that these violations would not take place in the future.

## 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 ICOIL is a public agency and a governing body subject to the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b).

The general rule is that meetings of the majority of the members of a governing body of a public agency are to be held openly, so that the public may "observe and record them." Ind. Code § 5-14-1.5-3(a). Meetings are defined as gatherings of a majority of the members of any governing body, which would include ICOIL and any committees appointed by ICOIL or its chair, and at which official action is taken on public business. Ind. Code § 5-14-1.5-2(c). Public notice of these meetings must be provided under Indiana Code section 5-14-1.5-5.

One exception to the general rule that such meetings must be open to the public is an executive session. "Executive session" is defined as a meeting "from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose." Ind. Code § 5-14-1.5-2(f). Executive sessions, however, may only be held under the narrowly construed statutory exceptions listed under Indiana Code section 5-14-1.5-6.1 and only after posting appropriate notice to the public. Ind. Code § 5-14-1.5-6.1(d). In any event, "final action must be taken at a meeting open to the public." Ind. Code § 5-14-1.5-6.1(c).

According to your complaint, several decisions were made by ICOIL during either during telephone conference calls or during face-to-face meetings. Mr. Bair, in his response, does not deny that these meetings took place. It is my opinion that any gathering in which a majority of the members of the ICOIL or its committees were present and took official action on public business outside of a properly noticed public meeting were held in violation of the ODL.

You also raised your concern about the possibility that social gatherings were being used as a means to avoid the ODL. You stated that Mr. Tolbert, a committee chair, allegedly made statements that he

intended to hold a "social gathering" for the purpose of making a decision regarding an ICOIL retreat rather than to hold a committee meeting so that they could avoid the requirements of the ODL.

Under the ODL, social or chance gatherings *not intended to avoid this chapter* are by definition not meetings, therefore, they are not subject to the requirements of the ODL. See, Ind. Code § 5-14-1.5-2(c). [Emphasis added.] As stated above, any gathering in which a majority of the members of a governing body take official action on public business constitutes a meeting under the ODL. Such meetings are subject to the requirements of the ODL regardless of whether the gathering has been called a "social gathering." It is my opinion that a meeting of the majority of the members of a governing body at which official action was taken is a meeting subject to the requirements of the ODL. A governing body may not label such a meeting as a "social gathering" in an effort to avoid the requirements of the ODL and to do so is a violation of the ODL.

Finally, you also stated your concern about the cancellation of a meeting for which notice was not provided forty-eight (48) hours in advance. According to your complaint, the ICOIL chair cancelled the meeting, but suggested to one member of the committee that she meet with two other members of the committee anyway. Certainly, the principles stated above about what constitute a meeting subject to the ODL would apply. According to your complaint, however, the individual who was contacted advised the chair that she would not meet under those conditions so no meeting took place. Since no meeting took place, there was no violation of the ODL.

## CONCLUSION

It is my opinion that any gathering in which a majority of the governing body was present and took official action on public business outside of a properly noticed public meeting violated the Open Door Law. It is also my opinion that a governing body may not label a gathering as a "social gathering" to avoid the requirements of the Open Door Law if a majority of its members are present and take official action on public business.

Sincerely,

Anne Mullin O'Connor

cc: Mr. Mark Bair, ICOIL Chairperson

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