

February 6, 2002

Mr. Michael R. Johnson
The Evening World
P.O. Box 311
Bloomfield, IN 47424

Re: *Advisory Opinion 02-FC-02*;

Alleged Violation of the Open Door Law by the Greene County Board of Commissioners.

Dear Mr. Britton:

This is in response to your formal complaint, which was received on January 8, 2002. You have alleged that the Greene County Board of Commissioners ("Board of Commissioners") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. According to your complaint, on January 8, 2002 the Board of Commissioners discussed county business outside of a properly noticed public meeting. Mr. Tom Britton, President of the Board of Commissioners of Greene County, responded in writing to your complaint. A copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that Board of Commissioners violated the Indiana Open Door Law by failing to post notice of its lunch meeting on January 8, 2002.

BACKGROUND

In your complaint, you allege that on January 8, 2002 all three members of the Board of Commissioners met at a Bloomfield restaurant without posting notice and discussed county business. You stated that you personally observed the Board of Commissioners discussing county business during the lunch. You also provided via email a newspaper article by Ms. Lana Robertson, which indicated that the Board of Commissioners received information from Mr. Jack Waldrip and Mr. Kurt Fowerbaugh, of United Consulting Engineers.

In his response Mr. Britton conceded that all three members of the Board of Commissioners had lunch with Mr. Waldrip and Mr. Fowerbaugh. Mr. Britton asserts that this was a social gathering, which was not intended to avoid the Open Door Law. Mr. Britton stated in his response that during lunch he thanked the other commissioners for re-appointing him as president. He also stated in his response that there was a discussion about arranging for rooms for the annual road school in Lafayette, and that the Board of Commissioners expressed their personal feelings that they made some good decisions for the county during the prior year. Finally, Mr. Britton stated in his response that the Board of Commissioners did not receive any information from Mr. Waldrip or Mr. Fowerbaugh or anyone else, nor did the Board

of Commissioners deliberate, make any recommendations, establish any policy, make decisions, or take final action.

ANAYLSIS

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 governing body of a public agency subject to the ODL. Ind. Code § 5-14-3-2.

A meeting 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). Meetings of a governing body must be held openly, with the exception of executive sessions, including affording the public the right to attend, observe and record these meetings. Ind. Code § 5-14-1.5-3(a). Further, if the ODL applies to a meeting, the Board of Commissioners must have posted notice in accordance with Indiana Code section 5-14-1.5-5.

The determination of whether the Board of Commissioners violated the ODL with respect to the actions that took place during the lunch on January 8, 2002 is dependent upon three factors. First, a majority of the members must have been present. Secondly, the members must have taken official action and third, that action must have concerned the public business of the Board of Commissioners. All three of these factors must have been present in order for the ODL to apply to the gathering on January 8th.

Under the ODL, a majority of the members of the Board of Commissioners triggers the requirements for conducting a meeting, including posting notice and maintaining memoranda. In the case of Board of Commissioners, which are three member Boards, a majority if two (2) of its members. It is undisputed that all of the members of the Board of Commissioners were in attendance at the January 8th lunch, therefore, the majority requirement of the ODL is satisfied.

In order for the ODL to have applied to the January 8th gathering of the Board of Commissioners, the two other factors noted above must have also been met. The Board of Commissioners must have also been taking official action on public business while present during the January 8th lunch. "Official action" is defined very broadly to include receiving information, deliberating, making recommendations, establishing policy, making decisions or taking final action. Ind. Code § 5-14-1.5-2(d). "Public business" includes "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). If the Board of Commissioners gathered did take official action on the public business of the Board of Commissioners on January 8th, this would have constituted a violation of the ODL.

It is not a violation of the ODL for the Board of Commissioner to have lunch together and discuss matters not related to the public business of the Board of Commissioners. However, based on the information I have been provided it is my opinion that the Board of Commissioners did discuss public

business during the January 8th gathering. According to Ms. Robertson's article in the Linton Daily Citizen, Mr. Fowerbaugh stated that "[w]e didn't discuss any types of projects, with the exception of the bridge inventory, which we're under contract for. We kind of reviewed the bridge inventory and areas that needed improvement, it was really a general conversation. No decisions were made."¹ It is clear, based on Mr. Fowerbaugh's statement that the Board of Commissioners did receive information about the bridge inventory. Therefore, the only question remaining is whether the bridge inventory constitutes public business of the Board of Commissioners. In a telephone conversation I had with Dr. Tom Bailey on February 6, 2002, a member of the Board of Commissioners, he stated that the bridge inventory updates the Board of Commissioners concerning the condition of the various bridges in Greene County. Dr. Bailey further stated that any decisions concerning the various bridges in Greene County are within the jurisdiction of the Board of Commissioners. Therefore, it is clear that the bridge inventory is the public business of the Board of Commissioners.

CONCLUSION

It is my opinion that the Greene County Commissioners violated the Indiana Open Door Law by receiving information concerning the bridge inventory outside of a properly noticed public meeting.

Sincerely,

Sandra K. Barger
Staff Attorney

cc: Mr. Tom Britton, President
Green County Board of Commissioners

¹ I contacted Ms. Robertson via telephone to confirm the accuracy of the quote from her January 15, 2002 article about the Formal Complaint filed with this Office.