

February 8, 2002

Mr. Bryan Harris
114 N. Walnut
Peru, IN 46970

Re: *Advisory Opinion 02-FC-04*;

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

Dear Mr. Harris:

This is in response to your formal complaint, which was received on January 11, 2002. You have alleged that the Miami County Board of Commissioners ("Board of Commissioners") has violated the Indiana Open Door Law ("ODL"), Indiana Code chapter 5-14-1.5. Specifically, you claim that the Board of Commissioners met on January 10, 2002 without posting proper notice. Mr. J. David Grund, Miami County Attorney, responded in writing to your complaint in a letter dated February 1, 2002. A copy of his response is enclosed for your reference.

From the information provided in your complaint, in Mr. Grund's response, and from a discussion I had on February 8, 2002 with Mr. Bob Althouse, Board of Commissioner, it is my opinion that notice was not properly posted of the meeting held on January 10, 2002 in violation of the ODL.

BACKGROUND

In your complaint, you stated that on January 10th the Board of Commissioners met with John Staley, of DLZ, without posting proper notice. In his response, Mr. Grund stated that the Board of Commissioners did not admit any violation of the Indiana Open Door Law. Mr. Grund also stated that "[t]he Board would further explain that any discussion that may have taken place were unplanned and resulted in no decisions or agreements being made or entered into by the Board." In my conversation with Mr. Althouse, he stated that on this particular day the Board of Commissioners was in session from 9:00 a.m. until 3:00 p.m. The Board of Commissioners conducted part of the January 10th meeting in the morning then recessed for lunch, and then came back and continued their meeting. During that lunch recess the Board of Commissioners had lunch at the jail with Mr. Bill Staley, and according to Mr. Althouse the Board of Commissioners were shown different charts concerning the three different ways to expand the jail.

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).

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). 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 on January 10th is dependent upon three factors. First, a majority of the members must have been present. Second, the members must have taken official 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 10th.

Under the ODL, a majority of the Board of Commissioners triggers the requirements for conducting a meeting, including posting notice and maintaining memoranda. In the case of the Board of Commissioners, which are three member Boards, a majority is two (2) of its members. According to Mr. Althouse, all three members of the Board of Commissioners were present at the gathering at the jail on January 10th, therefore, the majority requirement is satisfied.

In order for the ODL to have applied to the January 10th meeting 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 10th gathering at the jail. "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." 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 10th this would have constituted a violation of the ODL.

It is not a violation of the ODL for the Board of Commissioners 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 provided it is my opinion that the Board of Commissioners did receive information on public business during the January 10th gathering. According to Mr. Althouse, the Board of Commissioners met with Mr. John Staley at the jail during lunch on January 10th and were shown charts indicating the three different ways to add on to the jail. Although the Board of Commissioners did not take a vote during that lunch meeting, it is my opinion that the Board of Commissioners did receive information on public business.

Mr. Althouse indicated in my conversation with him that notice was posted that the Board of

Commissioners would meet January 10th from 9:00 a.m. until 3:00 p.m. Indiana Code section 5-14-1.5-5 (c) allows governing bodies to give notice only once each year. However that provision further provides that additional notice is required if the meeting location is changed. Ind. 5-14-1.5-5(c). Here, it is undisputed that the meeting location was changed for part of the meeting. According to Mr. Althouse, the Board of Commissioners first met in the Commissioners Room at the courthouse, but at lunch they moved to a meeting room at the jail. Therefore, it is my opinion that the Board of Commissioners should have posted notice that the meeting location for part of the meeting had been changed and failure to do so violated the ODL.

CONCLUSION

It is my opinion that the Miami County Board of Commissioners violated the ODL by failing to post notice that the meeting location for part of the January 10, 2002 had been changed.

Sincerely,

Sandra K. Barger
Staff Attorney

cc: Mr. Mike Morris, Chairman
Miami County Board of Commissioners
