

May 31, 2002

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

Re: *Advisory Opinion 02-FC-21*;  
Alleged Violations of the Open Door Law by the Hamilton County Council.

Dear Mr. Frost:

This is in response to your formal complaint, which was received on May 20, 2002. You have alleged that the Hamilton County Council ("Council") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Council is violating the ODL by not properly conducting its executive sessions, and in particular the one held on May 1, 2002. Mr. John F. Culp, attorney for the Council, provided a written response to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Council did not violate the ODL with respect to its executive session held on May 1, 2002.

#### BACKGROUND

According to your complaint, the Council is violating the Open Door Law by holding its executive sessions at the beginning rather than at the end of their agenda<sup>1</sup> for their meetings. In particular, you claim that such a violation occurred with respect to the Council's May 1, 2002 executive session and, as a result, you filed your formal complaint with this Office.

In response to your complaint, Mr. Culp stated that the Council held their executive session beginning at 6:00 pm on May 1, 2002 in compliance with the ODL. County Auditor Robin Mills provided an affidavit with Mr. Culp's response demonstrating that she had posted the notice. In addition, Ms. Mills arranged for a legal notice to be published for both the executive session at 6:00 pm and the public meeting at 7:00 pm because certain issues required the Council to hold a public hearing that evening. Ms. Mills' affidavit stated that the May 1, 2002 executive session ended at 7:10 pm. Mr. Culp stated that the Council did comply with the ODL notice requirements and that there is nothing that prohibits a governing body from meeting in executive session prior to a public meeting.

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

Notice of the date, time and place for a meeting or executive session of a governing body must be provided at least forty-eight (48) hours in advance, not including Saturdays, Sundays or legal holidays. Ind. Code §5-14-1.5-5(a). In addition, for executive session notices, the governing body must indicate the purpose or purposes for which the meeting will be held under Indiana Code section 5-14-1.5-6.1(b).

The ODL does not mandate that an executive session be held before or after a public meeting, only that the public is informed of the date, time and place of the executive session. In addition, the ODL provides that

notice [of a meeting] has not been given in accordance with [the ODL] if a governing body . . . convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe and record.

Indiana Code §5-14-1.5-5(h).

Under the facts presented, it appears that your complaint is directed at the fact that the Council's May 1, 2002 executive session did not end before the scheduled start time of the public hearing/meeting, for which the notice indicated would begin at 7:00 pm. Mr. Culp is correct in that the ODL does not prohibit a governing body from holding an executive session prior to a public meeting. It is my opinion that it was not a violation of the ODL for the Council to hold their executive session prior to the scheduled public hearing/meeting.

As noted above, however, the ODL does require that a public meeting convene at a time not is not so "unreasonably" different from the scheduled time of the meeting. Ind. Code §5-14-1.5-5(h). In this case, the executive session ran long by ten (10) minutes, indicating that the public meeting did not begin on time.<sup>2</sup> There is nothing in the materials in your complaint or Mr. Culp's response that indicates when the public hearing/meeting did begin, but at a minimum it may have started fifteen (15) minutes late. It is my opinion that a delay of 15 minutes or so with respect to a public meeting by the Council was not so unreasonably different from the advertised meeting time as to deprive the public of the opportunity to attend, observe and record the meeting. If additional time is needed for an executive session held immediately prior to a public meeting, I suggest that the Council take this into account in order to ensure that their public meetings are convened at or near the time scheduled.

## CONCLUSION

It is my opinion that the Hamilton County Council did not violate the ODL by holding an executive session before their May 1, 2002 public hearing/meeting.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. John F. Culp, Attorney for HCC

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<sup>1</sup> Although it is not clear from your complaint, you appear to be referencing the agenda for the Council's public meeting held after the executive session.

<sup>2</sup> The meeting minutes have not yet been posted on the Council's webpage, but I noted that the April 10th executive session also ran past 7:00 pm, the scheduled start of the public meeting.