

August 12, 2002

Mr. Hilton A. Turner Jr.  
1513 Buick Lane  
Kokomo, IN 46902

*Re: Advisory Opinion 02-FC-36; Alleged Violation of the Open Door Law for an Executive Session held by the Kokomo Board of Aviation Commissioners.*

Dear Mr. Turner:

This is in response to your formal complaint, which was received on July 29, 2002. You have alleged that the Kokomo Board of Aviation Commissioners ("Board") violated the Indiana Open Door Law ("ODL") by failing to post notice of an executive session held on July 15, 2002 at least forty-eight (48) hours in advance. Board Attorney Thomas Trauring responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Board's failure to provide proper notice of a private gathering held on July 15, 2002 violated the ODL and that this violation is actionable in court under Indiana Code section 5-14-1.5-7.

## BACKGROUND

According to your complaint, on July 15, 2002, you were invited to attend the Board's public meeting, which was scheduled to begin at 4:30 p.m., for the purpose of discussing proposed contract revisions for "Tee" hangar number 50. When you arrived, you were advised by persons who had come for the Board's public meeting that the Board had decided to meet in executive session and that the public could not enter the meeting room. At 4:45 p.m., one of the Board members exited the meeting room and advised you and others who were attending the public meeting that the executive session had ended and that the public could now enter the meeting room. You observed that the persons who attended the executive session were four (4) of the Board members as well as Mr. Ken Ferries, Corporation Counsel for the City of Kokomo. No notice was provided to the public that an executive session would be held. You requested information from the Board and received a written response from Mr. Trauring dated July 23, 2002 about this executive session. Mr. Trauring advised you that there was no notice posted for the July 15th executive session. At a special public meeting held on July 23rd, the Board apparently disclosed the entirety of its discussion on July 15th and invalidated its motion with respect to your refusal to sign a new hangar rental agreement with them. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Trauring stated that before the regularly scheduled meeting of the Board on July 15, 2002, an impromptu, private meeting of the Commissioners was held and they discussed a communication from their attorney concerning your refusal to sign a new hangar rental agreement. During this private gathering, the Commissioners were advised to confine themselves to dealing with your refusal to sign the agreement at the public meeting to follow and not make any

decisions related to unresolved issues in pending litigation that also involves you. The Commissioners were also advised that the Board should authorize their attorney to give you advance notice of the termination of your existing lease in the event you did not sign a new one by July 31, 2002.

The impromptu meeting was not a scheduled executive session and after discussing the issue with one Board member, Mr. Trauring advised the Board to hold a special public meeting on July 23, 2002 to discuss this matter. During the July 23rd meeting, the President of the Board acknowledged that he had called the special meeting. Mr. Trauring then advised the Board on the legal implications of the July 15th meeting and communicated his conclusion that the impromptu gathering might have constituted an executive session under the ODL.

Because the notice requirements of the ODL were not met with respect to the impromptu gathering held on July 15th, Mr. Trauring made recommendations to the Board to remedy the situation during its July 23, 2002 meeting and these recommendations were followed. First, namely that the Board president made a public disclosure of the matters discussed during the impromptu gathering on July 15th and all members of the Board publicly agreed that this was an accurate description of what occurred at the impromptu gathering. The Board stated that no votes or decision-making occurred during that gathering. The Board also invalidated a resolution that was passed during the public meeting held on July 15th, which authorized legal counsel to notify you in writing of the status of your lease arrangement. The Board then proceeded, during the July 23rd special meeting, to take action with respect to your lease at the airport.

## 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 is a governing body of a public agency subject to the ODL. Ind. Code § 5-14-1.5-2(b)(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). If a governing body takes action at a meeting for which notice was not provided under the ODL, any person may file an action in a court of competent jurisdiction to challenge the action. Ind. Code §5-14-1.5-7.

Under Indiana Code section 5-14-1.5-5, the Board is obligated to post notice to the public of any executive session outside their principal office or meeting location at least forty-eight (48) hours before the time of the meeting. Ind. Code §5-14-1.5-5(b)(1). In addition, the Board is required to provide notice to "all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body." Ind. Code §5-14-1.5-5(b)(2). Notices of executive

sessions must include the date, time and place of the executive session, as well as the "subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under" Indiana Code section 5-14-1.5-6.1(b).

In your complaint and in Mr. Trauring's response, it is clear that a majority of the members of the Board were present at the impromptu gathering that preceded the Board's public meeting of July 15, 2002. This gathering, therefore, triggered the requirements of the ODL. It is my opinion that the failure to provide notice to the public and the media of the July 15th private gathering at least forty-eight (48) hours in advance did violate the ODL. This violation is actionable in court under Indiana Code section 5-14-1.5-7.

The Board did, however, take swift action in an attempt to cure the defects related to their July 15th executive session. Under the ODL, however, this does not, in my opinion, prevent a person from seeking redress in the courts under Indiana Code section 5-14-1.5-7.

## CONCLUSION

In conclusion, it is my opinion that the Kokomo Board of Aviation Commissioners' failure to provide proper notice of a private gathering held on July 15, 2002 violated the ODL and that this violation is actionable in court under Indiana Code section 5-14-1.5-7.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Thomas Trauring, Attorney for the KBAC w/o enclosures