



# STATE OF INDIANA

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July 22, 2008

Linda Yoder  
Director, Nappanee Public Library  
157 North Main Street  
Nappanee, Indiana 46550

*Re: Informal Inquiry 08-INF-25 regarding interlocal agreements*

Dear Ms. Yoder:

This is in response to your informal inquiry dated July 15, 2008 which I received July 16, 2008. You write to inquire about an interlocal agreement entered into by several libraries to negotiate a contract for one computer support provider. You inquire to what extent the group formed by the agreement is subject to the Open Door Law ("ODL")(Ind. Code 5-14-1.5). Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

## BACKGROUND

You indicate that a number of years ago several libraries formed an interlocal agreement so the libraries could together negotiate a contract for one computer support provider. You have since opened the agreement to include other local units of government. You are in the process of setting up another similar interlocal agreement. You indicate that the agreement is approved by the governing body of each participating unit of government and a representative is designated for voting purposes on all matters that come before the group. You indicate that the representatives to the group are generally the directors of the agencies. You ask the following questions:

1. Does the ODL apply to meetings of members?
2. Is the group required to post notices?
3. Can voting be conducted electronically?
4. Typically meetings are conducted at multiple sites via video conference equipment; can votes be tabulated from each site?

## ANALYSIS

It is the intent of the Open Door Law 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. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. § 5-14-1.5-3(a).

The first question here is whether the group formed by the interlocal agreement is a governing body of a public agency. The statute authorizing interlocal agreements does not address the application of the Open Door Law to a separate entity created under an interlocal agreement. *See* I.C. 36-1-7, regarding interlocal cooperation. While I.C. § 36-1-7-12 provides that “[w]henever a contract provides for the purchase, sale, or exchange of services, supplies, or equipment between or among Indiana governmental entities only, no notice by publication or posting is required,” the chapter does not exempt an entity created by interlocal agreement from the requirements of the ODL. As such, we turn to the ODL for definitions of “public agency” and “governing body.”

(a) "Public agency", except as provided in section 2.1 [IC 5-14-1.5-2.1] of this chapter, means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

I.C. § 5-14-1.5-2

Here, the entity formed by the interlocal agreement, Northern Indiana Computer Consortium for Libraries Plus ("NICCL Plus"), is a group of representatives from each of the participating entities, which are all public agencies. The representative to the group from each agency is chosen by the agency. The group designates one member to serve as the accounts payable government entity, and that entity is responsible for bookkeeping, recordkeeping, communication, and contract negotiations. You indicate that currently the Nappanee Public Library is the accounts payable entity for NICCL Plus. You indicate that NICCL Plus is not independently audited by the state board of accounts but that the library is audited, and during that audit the account assigned to the NICCL Plus is audited by the state board of accounts.

The two subsections of the definition of "public agency" which may apply to this group are I.C. § 5-14-1.5-2(a)(2) and (3)(B). First, we must consider whether NICCL Plus is exercising "in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power." *See* I.C. § 5-14-1.5-2(a)(2). It is my understanding the primary purpose of NICCL Plus is to enter into an agreement for computer services. NICCL Plus enters into the agreement on behalf of all of its member agencies. Certainly soliciting bids, receiving information regarding services offered, and entering into agreements are administrative powers of a local unit of

government. While NICCL Plus has delegated the solicitation of bids or quotes for contract or agreements to the accounts payable entity (See Interlocal Agreement for Computer Support Services (“Agreement”) Section 5), it appears that the local governmental entities which are party to this agreement have delegated at least some administrative authority to NICCL Plus. It is my opinion that because it exercises in a limited geographical area the administrative power of a local governmental entity, NICCL Plus is a public agency for the purposes of the ODL, pursuant to I.C. § 5-14-1.5-2(a)(2).

I would note that my analysis related to NICCL Plus can be distinguished from opinions I have offered many counties, cities, and towns regarding their technical oversight committees. In many jurisdictions, representatives from a number of public agencies will meet regularly to discuss issues related to technology. In those situations, the meetings are held to simply discuss technology but not to exercise any administrative power. The groups are generally loosely formed, the attendees do not take final action on any matters, and no separate funding is allocated to the group. In my opinion, such a gathering is a gathering of staff members of different public agencies and is not in itself a public agency.

Further, if NICCL Plus is subject to audit by the state board of accounts, it is a public agency subject to I.C. § 5-14-1.5-2(a)(3)(B). You have indicated that the library is audited by the state board of accounts, and the NICCL Plus account managed by the library is thus audited. In my opinion, NICCL Plus may be subject to audit independent of the library’s audit. The determination whether an entity is subject to audit is made by the state board of accounts pursuant to state statute; it is not a determination made by the public access counselor. I would note that both sections labeled Section 3 as well as Section 4 of the Agreement related to monies collected and utilized by NICCL Plus. The amount and percentage of those funds which are public funds will be determinative on the issue of whether the entity is subject to audit. If the entity is subject to audit by the state board of accounts, it is a public agency pursuant to I.C. § 5-14-1.5-2(a)(3)(B).

Since NICCL Plus is a public agency, the next question is whether NICCL has a governing body. From my understanding, the membership of NICCL Plus is comprised of one representative of each of the government agencies which are party to the agreement. As I understand, each agency appoints one member to the NICCL Plus. This body is a group of two or more individuals that takes official action on public business, namely to obtain and manage computer support services. *See* Agreement Sections 8 and 9 regarding official actions of NICCL Plus. It is my opinion that pursuant to I.C. § 5-14-1.5-2(b)(1), the members of NICCL Plus constitute a governing body. As such, the meetings of the NICCL Plus are subject to the Open Door Law.

Your next inquiry is whether NICCL Plus must post notice of its meetings. Because NICCL Plus is subject to the ODL, it is required to conduct open meetings and provide proper notice of those meetings. Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before

the meeting. I.C. § 5-14-1.5-5(a). I am enclosing a copy of my office's *Public Access Handbook* which might be instructive in assisting NICCL Plus in posting notice and conducting meetings in accordance with the ODL.

You further inquire whether NICCL Plus members may vote electronically and whether votes can be tabulated at different sites. The ODL addresses this issue:

(d) A member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, videoconferencing, or any other electronic means of communication:

(1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and

(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.

I.C. § 5-14-1.5-3.

While a member of NICCL Plus may participate in meeting discussions by telephonic or electronic means, that individual may not be counted present for purposes of establishing quorum and may not vote on matters before the group. To the extent the meetings of NICCL Plus are conducted at different sites, a vote could only be taken at a site where at least fifty percent of current members are present. *See* Agreement Section 9 and I.C. § 5-14-1.5-3(d).

#### CONCLUSION

For the foregoing reasons, it is my opinion NICCL Plus is subject to the requirements of the Open Door Law.

Best regards,



Heather Willis Neal  
Public Access Counselor