



STATE OF INDIANA

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March 11, 2009

Andrew Simmons
Van Gilder & Trzynka, P.C.
436 East Wayne Street
Fort Wayne, Indiana 46802

Re: Informal inquiry 09-INF-6 regarding what constitutes a meeting

Dear Mr. Simmons:

This is in response to your informal inquiry dated January 28, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the City of New Haven. Your inquiry is whether certain gatherings of members of the City of New Haven Board of Public Works and Safety ("BOW") constitute meetings for the purposes of the Open Door Law ("ODL") (Ind. Code 5-14-1.5).

The ODL requires that a meeting of a governing body of a public agency must be open so members of the public may observe and record. Ind. Code § 5-14-1.5-3(a). A "meeting" is a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). The ODL excepts from the definition of "meeting" a number of types of gatherings, including any social or chance gathering not intended to avoid the ODL. This provision is the subject of your inquiry.

As you explain, the BOW is comprised of three members. One of those members is the mayor, who also serves as president of the City of New Haven Common Council ("Council"). While the other two members of the BOW are not Council members, you indicate they may attend Council meetings on occasion and participate in the meetings by providing public testimony. As a result, it is often the case that a majority of the BOW is present at Council meetings. You inquire whether each Council meeting would constitute a meeting of the BOW or whether these are social or chance gatherings and as such are excepted from the definition of meeting.

I have previously issued two advisory opinions addressing the matter of a social or chance gathering. In *Opinion of the Public Access Counselor 08-FC-102* (available at http://www.in.gov/pac/advisory/files/formal_opinion_08-FC-102.pdf), the issue was

whether members of a town council violated the ODL by discussing public business, the hiring of a new police chief, at church. I opined the following:

Both Mr. Hess and Ms. Lance affirm that they discussed Mr. Weisheit's hiring, if only briefly, at church. While the ODL provides that a social or chance gathering is not a meeting (*See* I.C. § 5-14-1.5-2(c)), such a social or chance gathering cannot be intended to avoid the ODL. Further, once a social or chance gathering, which is certainly what I consider attendance at church or church events to be, turns into a gathering of a majority of the governing body of a public agency for the purposes of taking official action on public business, it becomes a meeting. I.C. § 5-14-1.5-2(c).

Opinion 08-FC-102.

On the other hand, in *Opinion of the Public Access Counselor 07-FC-318 and 07-FC-319* (available at http://www.in.gov/pac/advisory/files/07-FC-318_319.pdf), the issues related to a majority of the members of a school board attending two different meetings. One meeting was a gathering of concerned citizens to discuss a petition and remonstrance process. There, the president of the school board sent an electronic invitation to the meeting to the other board members, who were included in a list of 45 contacts to whom she sent the invitation. The other meeting was a meeting of the South Bend Common Council. In both instances, I opined that the gatherings were social or chance gatherings because the school board members were invited individually, made individual decisions to attend, and did not intend to avoid the ODL:

It is my opinion the Board members each made an individual decision whether to attend the gathering. Further, it is my opinion that requiring the members of a governing body to provide notice every time they receive an invitation and might attend the same event frustrates the purpose and intent of the ODL.

The ODL lists seven gatherings that are not meetings, and among those is "any social or chance gathering not intended to avoid this chapter." I.C. §5-14-1.5-2(c). It is my opinion that while the Board members were invited to the gathering by a fellow Board member, their decision to attend was an individual decision made by each member. As such, the gathering of all or a majority of the Board members at this meeting was a chance gathering not intended to avoid the chapter. If the Board had discussed the gathering at a Board meeting and agreed upon the importance of their attendance as a Board, I believe that action would remove this gathering from the classification as a chance gathering. I see no indication in the President's email or invitation that the Board had previously discussed their need to attend this gathering as a Board.

Opinion 07-FC-318 and 07-FC-319.

In my opinion, the present issue is similar to that in *Opinion 07-FC-318 and 07-FC-319*. Here, the BOW members attend Council members as concerned citizens. So long as their attendance is not a coordinated effort to attend together on behalf of the

BOW or to conduct BOW business outside of a public BOW meeting, it is my opinion the attendance of the BOW members at a meeting of the Council does not constitute a meeting of the BOW.

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor