



# STATE OF INDIANA

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Jessica Wiseman

Via e-mail: [Jessica.wiseman@fssa.in.gov](mailto:Jessica.wiseman@fssa.in.gov)

## *Informal Inquiry 11-INF-56; Committees*

Jessica,

I've attached a summary of our discussion this morning regarding the FSSA Provider Committee ("Committee") and whether it must comply with the Open Door Law ("ODL"). Please let me know if you have any questions or concerns. I know that I might not have all the facts 100% correct, please let me know if I have severely altered anything that you provided.

The General Assembly enacted the ODL intending that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so that the people may be fully informed. I.C. § 5-14-1.5-1. Accordingly, the ODL requires that, except for those situations where an executive session is authorized, "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).

By its terms, the ODL applies only to meetings of "governing bodies" of public agencies:

- (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(b).

The ODL defines a “meeting” as “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). “Official action” is defined as to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. 5-14-1.5-2(c)(7). A public agency means 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. I.C. 5-14-1.5-2(a)(1).

You have indicated that prior to the last legislative session, the Committee was statutorily created, appointed by the governor, and complied with all aspects of the ODL. However, a law was passed at the last legislative session that deleted all reference to the Committee. The Committee still meets, takes official action on FSSA business, is comprised of the same membership, and carries out the same functions as prior to the statute being amended. You have inquired whether the Committee must still comply with the ODL.

It is my opinion that the Committee could qualify as a governing body pursuant to I.C. 5-14-1.4-2(b) and be required to comply with the ODL. There is no dispute that the Committee takes “Official action” on public business due to the broad definition provided by the ODL ( i.e. doing as little as receiving information is considered “Official action”). You have provided that the Committee main function is to approve providers who have made application to the FSSA. Although I am not entirely certain what subsection of section 2 of the ODL would qualify the Committee as a governing body, more likely that not is would be (3). I believe an argument can be made in regards to any of the three subsections of section 2. In any event, one of the hallmarks of the ODL is transparency and as the Committee prior to the most recent legislative changes was complying with the ODL, it is my opinion that it should continue to do so.

As we spoke about this morning, the key areas to keep in mind regarding meetings being held pursuant to the ODL are notice and executive session. Notice must be provided 48-hours in advance (excluding weekends and holidays) and provide the time, date, and location of the meeting. The notice must be posted at the door of where the meeting takes place or at the principal office of the public agency. Notice must also be provided for executive sessions, and include the specific statutory exception that allows the executive session and the language of the statute. Examples of notice can be found in the PAC Handbook, which you have a copy. The requirements of an executive session can be found under I.C. 5-14-1.5-6.1 and as mentioned prior, a vote by the Committee may not be taken during an executive session.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor