



# STATE OF INDIANA

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March 1, 2012

Mr. Warren A. Auxier  
P.O. Box 215  
Hanover, Indiana 47243  
Via email: ICWtraveler@aol.com

Re: *Informal Inquiry 12-INF-06; River Valley Resources, Inc.*

Dear Mr. Auxier:

This is in response to your informal inquiry regarding whether River Valley Resources, Inc. ("RVR") is considered to be a public agency for the purposes of Indiana's Open Door Law ("ODL") and the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*, and the ODL, I.C. § 5-14-1.5-1 *et seq.*

## BACKGROUND

The issue presented is whether RVR is considered to be a public agency pursuant to the ODL and the APRA. With your informal inquiry, you submitted documentation from that State Board of Accounts ("SBOA") that provided that RVR has been subject to audit by the SBOA since 1999 and has complied with the audit requirements by submitting annual CPA Audits for review to the SBOA. In a October 26, 2011 correspondence from the SBOA to RVR, Tammy Baker, Supervisor for Non-Governmental Entities, advised that the SBOA had reviewed RVR's most recent Entity Annual Report filed for the year ended June 30, 2011 and according to the information that was presented, RVR was subject to a complete organization-wide audit performed in accordance with guidelines issued by the SBOA.

In response to your informal inquiry, Margo Olson, Executive Director, provided documentation submitted by RVR to the SBOA for reconsideration of its October 26, 2011 determination that found that RVR was subject to audit.

Our office made a separate inquiry with the SBOA with Sherry Parton, Quality Control Supervisor. Ms. Parton confirmed that RVR had submitted their most recent E-1 Report for fiscal year-end June 30, 2011. After review of the audit, it was determined that RVR's funding was at the level that would require an audit. The audit will be

overseen by the SBOA and should be performed by an outside CPA firm. I have enclosed our correspondence with Ms. Parton for your review.

## ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

An entity must be considered a “public agency” in order to be subject to the requirements of the APRA and the ODL. The party seeking to inspect and copy records has the burden of proving that the entity in possession of the records is a public agency within the meaning of the APRA. *Indianapolis Convention & Visitors Ass’n, Inc. v. Indianapolis Newspapers, Inc.* 577 N.E.2d 208, 212 (Ind. 1991).

The ODL defines a public agency, except as provided in I.C. § 5-14-1.5-2.1, as 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. I.C. § 5-14-1.5-2(a).

A public agency is further defined pursuant to I.C. § 5-14-1.5-2.1, which states that certain providers are exempt from being classified as public agencies:

“Public agency” for purposes of this chapter, does not mean a provider of goods, services, or other benefits that meets the following requirements:

(1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:

(A) The agreement provides for the payment of fees to the entity in exchange for services, good, or other benefits.

(B) The amount of fees received by the entity under the agreement is not based upon or does not have consideration of the tax revenues or receipts of the state, county, or municipality.

(C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts. I.C. § 5-14-1.5-2.1.

Pursuant to state statute, the SBOA is responsible for making an examination of “all accounts of all financial affairs of every public office and officer, state office, state institution, *and entity.*” I.C. § 5-11-1-9(a) (emphasis added). Under this provision, an entity organized as a not-for-profit corporation that derives at least 50% and more than \$100,000 in public funds shall be subject to an audit. *See* I.C. § 5-11-1-9(b). An “entity” is defined as “any provider of goods, services, or other benefits that is: (1) maintained in whole or in part at public expense; or (2) supported in whole or in part by appropriations or public funds or by taxation.” *See* I.C. § 5-11-1-16(e).

The SBOA has determined that RVR’s funding was at a level that would subject it to audit after reviewing the most recent E-1 Annual Report that was submitted. As such, pursuant to I.C. § 5-14-1.5-2(a)(3)(B), RVR is considered a public agency pursuant to the ODL and must comply with the requirements of the law, including providing notice to and allow the public to attend all meetings of its governing body, minus properly noticed executive session. RVR does not meet the qualifications of I.C. § 5-14-1.5-2.1, as it does not qualify under I.C. § 5-14-1.5-2.1(D)(2).

Similar to the ODL, the APRA provides that a public agency, except as provided in section I.C. § 5-14-3-2.1, means any entity or office that is subject to audit by the SBOA that is required by statute, rule, or regulation. *See* I.C. § 5-14-3-2(m)(3)(B). A provider would not qualify under the exceptions of I.C. § 5-14-3-2.1, if it is subject to audit by the SBOA. As outlined under the ODL, RVR would be considered a public agency for the purposes of the APRA due to it being subject to audit by the SBOA and does not qualify under I.C. § 5-14-3-2.1. Thus, RVR must comply with the requirements of the APRA in responding to any public records requests received by it.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage  
Public Access Counselor

cc: Margo Olson