



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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March 8, 2012

Ms. Aladean DeRose
City Attorney
1400 County City Building
227 W. Jefferson Boulevard
South Bend IN 46601

Re: Informal Inquiry 12-INF-09; City of South Bend

Dear Ms. DeRose,

I've taken time to review the issue a little more fully and it is my opinion that the Task Force ("TF") would be considered a governing body pursuant to I.C. 5-14-1.5-2(b)(2). Accordingly, the TF would be required to comply with the Open Door Law ("ODL").

Except as provided in chapter 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* IC 5-14-1.5-3. "Governing body" means two 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. IC 5-14-1.5-2(b).

In this instance, you indicate that the TF was appointed directly by the Mayor. The TF would be an idea-generating body that would provide info and possibly deliberate or make recommendations regarding vacant and abandoned properties in the City.

In a previous informal opinion issued by the Public Access Counselor's Office, Counselor Neal addressed a similar factual scenario with the City of Vincennes. (http://www.in.gov/pac/informal/files/VincennesCommunityEconomic_LandUsePlanStee)

[ringComm.pdf](#)). In that opinion, the Mayor of the City of Vincennes directly appointed a committee to make decisions regarding the location of a railroad (“Railroad Committee). Vincennes is considered to be a third-class city, pursuant to I.C. 36-4-6-8(b). In third-class cities, the City Executive (i.e. Mayor) presides at all meetings of the governing body (i.e. City Council). As the Railroad Committee was directly appointed by the presiding officer of the governing body, the Railroad Committee would be considered to be a governing body of the City pursuant to I.C. 5-14-1.5-2(b)(3) and therefore must comply with the ODL. Counselor Neal noted that it would not matter if the Railroad Committee was making decisions on behalf of the City, if it simply was receiving information or deliberating, then it was taking official action pursuant to I.C. 5-14-1.5-2(d).

The City of South Bend is considered to be a second-class city pursuant to I.C. 36-4-1-1. As opposed to the City of Vincennes, pursuant to I.C. 36-4-6-8(a), the legislative body of a second class city chooses from its members a president and vice-president. For the purposes of the ODL, I.C. 5-14-1.5-2(b)(3) would not be applicable to the TF as the Mayor of South Bend would not be considered the presiding officer of a governing body. However, it is my opinion that the TF would still qualify as a governing body of the City pursuant to I.C. 5-14-1.5-2(b)(2).

I.C. 5-14-1.5-2(b)(2) provides that a governing body is the board, commission, council, or other body of a public agency which takes official action on public business. Official action means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. 5-14-1.5-2(d). Public business is defined as any function upon which the public agency is empowered to take official action. *See* I.C. 5-14-1.5-2(e). You have indicated that in the traditional sense, the TF will not be taking “official action” on the issue of abandoned homes. It would appear that the TF will be receiving information and possibly deliberating or making recommendations. The definition of “official action” is defined broadly under the ODL; therefore it is my opinion that the TF would be taking “official action” when meeting because at a minimum it would be either receiving information, deliberating, or making recommendations. As the Mayor and/or the City of South Bend is empowered to take official action in dealing with the issue of abandoned homes in the City, the issue addressed by the TF would be considered “public business”. Thus, the TF would meet the statutory definition of a governing body

To hold that the TF would not be considered a governing body would establish that a governing body of a third class city would be created when the mayor appoints the members, whereas in a second-class City, the same result would not occur. Further, although in no way alleged here, the Mayor of a second-class city could easily skirt the requirements of the ODL by simply appointing committees to address issues to which would be considered “public business” of the City and said committee meeting would be closed to the public. I believe that both conclusions would be inconsistent and contrary to the requirements and spirit of the ODL.

If I can be of any further assistance, please do not hesitate to contact our office.

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 "H".

Joseph B. Hoage
Public Access Counselor