



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

February 25, 2013

Jerry W. Eads
1866 W. 500 South
Sharpsville, Indiana 46068

Re: Formal Complaint 13-FC-35/13-INF-13; Alleged Violation of the Open Door Law by the Harrison Township Trustee

Dear Mr. Eads:

This advisory opinion is in response to your formal complaint alleging the Harrison Township Trustee ("Trustee") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* Alan D. Wilson, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that the Trustee has continually failed to provide proper notice for its meetings. You were elected to the position of Fire Chief of the Harrison Volunteer Fire Department in Howard County on November 11, 2012. You provide that the Trustee held a special meeting on December 18, 2012, to which notice was not posted until December 17, 2012. Thereafter, notice was posted on December 18, 2012, which provided that the meeting was now a public meeting. During the meeting, Ms. Joyce Ancil, Township Trustee, was notified that the proper notice had not been provided. You allege that Ms. Ancil admitted to not posting the notice forty-eight hours in advance and provided that if you desired to alert the media and reconvene on Thursday, December 20, 2012, the result of the meeting would be the same. The meeting proceeded as called. During the meeting you were removed as Fire Chief of the Harrison Township Volunteer Fire Department. You further provide that after the meeting, Ms. Ancil stated that she had been holding secret meetings in order to figure out how to have you removed. You were informed by the State Board of Accounts that the Board was required to have a public meeting by January 21, 2013. You do not believe that the Board posted proper notice for this meeting, if in fact a meeting did occur.

In response to your formal complaint, Mr. Wilson advised that neither the Trustee nor the Board of Trustee's conducted a meeting on November 21, 2012 or December 18, 2012. The meeting was held by the Harrison Township Fire Department, an entirely separate entity. Further, as your formal complaint was filed on February 1, 2013, you do

not have standing as more than thirty days have passed since the alleged violation of the ODL occurred.

ANALYSIS

A person denied the right to attend any public meeting of a governing body of a public agency in violation of I.C. § 5-14-1.5 or denied any other right conferred by I.C. § 5-14-1.5 may file a formal complaint with the public access counselor. *See* I.C. § 5-14-5-6. I.C. § 5-14-5-7 provides that a person that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after the denial or the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice. You were in attendance at the meetings that were conducted on November 11, 2012 (listed in the Trustees' response as November 21, 2012) and December 18, 2012. Your formal complaint was not received by our office until February 1, 2013. Therefore, you would not have standing to file a formal complaint as more than thirty days have passed since the date the meetings were held and the date your formal complaint was filed. Further, it has not been alleged that you were denied access to either meeting. However, you are entitled to make an informal inquiry about the state's public access laws. The substance of your formal complaint will be addressed as an informal inquiry. *See* I.C. § 5-14-4-10(5).

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).

Your formal complaint was filed against the Trustee. Mr. Wilson noted that neither the Trustee nor the Board of Trustees held a meeting on November 21, 2012 or December 18, 2012. The meeting in question was held by the Harrison Township Fire Department, a completely separate entity. As a result, the Trustee or Board of Trustee could not violate the ODL as a result of the conduct of a separate governing body.

Regardless, as a refresher to all parties I note that a "meeting" is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). "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" means to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. 5-14-3-2(e). A governing body could only meet in executive session (i.e. a meeting in which the public was not invited) in those limited instances provided under I.C. § 5-14-1.5-6.1.

The ODL requires that 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. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notice, generally nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2). A governing body would only be required to provide notice of its meetings pursuant to section 5 of the ODL unless otherwise specifically directed by a separate state statute. If the Trustees, Board of Trustees, or Fire Department did not hold a meeting on January 21, 2013, it would not be required to post notice. Any governing body that failed to provide proper notice would be subject to a formal complaint being filed with the Public Access Counselor or possible litigation pursuant to section 7 or 7.5 of the ODL that could result in the payment of plaintiff's attorney fees and/or civil penalties by the members of the governing body.

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, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: Alan D. Wilson