



STATE OF INDIANA

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March 6, 2013

Virginia Perry
Mooresville Town Council
4 E. Harrison St
Mooresville, Indiana 46158

Re: Informal Inquiry 13-INF-15; Mooresville Town Council

Dear Ms. Perry:

This is in response to your informal inquiry regarding the actions of the Mooresville Town Council ("Council") and its compliance with the Open Door Law ("ODL"), Ind. Code 5-14-1.5 *et. seq.* Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. George Watkins, President of the Council, responded in writing to your inquiry. His response is enclosed for your reference.

BACKGROUND

You provide that beginning in 2012, the President of the Council has initiated department head meetings ("Department Meetings") that occur twice a month. The meetings are held in the Town's government center. The Department Meetings require each department head to present either orally or in writing an update on their particular department. You note that only two members of the Council are allowed to attend, which is generally the President and Vice President. As a member of the Council, you have been allowed to attend only two Department Meetings. You believe that the Council is taking "official action" during the Department Meetings as information is being received and recommendations are being made. It has been recommended to you that the Department Meetings be made public with the required notice and memoranda being taken. You have recently been provided with notes taken by the Town Clerk who attended the most recent Department Meeting.

In response to your informal inquiry, Mr. Watkins noted that the Council believes that it is extremely important to comply with the ODL. The Department meetings have always been open to no more than two Council members and all members have been encouraged to attend as their schedule allows. Many of the Department meetings only have one Council member present. The Department meetings are held for the purpose of hearing reports from each department head. Notes are taken; however no decisions are

made by the Council or votes taken. The meetings have allowed for greater communications among department heads resulting in the saving of tax dollars.

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).

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). As applicable here, there are five members of the Council. If no more than two members of the Council are in attendance at the Department meeting, then a “meeting” of the Council will not occur as a majority of the members of the Council are not present. While the Council is taking “official action” on public business during the Department Meeting, a majority of the Council is not present. As such, a “meeting” has not occurred and the requirements of the ODL would not apply.¹

As noted here, the Council has limited the attendance of its members at the Department meetings. If more than a majority of the members of the Council attended the Department Meeting, a “meeting” would have taken place under the ODL. 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 notices nothing, requires the governing body to publish the notice in a newspaper.

The requirements for posting notice do not apply when the executive of a county or legislative body of a town meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. *See* I.C. § 5-14-1.5-5(f)(2). Administrative functions do not include the awarding of contracts, the entering into contracts or any other action creating

¹ The prohibition against serial meetings, found under I.C. § 5-14-1.5-3.1, would not apply here as the prohibition requires that the governing body be comprised of at least six members and the Department meetings that are being held occur twice a month in a span greater than seven (7) days apart.

an obligation or otherwise binding a county or town. *Id.* Even though notice is not required, the administrative meetings must be held in the public, since the notice provision of the ODL is the only provision that does not apply to an “administrative function” meeting. *See* I.C. § 5-14-1.5-5(f)(2).

From the description of the conduct described to be taking place at the Department Meetings, the activity would likely fit into an “administrative functions meeting.” I am assuming that the Council is the legislative body of the Town of Mooresville pursuant to I.C. § 36-5-2-2 and I.C. § 3-10-6. Thus, the Council could hold an administrative function meeting with a majority of Council members in attendance. Notice would not be required to be provided for said meetings, but the Council would be required to keep memoranda and abide by all other requirements of the ODL. *See also Informal Opinions of the Public Access Counselor 12-INF-36; 12-INF-36(b).* By holding the Department meetings as an administrative function meeting, a majority of the Council could attend to satisfy Ms. Perry’s concern. The Council would not be required to post notice but would need to be aware of the limited activity that may occur at an administrative functions meeting, which would prohibit the awarding of contracts, entering into contracts, or any other function that would create an obligation of the Town.

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 stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: George Watkins