



# 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](http://www.IN.gov/pac)

March 6, 2013

Mr. Jeff Collins  
Indiana Professional Licensing Agency  
402 W. Washington Street, W072  
Indianapolis, Indiana 46204

*Re: Informal Inquiry 13-INF-17; Indiana Professional Licensing Agency*

Dear Mr. Collins:

This is in response to your informal inquiry regarding the application of the Open Door Law ("ODL"), Ind. Code 5-14-1.5 *et. seq.* to anticipated gatherings attended by the Executive Director of the Indiana Professional Licensing Agency's ("IPLA") and certain governing bodies. Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry

## BACKGROUND

The IPLA performs all administrative functions, duties, and responsibilities assigned by law or rule to thirty-five (35) regulatory boards, commissions, and committees (collectively, "Boards") that license, certify, or register various professional and health-related occupations throughout the state of Indiana. I.C. § 25-1-5-3 and I.C. § 25-1-6-3. A governor-appointed executive director administers the IPLA, serving as the chief fiscal officer of the agency responsible for hiring staff and for procuring services and supplies. I.C. § 25-1-5-5. The executive director is also permitted to perform other functions such as issuing executive orders, subpoenas, continuances, and other legal documents on behalf of IPLA's Boards when requested to do so, and may, upon the request of a Board, provide advice and technical assistance on issues that may be presented. *Id.*

The IPLA's Boards vary in size and composition, but generally consist of a statutorily-specified number of governor-appointed members whose powers and duties consist of administering and enforcing the laws pertaining to the professional occupation(s) that they are charged by law with overseeing. Boards perform functions including, but not limited to, issuing licenses, adopting codes of professional conduct and rules establishing standards for licensure and practice, and conducting hearings concerning licensure and/or professional misconduct. Currently, approximately 270

individuals serve as board members for the boards, commissions, and committees that are administered by IPLA.

In January 2013, Governor Pence appointed Virgil R. Madden to the position of Executive Director of the IPLA. Mr. Madden is interested in meeting with each of IPLA's 270+ board members to introduce himself as IPLA's new executive director, to acquaint himself with the members of the Boards that IPLA administers, and to listen to any concerns that board members may express to him about their Boards or about IPLA in general.

The anticipated method of these "meet and greets" would be for Mr. Madden to meet separately with individual groups of board members in a conference room within the offices of IPLA approximately thirty minutes before that Board's scheduled and properly noticed board meeting. Although these 30-minute gatherings would not take place in a location that was open to the public and might involve a majority of the board that could take action on official business, the gatherings would be limited to the purposes of the parties becoming acquainted with one another, and would not involve any board members making recommendations or decisions, deliberating, establishing policy, or taking final action. You inquire whether the stated actions constitute a "meeting" subject to notice and other requirements of the ODL.

#### 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). The ODL further provides that a meeting does not include any social or chance gathering not intended to avoid the requirements of the ODL. *See* I.C. § 5-14-1.5-2(c)(1).

Initially I would note that if a majority of the governing body is not present during the proposed "meet and greet" with Mr. Madden, then by definition a meeting would not occur under the ODL. However, the Boards should be mindful of the ODL's prohibition against serial meetings. *See* I.C. § 5-14-1.5-3.1. A serial meeting is a series of smaller meetings held by a governing body in an attempt to avoid the requirements of the ODL. By definition, the serial meeting law can only be violated by governing bodies that have six or more members. *Id.* A serial meeting occurs when members of a governing body

participate in a series of at least two meetings and all of the following conditions are met: one gathering is attended by at least three members but less than a quorum; the other gatherings included at least two members of the governing body; the sum of different members participating at least equals a quorum; the gatherings concern the same subject matter and are held within a period of seven days; and the gatherings are held to take official action on public business. *Id.*

Aside from these considerations, the ODL provides that social gatherings not intended to avoid the requirements of the law would not be considered a meeting. *See* I.C. § 5-14-1.5-2(c)(1). You have provided that Mr. Madden is interested in meeting with each of IPLA's 270+ board members to introduce himself as IPLA's new executive director, to acquaint himself with the board members of the Boards that IPLA administers, and to listen to any concerns that board members may express to him about their Boards or about IPLA in general. Further, the gatherings would not involve any board members making recommendations or decisions, deliberating, establishing policy, or taking final action. If the content of the proposed "meet and greet" is limited to Mr. Madden introducing himself to the members of the body and to become more acquainted with said members, it is my opinion that this would be considered a social gathering that was not intended to avoid the requirements of the ODL. Thus the "meet and greet" would not be considered a meeting under the ODL and the requirements of the law would not apply.

However, you have indicated that discussions at the "meet and greets" may also turn to issues that members have regarding their Board or about the IPLA in general. My concern here as far as the ODL is that it is likely such types of discussions would not be social in nature. As a result, the "meet and greet" would no longer be considered a social gathering; rather it would be considered a meeting under the ODL and all the requirements of the law would apply. The parties need to be mindful of the broad definition of "official action" and that any discussions amongst the members regarding concerns they may have as to the Board or the IPLA would be considered "public business" under the ODL. "Official action" can be as little as receiving information, which would likely be achieved regarding any anticipated discussions regarding Board member concerns with Mr. Madden. With this exception, from what has been provided I believe that the anticipated "meet and greets" with a majority of a governing body would be considered a social gathering and not a "meeting" under the ODL.

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 fluid and cursive, with a large initial "J" and a stylized "H".

Joseph B. Hoage  
Public Access Counselor