



# STATE OF INDIANA

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October 4, 2013

Mr. Ted Dye, Jr.  
325 North Hyde Park Drive  
Vincennes, IN 47591

*Re: Informal Inquiry 13-INF-50; Public Notice*

Dear Mr. Dye:

This is in response to your informal inquiry regarding the out-of-county retreat by the Vincennes Community School Board ("Board") and if their public meeting violated the requirements of the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

## BACKGROUND

On or about August 1 and 2, 2013, you allege that all five members of the Vincennes Community School Board held a retreat in French Lick, Indiana, out of their jurisdiction. Also in attendance were administrators of the local school corporation and a third-party vendor who hosted the retreat. Your question specifically asks whether the meeting was appropriate given the notice in the local paper. Additionally, it is your contention the Board did not keep minutes of the event, although several public business issues were discussed. You also attached a press release from the Board publishing a narrative of what was discussed at the retreat. It appears that no final actions were taken at the gathering.

## ANALYSIS

It is the intent of the Open Door Law (ODL) 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* Ind. Code § 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* Ind. Code § 5-14-1.5-3(a). The Vincennes Community School Board is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(a)(2); therefore, they are subject to the Open Door Law and the notice requirements under Ind. Code § 5-14-3-5.

Additionally, under the definitions set forth in Ind. Code § 5-14-1.5-2 *et. al.*, "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business; "Official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action; and "Public business" means any function upon which the public agency is empowered or authorized to take official action.

It is clear from its press release the Board's retreat met the criteria listed above. A quorum of the Board's members were present, detailed discussions of school curriculum, operations and performance services pertaining to building upgrades were discussed. All of these actions rise to the level of a public meeting despite the school referring to the gathering as a 'retreat'.

You concede in your request for an informal opinion that the Board advertised the retreat in the Vincennes Sun-Commercial periodical. It is unclear from your request when the notice was posted, but for the purposes of this Opinion, it was presumably published forty-eight (48) hours before the event. Ind. Code § 5-14-1.5-2(a) states 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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

Your request specifically inquires as to the sufficiency of the notice posted in the newspaper, particularly if several meetings took place during the retreat. 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* Ind. Code § 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* Ind. Code § 5-14-1.5-5(b)(2). 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 the complainant's attorney fees and/or civil penalties by the governing body.

Although the publication of notice is above and beyond the requirements of the ODL, the letter of the law sets forth specifically that the notice be posted at the place where the meeting is to be held. It is unclear if that actually occurred. This would be a violation, albeit a minor one, of the Open Door Law. Publication alone is not sufficient to satisfy the notice requirements of the statute. Transparency is a fundamental obligation of a public agency and while the spirit of open access was followed in this case, the strict adherence of the statute is required.

As for the minutes of the meeting not being kept during the meeting, the ODL mandates in Ind. Code § 5-14-3-(b) that:

As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken by individual members if there is a roll call.
- (5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

Again, it is unclear in your inquiry if this actually happened at the meeting. You allege you are doubtful that they were, yet the press release issued by the Board set forth specific information that would satisfy the requirements listed above. Therefore, it is likely a form of minutes were kept; however, the Board must make those minutes taken during the meeting available for public inspection. However, it does appear the Board followed the spirit of access and transparency by issuing the details of the meeting in the press release.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor