



# STATE OF INDIANA

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November 20, 2013

Ms. Michelle Bazin-Johnson, Esq.  
Via Email

*Re: Informal Inquiry 13-INF-57; Electronic Meetings of the LaPorte  
County Health Department Health Board*

Dear Ms. Bazin-Johnson:

This is in response to your informal inquiry regarding Electronic Meetings of the LaPorte County Health Department Health Board ("Board"). 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 Open Door Law, Ind. Code § 5-14-1.5-1 *et seq.*

## BACKGROUND

Your inquiry requests an Opinion as to whether a member of the LaPorte County Health Board can participate in a quarterly meeting by electronic means and whether or not that individual would be included in the quorum or be able to take part in a final action.

## ANALYSIS

It is the intent of the Open Door Law (ODL) 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 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).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. See Ind. Code § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. See Ind. Code § 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action. "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

The ODL speaks specifically to electronic participation of members during an open meeting. Ind. Code § 5-14-1.5-3.5 states that:

(a) This section applies only to a governing body of a public agency of a political subdivision.

(b) A member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication:

**(1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and**

**(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.**

(c) The memoranda prepared under section 4 of this chapter for a meeting in which a member participates by using a means of communication described in subsection (b) must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

Emphasis added.

Please note as indicated in subsection (a), this statute only applies to governing bodies of a public agency of a political subdivision. The LaPorte County Health Department is a public agency that meets this definition, as they carry out the administrative and executive functions of LaPorte County in regard to public health.

Based on this statute, a member who chooses to communicate by electronic means can participate in the meeting and take “official action” as defined by Ind. Code § 5-14-1.5-2(d). This would *not include final action such as a vote* described in subsection (g) unless specifically authorized by another statute. I am not aware of a statute in the Indiana Code that would give members of the Health Board the authority to vote when not physically present. Additionally, the statute states in subsection (b)(2) that individuals communicating electronically may not be considered present and therefore may not be considered to be counted in a majority or quorum.

This statute is distinguished from the subsequent section of the Open Door Law which “applies only to a governing body of a charter school (as defined in IC 20-24-1-4) and a public agency of the state, including a body corporate and politic established as an instrumentality of the state.” The statute indicates meetings of *state agencies* may include final action when an individual communicates electronically. They are also considered to be present. Note state agency is defined in Ind. Code § 4-12-1-2(d) as:

The terms "agency of the state" or "agencies of the state" or "state agency" or "state agencies" mean and include every office, officer, board, commission, department, division, bureau, committee, fund, agency, and, without limitation by reason of any enumeration herein, every other instrumentality of the state of Indiana, now existing or which may be created hereafter; every hospital, every penal institution and every other institutional enterprise and activity of the state of Indiana, wherever located; the universities and colleges supported in whole or in part by state funds; the judicial department of the state of Indiana; and all non-governmental organizations receiving financial support or assistance from the state of Indiana; **but shall not mean nor include cities, towns, townships, school cities, school towns, school townships, school districts, nor other municipal corporations or political subdivisions of the state.**

Emphasis added.

Therefore Section 3.6 does not apply for the purposes of the LaPorte County Board of Health; however, they are subject to Open Door Law Section 3.5.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized flourish at the end.

Luke H. Britt  
Public Access Counselor