



STATE OF INDIANA

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February 18, 2014

Mr. Steve Hunt
c/o Washington County Economic Growth Partnership, Inc.
1707 North Shelby St., Ste. 109
Salem, Indiana 47167

Re: Informal Inquiry 14-INF-01; Washington County Economic Growth Partnership, Inc.

Dear Mr. Hunt:

This is in response to your informal inquiry regarding the Washington County Economic Growth Partnership, Inc. and its status as a public agency. 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 Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5-1 *et seq.* and Ind. Code § 6-1.1-35 *et seq.*

BACKGROUND

You have requested that I analyze the supporting documents attached to your informal inquiry to determine if the Washington County Economic Growth Partnership, Inc. ("Partnership") is a public agency subject to the Open Door law ("ODL") or the Access to Public Records Act ("APRA").

ANALYSIS

As applicable here, the key question is whether the Partnership is considered to be a "public agency" pursuant to the ODL and the APRA. The ODL defines a public agency as:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a

limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medicals staffs or the committees of any such staff.

(6) The Indiana Gaming Commission established by I.C. 4-33, including any department, division, or office of the commission.

(7) The Indiana Horse Racing Commission established by I.C. 4-31, including any department, division, or office of the commission.

See § Ind. Code § 5-14-1.5-2(a).

The APRA defines a public agency as:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public

agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

See Ind. Code § 5-14-3-2(n).

I have reviewed the Partnership's Articles of Incorporation, Articles of Amendment and Code of By-Laws and had made the determination that the Partnership would not be subject to the Open Door Law or the APRA based upon most of the above statutes. It does not appear that the Partnership is exercising any power that would generally be given to a legislative, executive or judicial political subdivision of the State.

Before I published this Opinion, however, I reached out to the State Board of Accounts ("SBOA") to determine if the Partnership has been audited by the SBOA (thus triggering Ind. Code § 5-14-1.5-2(a)(3)(B) and Ind. Code § 5-14-3-2(n)(3)(B). Ms. Sherry Parton, Non-Governmental Entities Supervisors for the SBOA, indicated that the Partnership was indeed subject to a complete audit for the 2009 reporting period.

The SBOA is responsible for determining whether an entity is subject to audit by statute, rule, or regulation. To the extent you take issue with the SBOA's determination, the proper redress would be with the SBOA and not the Public Access Counselor's Office. Until such time that the SBOA makes an alternative determination, it is my opinion the Partnership is subject to both the ODL and the APRA.

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

Best regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor