



# STATE OF INDIANA

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May 9, 2014

Mr. Mike Cherry  
Via email

*Re: Informal Inquiry 14-INF-14; Open Door Law Notice Requirements*

Dear Mr. Cherry,

This is in response to your informal inquiry regarding the Morgan County Redevelopment Commission holding a meeting during regular business hours when the public may not be able to attend and the publishing of a meeting allegedly violating the 48-hour notice requirement. 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 ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*

## BACKGROUND

The background facts of this situation do not appear to be in dispute. On March 26, 2014, the Morgan County Redevelopment Commission published a notice in the local newspapers notifying the public of a public meeting at 8:00 a.m. on April 7, 2014. The meeting was being held to discuss the establishment of a TIF district. You do not take exception to the date of this meeting, but rather the meeting time being held during regular business hours when the public may not be able to attend.

Secondly, the Morgan County Commissioners published a notice of a meeting on Saturday April 5, 2014 for a meeting on Monday April 7, 2014. You take exception to this as Ind. Code § 5-14-1.5-5(a) excludes weekends and holidays from the 48-hour notice requirement.

## DISCUSSION

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 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 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 Ind. Code § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no 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 notices nothing requires the governing body to publish the notice in a newspaper. See Ind. Code § 5-14-1.5-5(b)(2).

In regard to the Redevelopment Commission meeting, notice of public hearings for redevelopment commissions fall under Ind. Code § 36-7-14-17(a) and Ind. Code § 5-14-1-5-2(b). The ODL notice requirements do not apply where notice by publication is required by statute, ordinance, rule, or regulation. See Ind. Code § 5-14-1-5-5(e). Notice appears to be effectuated appropriately. I do have some potential concern about the timing of the meeting. Although the ODL gives public agencies the discretion to set their meetings at any time, the purpose of the ODL is to give the public the opportunity to observe and record. That being said, it may be more practical for the members of a public agency to set the meeting during regular business hours. The 48-hour notice requirement (in this case 10-day) is to give the public an opportunity to make arrangements to attend. My caution to the Redevelopment Commission would be to take into consideration those hearings or meetings which may attract an unusual amount of public interest. This is a subjective determination at the discretion of the agency, but it would be consistent with the spirit of the ODL.

As for the second meeting you reference, I am not compelled by the County Commissioner's argument that notice was properly given. Ind. Code § 5-14-1.5-5(b)(1) is specific in that notice must be posted at the principal office of the agency. *This is mutually exclusive from Ind. Code § 5-14-1.5-5(b)(2)*. Publication by newspaper at the newspaper's request is *in addition to* posted notice and at the media's benefit. It is not an either/or choice by the agency. Newspapers are not bound by the ODL and have no obligation to publish meeting notices. They likely will, but they may not. Notice of date, time and place must be conspicuously posted at the place of the meeting for the public's benefit. Had this been a formal complaint, based on the information provided, I would have found the County Commissioner's in violation of the Open Door Law.

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

Best Regards,

A handwritten signature in black ink, appearing to be 'J. H. B.', written in a cursive style.

Luke H. Britt  
Public Access Counselor

cc: Mr. Peter R. Foley, Esq.