



STATE OF INDIANA

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March 14, 2016

Ms. Jane Harper
jane.f.harper@hotmail.com

Re: Informal Inquiry 16-INF-03; Secret Ballots

Dear Ms. Harper:

This is in response to your informal inquiry regarding whether a paper ballot vote is permissible under the Open Door Law. 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 and seq.

BACKGROUND

You seek a determination as to whether a paper ballot vote violates the Open Door Law. You note the Tipton County Plan Commission conducts paper ballot votes if requested. You contend a paper ballot is equivalent to a secret ballot. You note the purpose of a secret ballot is to ensure all votes are cast in secret, in order that the voter is not influenced by any other individual. You also note under Ind. Code 5-14-1.5-3(b) expressly prohibits secret ballots at meetings.

On March 8, 2016 the Plan Commission responded via counselor Mr. David Langolf Smith, Esq. The Commission contends the paper ballot is not a secret ballot, as the vote of each member is publicly announced during the meeting after the ballots are collected. The Commission contends the paper ballot is a variant of a roll call vote and does not constitute a secret ballot.

ANALYSIS

According to the ODL, Ind. Code § 5-14-1.5-1, Indiana public policy provides that, "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."

Ind. Code 5-14-1.5-3(b) states that [a] secret ballot vote may not be taken at a meeting. However, it does not appear the Commission is conducting a secret ballot. The very act of announcing the vote of each commission eliminates any secrecy and a verbal roll call vote is not explicitly required under the law.

While the paper votes are cast silently, they are not cast secretly. For anyone interested in knowing exactly which individual voters ratified a measure, the ballots are (or should be) immediately available for public inspection and kept as public records – including being memorialized in the minutes and/or memoranda. However, I will note that while the Commission’s voting system does not appear to be improper, it does appear to be redundant and there is a potential for abuse if the votes are not announced. I caution the Commission to be mindful of the Open Door Law and its purpose.

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

Best regards,

A handwritten signature in black ink, appearing to read 'LHB', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. David Langolf Smith, Esq.