



STATE OF INDIANA

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March 30, 2016

Mr. Louis Britton, Esq.
Cox Zwerner Gambill & Sullivan LLP
511 Wabash Avenue
Terre Haute, Indiana 47807

Re: Informal Inquiry 16-INF-04; Non-Profit Corporations

Dear Counselor Britton:

This is in response to your informal inquiry regarding the release of records which include personal information. 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 § 5-14-1.5-2

BACKGROUND

You seek to know whether a non-profit corporation, with a board of directors made up of Town Board Members, is subject to the Open Door Law. The corporation was created in 1961 to manage a gift made to the Town. You also seek to know whether it is a violation for a majority of the members of a town council to attend a meeting of the Chamber of Commerce.

ANALYSIS

According to the ODL, Ind. Code § 5-14-1.5-1, According to the ODL, Ind. Code § 5-14-1.5-1, Indiana public policy provides that, "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees."

Ind. Code § 5-14-1.5-2 defines 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.

Under this definition, a not-for-profit ("NFP") corporation can be subject to the requirements of the Open Door Law if it is exercising some part of the Town's authority as local government. A private entity which assumes the role of government can be subject to the access laws as if they are the functional equivalent of a public agency.

It does appear the corporation is subject to the Open Door Law due to the fact the corporation is performing a government function. The NFP was established by the Town to manage a gift made to the Town. The NFP's purpose is to manage town property and monies regardless of the source of those funds. Therefore, it appears the corporation is performing either an executive or administrative function of town government. It is the Opinion of this Office the not-for-profit corporation referenced in your inquiry is subject to the Open Door Law and Access to Public Records Act.

Contrast this with a local economic development organizations ("LEDOs"). Most are non-profit and not subject to the Open Door Law unless audited by the State Board of Accounts. Economic development is not inherently a governmental function. Most of these LEDOs operate as a provider of goods and services to political subdivisions. In the current instance, being the sole steward of a revenue stream, however, is a government function.

Your second question is whether it is a violation of the Open Door Law for a majority of the town council to attend a meeting of the Chamber of Commerce. I previously opined on similar meeting-within-a-meeting scenario in Formal *Opinion 15-FC-94*. I wrote that

[O]fficial action on public business includes simply receiving information. Even if the intent was to participate as an interested member of the public and not as a member of a governing body, public officials would not be able to take off their public official 'hats' unless the discussion was so far removed from business it would not be considered 'public business' to *both* governing bodies.

Because the activities of a Chamber of Commerce are germane to the functions of the Town Council the Open Door Law is triggered. Notice would need to be given that the Council is gathering to attend a meeting of the Chamber. Please do not hesitate to contact me with any questions or for further guidance.

Best regards,

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

Luke H. Britt
Public Access Counselor