



# STATE OF INDIANA

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June 2, 2016

Ms. Andrea Huntington

*Re: Informal Inquiry 16-INF-13; City of South Bend Common Council*

Dear Ms. Huntington:

This is in response to your informal inquiry regarding the City of South Bend's committee arrangements. I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of Indiana law, Indiana Code § 5-14-1.5-2.

## **BACKGROUND**

You seek a determination as to whether the City of South Bend's Common Council is in compliance with the Open Door Law. The Council is comprised of nine (9) members. The Council is involved with eleven (11) standing committees and one (1) subcommittee. The committees are comprised of four (4) members. The subcommittee is comprised of two (2) members.

You present the following hypothetical situation:

Two members of Committee A and two members of another Committee meet to discuss and receive information about Committee A's subject matter. These four members constitute a majority of Committees B and C. B and C's official subject matter is not discussed. You ask whether the Open Door Law is violated even though a majority of Committee A did not meet. You also ask whether the Open Door Law is applicable because only Committee A is empowered to take public action.

## **ANALYSIS**

Under Indiana Code 5-14-1.5-2(b)

"Governing body" means two (2) or more individuals who are:

(1) A public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business.

(2) The board, commission, council, or other body of a public agency which takes official action upon public business.

(3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

Under Indiana Code 5-14-1.5-2(d)

Official action means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

For the purposes of this discussion I am assuming the Committees in question are subject to the Open Door Law as separately created governing bodies within the Council. Therefore, if a majority of the Committee meets, the Open Door Law is invoked. The Committees have separate subject matter ‘charters’ such as community relations or health and public safety.

As for your hypothetical, suppose only the community relations committee is empowered to take official action pursuant to their official counsel ‘charter’ (community relations). Yet two (2) members of a majority of the community relations committee meets with two (2) other individuals who happen to make up a majority of the health and public safety committee and the park committee.<sup>1</sup> Neither health and public safety nor park matters are discussed in any way – only community relations issues are addressed.

Your question based on this scenario is whether the health and public safety committee and the park committee must post notice that a majority will be meeting.

While the committee members are still receiving information, the subject matter is only relevant to Committee A (community relations). Therefore, I do not deem it necessary to post dual (or triple) notice

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<sup>1</sup> Note only four (4) individuals of the nine-member common council are meeting at any one time. Therefore, the Open Door Law is not triggered for the common council as a whole.

for each committee. If parks or public safety were indeed discussed, then notice would need to be posted or the committees run the risk of an Open Door violation.<sup>2</sup>

Committees can be tricky propositions when attempting to maintain compliance with the Open Door Law. While they can be an efficient and useful tool, over-complicating the delegation of official action can lead to the perception of impropriety. It is my sincere hope the South Bend Common Council remains cognizant of these considerations.

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 long, sweeping underline.

Luke H. Britt  
Public Access Counselor

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<sup>2</sup> Committee members should also be mindful of the prohibition with regard to serial meetings, which can be found at Indiana Code § 5-14-1.5-3.1.