



# STATE OF INDIANA

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Emma Rausch  
*The Paper of Wabash County*  
P.O. Box 603  
Wabash, IN 46992

**Re: Informal Inquiry 17-INF-16; Open Door Law; Executive Sessions**

Dear Ms. Rausch:

This informal opinion is in response to your inquiry concerning the use of executive sessions by three school districts—Manchester Community Schools, Metropolitan School District of Wabash County, and Wabash City Schools—to discuss the outcomes of the *Studies for Advancement* initiative. The *Studies for Advancement* initiative consists of feasibility studies and research concerning the shared interests of the public school districts in Wabash County and explores how the districts can become more efficient with resources.

On September 12, 2017, Manchester Community Schools and MSD of Wabash County held executive sessions citing Indiana Code sections 5-14-1.5-6.1(b)(4)(G) and (b)(2)(E) respectively as the statutory exceptions authorizing the closed meeting. On September 18, 2017, Wabash City Schools held an executive session citing Indiana Code section 5-14-1.5-6.1(b)(2)(E) as the statutory exception authorizing the closed meeting.

The crux of your inquiry is whether these school boards acted in accordance with Indiana law and whether executive sessions are permitted to privately discuss the *Studies for Advancement* report.

## DISCUSSION

### 1. The Open Door Law

The Open Door Law (“ODL”) generally requires the meetings of the governing bodies of public agencies to be open to the public. Ind. Code § 5-14-1.5-3(a). The purpose of the ODL is to ensure the official action of public agencies is conducted and taken openly so the general public may be fully informed. *See* Ind. Code § 5-14-1.5-1.

Under the ODL, “meeting” is defined as a gathering of a majority of the governing body for the purpose of taking official action on business. Ind. Code § 5-14-1.5-2(c). “Official action” is broadly defined by our state legislature to include everything from merely “receiving information” and “deliberating”—defined by Indiana Code 5-14-1.5-2(i) as discussing—to making recommendations, establishing policy, making decisions, or taking a vote. *See* Ind. Code § 5-14-1.5-2(d).

#### 1.1 Executive Sessions

Despite the ODL’s general rule of open meetings, the public may be excluded from certain meetings known as executive sessions. A governing body may only hold an executive session in the specific instances set forth under section 6.1 of the ODL. *See* Ind. Code § 5-14-1.5-6.1(b). This informal inquiry concerns two of these instances: (1) Discussion of strategy with respect to school consolidation under subsection (b)(2)(E); and (2) Interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by a local economic development organization under subsection (b)(4)(G).

##### 1.1.1 Discussion of Strategy

The ODL expressly authorizes a governing body to hold an executive session to discuss strategies with respect to certain specified topics. *See* Ind. Code § 5-14-1.5-6.1(b)(2). Indeed, school consolidation strategy is one of the specific subjects a governing body may discuss in executive session. Ind. Code § 5-14-1.5-6.1(b)(2)(E).

##### 1.1.2 Interviews and Negotiations with Prospects by a LEDC

The ODL also authorizes executive sessions for the purpose of conducting interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects by certain governing bodies. *See* Ind. Code § 5-14-1.5-6.1-(b)(4). Specifically, Indiana Code section 5-14-1.5-6.1(b)(4)(G) authorizes the governing body of a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana.

### 2. Analysis

Executive sessions are subject-matter-contingent scenarios, which have heightened sensitivity above and beyond regular public business. The Indiana General Assembly has recognized the need for privacy when it comes to these very narrow situations and has

carved out the exceptions when it is appropriate for a governing body to meet behind closed doors, excluding the public.

This Office scrutinizes executive sessions closely due to their very nature. While there are certainly justifications for having sensitive discussions behind closed doors, a governing body should use executive sessions judiciously and follow the public notice requirements to the exact letter of the law. Holding unauthorized private discussions behind closed doors as a majority of a governing body only serves to erode the public trust and cast doubt on the transparency of the public agency.

School corporations typically do not engage in economic development activities and it is a dubious proposition to suggest that the executive session justification under Indiana Code section 5-14-1.5-6.1(b)(4)(G) would ever apply to a school corporation. A school corporation is a government unit and not an economic development organization. Therefore, based on the information provided, that executive session would be inappropriate. On the other hand, subsection (b)(2)(E) could certainly apply to school corporations because it applies to strategy discussions about school consolidation.

Still, neither of these executive session justifications would apply for a discussion of feasibility studies. I have reviewed the study and school consolidation is only a very small portion of the text, and only tangentially referenced. It is much more a resource efficiency guide. Strategic school consolidation negotiations are almost certainly mutually exclusive from a study conducted regarding resource efficiency.

When scrutinizing most public meetings, a court would likely look to see if the actions of the Board were in “substantial compliance” with the Open Door Law. *See Turner v. Town of Speedway*, 528 N.E. 2d 858 (Ind. App. 1988). “Substantial compliance” includes: (1) the extent to which the violation denied or impaired access to a meeting; and (2) *the extent to which the public knowledge or understanding of the public business conducted was impeded. Town of Merrillville v. Blanco*, 687 N.E. 2d 191 (Ind. App. 1998)(Emphasis added). My expectation for executive sessions, however, is technical compliance when it comes to notice.

In regard to these considerations, I recommend the School tighten-up its practices when it comes to holding these closed-door meetings.

Please do not hesitate to contact me with any questions.

Best regards,



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