

September 21, 1998

Mr. Matt Pierce

800 N. Smith Road, #42Y

Bloomington, Indiana 47408

Re: PAC Opinion 98-6; Executive sessions.

Dear Mr. Pierce:

You have asked whether the Monroe County Communications Commission (hereinafter, "Commission,") violated the Indiana Open Door Law, specifically, Indiana Code 5-14-1.5-6.1(b)(8), when they conducted an executive session on July 20, 1998, to discuss personnel matters. As noted in your letter, the Commission has no personnel, but wanted to discuss the conduct of Monroe County Library Board employees under contract with the county to televise governmental meetings. The Commission, through the attorney for the Monroe County Board of Commissioners, William K. Steger, has responded to your complaint and a copy of the response is attached for your information. It is my opinion that the Commission did violate the Indiana Open Door Law when it held an executive session on July 20, 1998.

Background

The following facts have been obtained from your letter and the Commission's response. The Commission, an advisory council to Monroe County Board of Commissioners, is responsible for the evaluation and supervision of cable television services in the county. The community access television services (CATS) provides coverage of Monroe County governmental meetings under a contract with the Monroe County Board of County Commissioners.

On July 8, 1998, the CATS, which is operated by the Monroe County Public Library, televised a political party caucus for the nomination of a candidate for state representative at the request of the party chairman. In response to this broadcast, the Commission posted notice of an executive session under Indiana Code 5-14-1.5-6.1(b)(8) that they would discuss "personnel matters" on July 20, 1998. At the executive session, the Commission planned to review information provided by the director of the CATS and discuss recommendations that could be made to the Board of County Commissioners to prevent a future occurrence.

You contacted the Board of County Commissioners in a letter dated August 4, 1998, concerning this

executive session, but had received no written response as of August 17, 1998. On August 15, 1998, your local newspaper, *The Bloomington Herald-Times*, reported that Mr. Steger had suggested that the executive session may not have been held in compliance with the law and that he would recommend that the minutes of the executive session be released. In fact, in his response to your complaint, Mr. Steger states that the meeting probably should have been held publicly.

Analysis

The Indiana Open Door Law ("Law") provides that "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." ind. code rc 5-14-1.5-1. An advisory council of the board of county commissioners is a public agency and a governing body subject to the Law. ind. code rc 5-14-1.5-2(a)(5) and (b).

An executive session is a "meeting from which the public is excluded," but the governing body may allow other persons to attend if their presence is necessary to the purpose of the meeting. ind. code rc 5-14-1.5-2(f). The question is whether the Commission could lawfully meet in executive session to discuss "personnel issues" concerning the conduct of the CATS employees under Indiana Code 5-14-1.5-6.1(b)(8).

Indiana Code 5-14-1.5-6.1(b)(8) provides, in pertinent part, that an executive session may be held "(t)o discuss a job performance evaluation of individual employees." In this case, the employees involved were not those of the Commission, or even the Board of County Commissioners. These individuals are employed by the Monroe County Library Board, an independent contractor with the county.

In 1997, Attorney General Jeffrey Modisett issued an official opinion concerning the meaning of the term "employee" as used in the Indiana Open Door Law. *See, 1997 Op.AttyGen. No. 2.* Attorney General Modisett was asked whether another executive session provision using the term "employee," Indiana Code 5-14-1.5-6.1(a)(4), would permit a public agency to meet in executive session to receive information about and interview independent contractors who provided personal services. The Attorney General opined that the meaning of the term "employee" does not include an "independent contractor," and this is clearly evidenced by the fact that the General Assembly used each term separately within the Law. Therefore, the term "employee" does not include an independent contractor with a public agency and the public agency could not meet in executive session to receive information about or interview an independent contractor under the Indiana Open Door Law. *Id.*

This analysis is directly applicable to the matter described in your letter. In this case, the Commission, through the Board of County Commissioners, has a contractual relationship with the CATS to provide a service to the county. An executive session, therefore, could not be held under the auspices of Indiana Code 5-14-1.5-6.1(b)(8), which covers meetings to discuss the job evaluations of individual employees, for the purpose of receiving information about and discussing the broadcast of the political party caucus.

Despite the misgivings of Commission members to discuss this matter openly and possibly harm their working relationship with the CATS, the Indiana Open Door Law required that the meeting of July 20, 1998, be held openly.

Conclusion

It is my opinion that the July 20, 1998, executive session conducted under Indiana Code 5-14-1.5-6.1(b) (8) by the Monroe County Communications Commission violated the Indiana Open Door Law.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: William K. Steger, Monroe County Attorney