



STATE OF INDIANA

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September 11, 2012

Edward J. Ingram
4422 N. Elm St.
Richland, Indiana 47634

Re: Formal Complaint 12-FC-237; Alleged Violation of the Open Door Law by the Luce Township Regional Sewer District

Dear Mr. Ingram:

This advisory opinion is in response to your formal complaint alleging the Luce Township Regional Sewer District Board of Trustees ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Jefferson A. Lindsey, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you currently serve as a member of the Board, which consists of a total of nine members. On July 20, 2012, you allege that four members of the Board and the Board's attorney held an unannounced meeting to discuss various billing and financial issues. During the alleged meeting, you further provide that a decision was made to appoint Nora Yeager as acting office manager. A special meeting of the Board was held on July 26, 2012 to confirm this appointment and the resignation of the office secretary. You provide that the actions of the four members of the Board on July 20, 2012 deprived you, the other members, and the general public the opportunity to participate and witness the action of the Board.

In response to your formal complaint, Mr. Lindsey advised that a meeting is defined under the ODL as a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). Mr. Lindsey provided that the gathering that you have described that occurred on July 20, 2012 does not meet the definition of a meeting under the ODL, as a majority of the Board was not present. The email correspondence that you refer to was not a result of any Board action. There could not be any action taken by the Board, as there had never been a meeting to consider such action. Although it was later adopted as the policy of the Board on July 26, 2012, the Board President's announcement was not an official action of the Board.

ANALYSIS

It is the intent of the ODL that the 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. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

A “meeting” is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action. There is no dispute that the Board consists of nine members and only four members were present on July 20, 2012. As such, it is my opinion that the Board did not violate the ODL as a majority of the Board was not present on July 20, 2012. Further, since a meeting of the Board did not occur on July 20, 2012, any alleged decision made by the four members of the Board would not have had any effect until final action was taken by the Board at an open public meeting.

“Final action” is defined as a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). The Board held a meeting on July 26, 2012 where it, among other things, moved to appoint Nora Yeager as interim office manager until a new district manager was hired. The motion passed by an open vote of six to two. There is no indication or has it been alleged that members of the Board were not given the opportunity to discuss or deliberate the appointment prior to the vote being taken or that the public was excluded from the meeting. As the Board’s final action on the appointment of Ms. Yeager took place by vote of the Board on July 26, 2012 at an open public meeting, it is my opinion that the Board did not violate the ODL.

CONCLUSION

Based on the foregoing, it is my opinion that the Board did not violate the ODL.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Jefferson A. Lindsey