



STATE OF INDIANA

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March 11, 2014

Mr. Joseph T. Bradley
645 E. North Shore Dr.
Brownstown, IN 47220

Re: Formal Complaint 14-FC-19; Alleged Violation of the Open Door Law by the Jackson County Plan Commission

Dear Mr. Bradley,

This advisory opinion is in response to your formal complaint alleging the Jackson County Plan Commission ("Commission") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Commission has responded via Ms. Susan D. Bevers, Esq.. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 6, 2014.

BACKGROUND

Your complaint dated February 6, 2014, alleges the Jackson County Plan Commission violated the Open Door Law by providing improper notice of a sub-committee meeting.

Both parties present the same substantive facts. On or about January 21, 2014, the Jackson County Plan Commission met during an open meeting session to discuss an ordinance the County Commissioners planned to discuss at a subsequent meeting on February 4, 2014. A Commission member then asked for a group of volunteers within the Commission to form an advisory committee ("Advisory Committee") to review the proposal in more detail and provide the Commissions with recommendations at the next scheduled public meeting on February 4, 2014.

The Advisory Committee then met on January 29, 2014 to carry out its purpose of discussing and revising the ordinance based upon suggestions of the Advisory Committee members. The revisions were then presented to the board on February 4, 2014.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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 Ind. Code § 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 Ind. Code § 5-14-1.5-3(a).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very 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. Ind. Code § 5-14- 1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

A "governing body" includes 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. Ind. Code § 5-14-1.5-2(c). In this case, however, it does not appear the Advisory Committee was directly appointed by the governing body as a whole or its presiding officer. A non-presiding officer solicited volunteers to form the Advisory Committee. I have no evidence before me suggesting the Advisory Committee was voted on, its members elected, or its duties defined by a final action. I do not consider this to be a direct appointment as contemplated by the statute.

Because the Advisory Committee does not meet the definition of a governing body, a gathering of the Committee cannot be considered to be a meeting as defined by the ODL. Moreover, only four members of the Committee were present at the gathering. As there are nine seats on the Jackson County Plan Commission, four members of that body do not constitute a majority. Finally, the Advisory Committee only met once to discuss the subject matter and would not be considered a serial meeting under Ind. Code § 5-14-1.5-3.1.

There is no doubt the Advisory Committee took official action on public business. The mere discussion of the ordinance meets that standard. Please note had the Plan Commission directly appointed the sub-committee (or officially ratified its creation in any way), the resulting Advisory Committee would meet the definition of a governing body and therefore be subject to all other provisions of the ODL, including notice requirements. Public agencies should use caution when forming delegations or commissions, even if not directly appointing them, as it gives the impression they are attempting to subvert notions of openness.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Jackson County Plan Commission did not violate the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Susan D. Bevers, Esq.