



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 6, 2015

Brent A. Snow
6159 West 100 South
Tipton, Indiana 46072

Re: Formal Complaint 15-FC-32; Alleged Violation(s) of the Open Door Law by the Tipton County Board of Commissioners

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Board of Commissioners violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Council has responded via Counsel, Mark R. Regnier, Esq. His response is enclosed for your review. 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 2, 2015.

BACKGROUND

Your complaint dated February 2, 2015 alleges violation of the Open Door Law by the Tipton County Board of Commissioners ("Board"). The complaint alleges the Board improperly convened an executive meeting on January 19, 2015. The purpose of the meeting was to interview for the position of county attorney. You contend the position of county attorney is by contract, not an employee and therefore not covered by the ODL.

The Council responded to your complaint on February 20, 2015. Counsel contends the commissioners were acting under their interpretation of the ODL and did not have counsel to advise them. The Council notes no further action was taken and the hiring decision was not made until the regularly scheduled meeting on January 26, 2015.

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).

For purposes of the ODL, a county attorney is considered a contractor unless the attorney is working for the county full time and is on the payroll as a full time employee. The position of attorney for the Board appears to be for an independent contractor because the attorney works on an as-needed basis.

While the final decision did not occur until the January 26, 2015 meeting, counsel does admit the Board used the executive meeting to interview two candidates for the position. Despite the fact no decisions were made, the process of interviewing candidates does constitute a violation of the ODL. It is not an excuse for a governing body to misinterpret the law because of lack of counsel; it does not appear as if the public was substantially prejudiced by the technical violation of the executive session law.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Tipton County Board of Commissioners violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mark R. Regnier, Esq.