



STATE OF INDIANA

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April 29, 2015

Ms. Brenda Steen-Pore
926 Lincoln Dr.
Tipton, IN 46072

Re: Formal Complaint 15-FC-94; Alleged Violation of the Open Door Law by the Tipton County Council and Tipton County Board of Commissioners

Dear Ms. Steen-Pore,

This advisory opinion is in response to your formal complaint alleging the Tipton County Council ("Council") and the Tipton County Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* Both parties have responded via Mr. 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 March 13, 2015.

BACKGROUND

Your complaint dated March 11, 2015 alleges a violation of the Open Door Law by the Tipton County Council and Board of Commissioners. The complaint alleges meetings of a majority of the governing bodies without notice.

Your complaint is two-fold. First you allege a systemic issue of members having conversations – potentially about public business – after a meeting is adjourned. You state you have witnessed several occasions when an official meeting is closed, yet members of a governing body continue discussions. Secondly, you identify an issue when a majority of members from one governing body will attend a meeting of another. You inquire as to the propriety of these occurrences and whether an additional notice by the attending members would satisfy the Open Door Law.

The Council and the Board responded by acknowledging your concerns but stating no violation has taken place. Counsel for the two (2) entities argue there was never a majority of members discussing public business privately and he has counseled the two (2) boards not to attend each other's meetings without first posting appropriate notice.

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).

When meetings are adjourned, it is not uncommon for members of governing bodies to mill about, speaking with one another and fielding questions from constituents. There is no prohibition against engaging in conversations about non-public business. If public business is discussed, however, a violation has only occurred if it involves a majority gathering of members. Having conversations about public business amongst a non-majority group of members is never prohibited. The Open Door Law is only triggered when a majority of a governing body is discussing public business. It appears as if this is recognized by the newly appointed Tipton County Attorney and he has attempted to educate public officials on their ODL responsibilities. Moreover, please note chance meetings not intended to circumvent the Open Door Law are not considered “meetings” under the statute. See Ind. Code § 5-14-1.5-2.

Because the subject matter at each other’s meetings is likely germane to both the Council and the Board, a majority of one body attending another body’s meetings would trigger the Open Door Law. Official action on public business includes simply receiving information. Even if the intent was to participate as an interested member of the public and not as a member of a governing body, public officials would not be able to take off their public official ‘hats’ unless the discussion was so far removed from business it would not be considered ‘public business’ to *both* governing bodies.

As both parties here indicate, an additional notice by both the Board and the Council would satisfy the notice requirements for both. This appears to be the advice given by the County Attorney and is best practice for the purpose of conforming to the law. While violations may have taken place in some past instances, it is clear the intention of the County moving forward is to correct the course when it comes to both of these scenarios. I sincerely hope Mr. Regnier’s advice is well-received by Tipton County officials.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt

Public Access Counselor

Cc: Mr. Mark R. Regnier, Esq.