STATE OF INDIANA

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December 31, 2012

Ms. Brenda K. Steen
926 Lincoln Drive
Tipton, Indiana 46072

Re: Formal Complaint 12-FC-345; Alleged Violation of the Open Door Law by the Tipton County Council

Dear Ms. Steen:

This advisory opinion is in response to your formal complaint alleging the Tipton County Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq*. Our office forwarded a copy of your formal complaint to the Council on December 4, 2012. As of today's date, we have yet to receive any response.

BACKGROUND

In your formal complaint, you allege on or about December 3, 2012, Council President Scott Friend contacted all members of the Council and informed them that a meeting was to occur that evening at 5 p.m. at the Foundation Building. Upon arrival at the meeting, you noted that three of the seven members of the Council were in attendance. You advised the Council at that time that the meeting had not been advertised and that the Council was in violation of the ODL if it continued the meeting. The Council continued the meeting nonetheless. You provide that another member of the Council appeared which gave the Council an official quorum; however a separate council member left shortly thereafter. You further allege that the meeting continued until approximately 6 p.m.

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. A "meeting" does not include any social or change gathering not intended by any member of the governing body to avoid the requirements of the ODL. *See* I.C. § 5-14-1.5-2(c)(1).

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

The burden is on the Council to demonstrate that it complied with the requirements of the ODL, including providing the necessary notice pursuant to I.C. § 5-14-1.5-5. Without the benefit of a response from the Council, it has failed to demonstrate that it complied with the ODL; as such, it is my opinion that the Council violated the ODL by failing to provide proper notice for the meeting held on December 3, 2012.

CONCLUSION

Based on the foregoing, it is my opinion that the Council violated the ODL by failing to provide proper notice for the meeting held on December 3, 2012.

Best regards,

Joseph B. Hoage
Public Access Counselor

cc: Tipton County Council