



STATE OF INDIANA

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January 15, 2013

Ms. Danielle Zeceovich
567 Warren Place
Valparaiso, Indiana 46385

*Re: Formal Complaint 13-FC-03; Alleged Violation of the Open Door Law by the
Porter County Education Services Board of Trustees*

Dear Ms. Zeceovich:

This advisory opinion is in response to your formal complaint alleging Porter County Education Services Board of Trustees ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* George Letz, Superintendent, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that the Board was scheduled to hold a public meeting on December 4, 2012 at 1 p.m. at the Special Education Learning Facility ("Facility"). You arrived at the Facility at 12:56 p.m. and took a seat in the audience. Upon entering the room, you were informed by Dr. Frataccia that the meeting had already concluded. You were asked by Superintendent Letz if you had any public input, which you stated you did not. You further allege that the agenda of the meeting was not posted, nor to your knowledge was it made available.

In response to your formal complaint, Superintendent Letz advised that the Board regularly meets on the first Tuesday of the month at 1 p.m. The Board's December meeting was held on December 4, 2012; the Board commenced the meeting at 12:57 p.m. To correct the issue of starting the meeting three minutes early on December 4, 2012, the Board re-considered all issues that were addressed at the December meeting during the January 8, 2013 Board meeting, which you attended. A copy of the minutes from the January 8, 2013 meeting is enclosed.

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 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). “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 to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. 5-14-3-2(e).

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). In addition, the ODL provides that notice has not been given in accordance with section 5 of the ODL if a governing body convenes a meeting that is so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe and record. *See* I.C. § 5-14-1.5-5(h).

As applicable here, the Board commenced its regularly scheduled monthly meeting in December approximately five minutes prior to the time stated on the notice that was posted. In previous advisory opinions, counselors have generally found that anything beyond a thirty minute delay in commencing the meeting would be consider a violation of section 5(h) of the ODL. *See Opinions of the Public Access Counselor 98-FC-02; 02-FC-19; 02-FC-21; 05-FC-64; 10-FC-54; 10-FC-60.* I was unable to locate any previous advisory opinions that alleged that the governing body violated the ODL by commencing the meeting prior to the scheduled start time. It is my opinion that commencing a meeting approximately five minutes prior to the time listed in the public notice would not be in violation of section 5(h) of the ODL. However, I would strongly encourage all governing bodies to not commence their meetings until the scheduled start time. Regardless, the Board in recognition of your formal complaint, re-considered all issues that were acted upon at its December 4, 2012 meeting at its January 8, 2013 meeting, which you were able to attend. As such, it is my opinion that the Board did not violate section 5(h) of the ODL as to its December 4, 2012 meeting.

A governing body of a public agency is not required to use an agenda, but if it chooses to utilize one, the body must post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. *See* I.C. § 5-14-1.5-4(a). The ODL does not require that an agenda utilized by a governing body include the time the meeting is to occur. *If* the Board utilized an agenda for its December 4, 2012 meeting and did not post

a copy of the agenda prior to the start of the meeting, it is my opinion that it acted contrary to section 4(a) of the ODL (emphasis added).

CONCLUSION

Based on the foregoing, it is my opinion that the Board did not violate section 5(h) of the ODL as to its meeting held on December 4, 2012. If the Board utilized an agenda for the December 4, 2012 meeting and did not post a copy of the agenda prior to the start of the meeting, it is my opinion that it acted contrary to section 4(a) of the ODL.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Superintendent George Lutz