



STATE OF INDIANA

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August 16, 2013

Mr. Carl Spackler
1130 South State Road 66
Marengo, Indiana 47140

*Re: Formal Complaint 13-FC-209; Alleged Violation of the Open Door Law by
the Crawford County School Board*

Dear Mr. Spackler:

This advisory opinion is in response to your formal complaint alleging the Crawford County School Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Marcus M. Bugher IV, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

You allege that the Board held an unpublicized meeting on July 8, 2013, where school business and personnel issues were discussed and acted upon. You allege that four members of the Board were present at the meeting, along with three school administrators.

In response to your formal complaint, Mr. Bugher advised that in light of the vague nature of your formal complaint, it was his belief that you allege that the Board violated the ODL on July 8, 2013 when four members of the Board and various administrative personnel were present at the high school outside a regular scheduled meeting and discussed the student scheduling process. The Board denies that a violation of the ODL occurred.

The Board is comprised of seven (7) members. On July 8, 2013, a meeting involving Board members and the high school principal had been scheduled at the high school ("Hammond gathering"). Specifically, Kelly Hammond, Board member, had inquired about the procedures involved in student scheduling. On July 8, 2013, Mr. Hammond and Dennis Talley, also a member of the Board, met with the high school principal and assistant principal to discuss the issue. In addition to the Hammond gathering, Superintendent Dr. Mark Eastridge and two Board members, Traci Kerns and Shawn Scott, were present for a meeting at the Superintendent's Office with approximately ten (10) members of the teacher bargaining team ("Eastridge gathering").

This meeting was convened for the specific purpose of conducting negotiations related to the Master Teacher Contract.

At the conclusion of the Eastridge gathering, Dr. Eastridge, Board members Kerns and Scott went to lunch. Upon finishing lunch, Dr. Eastridge asked if Board members Kerns and Scott would be interested in learning about the procedures involved in student scheduling. After agreeing that they would, the parties went to the high school to hear the information presented by the high school principal at the Hammond gathering. Upon arrival, four members of the Board were present at the Hammond gathering. Despite a majority being present, Mr. Bugher provides that this would not be a meeting under the ODL as it was a chance gathering not intended to avoid the ODL; the Board members did not engage in deliberations, make recommendations, establish policy, make decisions, or take final action; and the meeting was intended to act as an orientation of the members of the School Board, which exempts the gathering from being considered a “meeting” under the ODL.

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. *See* I.C. § 5-14-1.5-2(e). However, a “meeting” does not include a social or chance gathering not intended to avoid the requirements of the ODL or an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action. *See* I.C. § 5-14-3-2(c)(1), (6).

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 notice, generally nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

The basis of your formal complaint is that there a majority of the Board met on July 8, 2013 to discuss and act on “school business and personnel.” As an initial matter, it

is my opinion that the Eastridge gathering would not be considered a meeting under the ODL, as a majority of the Board was not present. As to the Hammond gathering, the gathering originally consisted of two Board members and certain school administrative personnel to discuss the School's scheduling process. Later on, two other members of the Board decided to join the gathering. At that point, a majority of the Board was present. As noted *supra*, "official action" is defined, in part, as receiving information and thus the Board took "official action" by attending a presentation regarding school scheduling, in that it received information on the topic. There is no dispute that the topic of school scheduling would be considered "public business." Once a majority of the Board was present and receiving information on a matter of public business, the Board was conducting a "meeting" under the ODL that required, amongst other things, that notice be provided. The question remains whether an exception to the definition of "meeting" is applicable to the facts presented.

A "meeting" does not include a social or chance gathering not intended to avoid the requirements of the ODL or an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action. See I.C. § 5-14-3-2(c)(1), (6). Mr. Burgher maintains that even if it can be found that the Board held a "meeting" under the ODL, the meeting was exempt as a chance gathering or alternatively, as an orientation of Board members as to their roles and responsibilities as public officials.

The Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. See *Opinion of the Public Access Counselor 11-FC-80*. As to the chance gathering exception, factual issues remain as to whether Board members Kerns and Scott were aware that two other members of the Board were already present at the Hammond gathering prior to accepting Dr. Eastridge's invitation to attend and whether there was a collective intent by a majority of the members of the Board to attend the Hammond gathering. If Board members Kerns and Scott were not aware of the other member's presence or alternatively, if there was no collective intent by the Board to attend the Hammond gathering, I believe that the chance exception would be applicable. Further, it should be noted that no decisions were made by the Board at the Hammond gathering, as school administrative officials are solely responsible for making decisions regarding student scheduling. The Hammond gathering was being conducted for informational purposes only. Even if chance exception was not applicable, I believe that it is evident that the Board had no intention of violating the ODL.

I do not believe that the orientation exception would be applicable to the Hammond gathering. The gathering was conducted to provide information to the Board regarding the scheduling process. By the Board's own admission, it has no authority to make decisions regarding the scheduling process; school administrative officials retain such powers. I do not believe the Board has met its burden to demonstrate a plausible connection between the individual Board members' roles and responsibilities and the school scheduling process, especially in light of the Board's lack of authority regarding

this issue. As such, I do not believe the Board can cite to the orientation exception in regards to the Hammond gathering.

CONCLUSION

Based on the foregoing, it is my opinion that the Eastridge gathering was not considered to be a “meeting” under the ODL. It is my opinion that a “meeting” was conducted by the Board when a majority of the body was present at the Hammond gathering, and “official action” was taken by the body in receiving information from school administrative staff. It is my opinion that the chance gathering exception could be applicable, depending in part on the intent of the Board members that joined the gathering after it had commenced and whether the Board collectively intended to attend the Hammond gathering. Even if it can be found that the chance gathering exception would not be applicable, I do not believe that the Board intentionally violated the ODL based on the incident described. Lastly, I do not believe that the orientation exception is applicable to the facts presented.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Marcus M. Burgher IV