



STATE OF INDIANA

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February 19, 2013

Cory L. Klinedinst
311 E County Road 700 N
Frankfort, Indiana 46041

Re: Formal Complaint 13-FC-25; Alleged Violation of the Open Door Law by the Clinton County Board of Commissioners

Dear Mr. Klinedinst:

This advisory opinion is in response to your formal complaint alleging the Clinton County Board of Commissioners (“Board”) violated the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et seq.* The Commissioners responded in writing in response to your formal complaint. A copy of the response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that prior to January 2, 2013, you were employed as the Clinton County Emergency Management Services (“EMS”) Director. On January 2, 2013, the Board conducted an executive session and requested that you attend. All three members of the Board, the County Attorney, the County Sheriff, and a human resources consultant retained by the County were present at the executive session. You provide that you were terminated at the executive session, with Board President George Evans reading to you a prepared statement. You further allege that the Board had recessed from its special meeting on January 2, 2013 and went into the aforementioned executive session. You maintain that the Board’s action of terminating you in executive session violated the ODL.

In response to your formal complaint, the Commissioners advised that the Board held an executive session on January 2, 2013 pursuant to I.C. § 5-14-1.5-6.1(b)(6)(B). During the executive session, the Board discussed your job performance as director of County’s EMS. The Board invited you out of courtesy in order to share and discuss its intentions regarding your employment before a final determination was made. The Commissioners advised that final action regarding your employment with the County was not taken at the executive session; rather final action was taken at the Board’s open, public meeting on January 2, 2013.

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).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). With regard to individuals over whom the governing body has jurisdiction, an executive session may be held to receive information regarding an individual's alleged misconduct or to discuss, before a determination, the individual's status as an employee. *See* I.C. § 5-14-1.5-6.1(b)(6)(A)-(B). The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 71 (Ind. Ct. App. 2001). "Final action" means a vote by a governing body on a proposal, motion, resolution, rule, regulation, ordinance or order. *See* I.C. § 5-14-1.5-2(g). The ODL does not instruct governing bodies as to what actions specifically require a meeting and/or vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-144.*

Here, you allege that the Board conducted final action on your employment with the county during its executive session held on January 2, 2013. In response, the Board advised that while it discussed the status of your employment at the executive session, all final action took place at the Board's open, public meeting on January 2, 2013. This is further evidenced by the minutes from the Board's January 2, 2013 public meeting which provide that the Board voted unanimously to replace you as director of the county's EMS. The Board thereafter voted unanimously to appoint Robbie Balcezak as the acting director of the EMS. It should be noted that I was not in attendance at either meeting held by the Council on January 2, 2013, nor is public access counselor 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.* Acknowledging the holding in *Baker* that the only official action that cannot take place in an executive session is final action, it is my opinion that the Board complied with the requirements of the ODL if it took final action regarding your employment at its January 2, 2013 public meeting.

A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. *See* I.C. § 5-14-1.5-6.1(e). A meeting may not be recessed and reconvened with the intent of circumventing this subsection. *Id.* Pursuant to the minutes provided by the Board, the Board's open, public meeting on January 2, 2013 commenced at 9:00 a.m. The public meeting was recessed for an executive session at 9:40 a.m. The public meeting thereafter reconvened at 9:52 a.m. and was adjourned at 10:52 a.m. It is my opinion that the Board violated section 6.1(e) of the ODL by recessing from its public meeting on January 2, 2013 in order to conduct an

executive session without specific statutory authority to act in such a fashion. *See also Opinions of the Public Access Counselor 02-FC-19; 05-FC-218; 08-FC-244.*

CONCLUSION

Based on the foregoing, it is my opinion that the Board complied with the requirements of the ODL if it took final action regarding your employment at its January 2, 2013 public meeting. Further, it is my opinion that the Board violated section 6.1(e) of the ODL by recessing from its public meeting on January 2, 2013 in order to conduct an executive session without specific statutory authority to act in such a fashion.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Clinton County Board of Commissioners