



STATE OF INDIANA

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October 15, 2013

Ms. Lydia Duncan
613 South Main St.
Bicknell, IN 47512

Re: Formal Complaint 13-FC-272; Alleged Violation of the Open Door Law by the City of Bicknell Board of Works

Dear Ms. Duncan,

This advisory opinion is in response to your formal complaint alleging the City of Bicknell Board of Public Works ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board, by Michael Edwards, Esq., responded to your complaint. His response is enclosed for your review. Your complaint requested this issue be treated with priority status. As you have not indicated you plan to present this opinion at a specific proceeding, priority status has not been granted pursuant to 62 IAC 1-1-3 *et. seq.* 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 September 13, 2013.¹

BACKGROUND

Your complaint alleges the City of Bicknell Board of Works violated the Open Door Law by holding a meeting in violation of the Open Door Law.

You allege that on or about August 12, 2013, the Board of Works held a meeting in which the meeting was adjourned, the public was asked to leave and discussions resumed with the Bicknell Youth Recreation League ("BYRL"). You further allege that on or about August 21 2013, and again on September 9, 2013, the Board held meetings in

¹ Please note that your formal complaint, received on September 13, 2013 falls outside the 30 (thirty) day statutory deadline for filing a complaint in regard to the August 12, 2013. See Ind. Code § 5-14-5-7(a)(2). As such, your formal complaint is deemed void, however, for the purposes of educating the public and local government, this opinion is merely advisory in nature and any violation by the agency determined to be valid by the Public Access Counselor is not considered binding as an administrative remedy under Ind. Code § 5-14-1.5-7 or 7.5. Therefore, a filing for injunctive relief may not be filed in a court of law.

which the public were either not allowed to speak, or alternatively, certain members of the public were excluded from speaking.

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* I.C. § 5-14-1.5-3(a).

The ODL states that a complaint to the Public Access Counselor must be filed within 30 (thirty) days of the alleged violation. *See* Ind. Code § 5-14-5-7(a)(2). Your complaint as to the August 12, 2013 is hereby rendered moot. In order to advise local governments of the importance of the ODL, the alleged violation will nevertheless be discussed.

Counsel for the Board verified on October 15, 2013, discussions likely continued after the official open meeting of the Board was adjourned on August 12, 2013. This is a clear violation of the ODL. Despite Counsel's assertion your untimely formal complaint would excuse the actions of the Board; the un-timeliness only renders your *complaint* moot. It matters not that the filing of your complaint falls outside the statutory timeline. If the discussions were held and the public were excluded, a violation of the Open Door Law would indeed exist.

Ind.Code § 5-14-1.5-2 sets forth the definitions which should be taken into consideration when determining if a violation has occurred. Section (c) defines a public meeting as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Section (d) states official action means to receive information; deliberate; make recommendations; establish policy; make decisions; or take final action. Public business means any function upon which the public agency is empowered or authorized to take official action. *Id.* at (d). Based upon statements by the Board's Counsel, although no final action was taken, official action was taken in violation of Ind. Code § 5-14-1.5-1.

As to the other issues raised in your formal complaint, nothing in the Open Door Law obligates a public agency to allow the public to speak during an open meeting. Likewise, there is no other provision mandating equal time for each individual permitted to speak. This Office does not dictate the manner in which public meetings are held beyond the scope of the Open Door Law.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor in regard to the August 12, 2013 meeting, the Board violated the Open Door Law. As to all other issues, no violation occurred.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Michael Edwards, Esq.