



# STATE OF INDIANA

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December 17, 2013

Linda Treat  
8126 E. 50th. St.  
Lawrence, IN 46226

*Re: Formal Complaint 13-FC-327; Alleged Violation of the Open Door Law by the City of Lawrence Board of Public Works and Safety*

Dear Ms. Treat,

This advisory opinion is in response to your formal complaint alleging the City of Lawrence Board of Public Works and Safety ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board responded to your complaint via Ms. Ellen Hurley, Corporation Counsel. Her response is enclosed for your review. 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 November 1, 2013. Please be advised your request for priority status has been denied. Additionally, your complaint was received more than thirty (30) days after the alleged violation on October 10, 2013. See Ind. Code § 5-14-5-7. Accordingly, this Opinion is truly advisory in nature and is not to be used in any further litigation as persuasive authority.

## **BACKGROUND**

Your complaint alleges the City of Lawrence Board of Public Works and Safety violated the Open Door Law by conducting a meeting without notice.

During an October 10, 2013 Board meeting, a recess was called for the purpose of allowing a Board member to individually review a contract of which he had not yet been privy to. He was given 20-30 minutes to review the contract before the meeting recommenced. During that time, you speculate in your formal complaint two members of the Board, forming a majority had a private conversation when a member placed a hand over a microphone to speak with another board member. You argue this is a caucus and inappropriate at the meeting.<sup>1</sup>

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<sup>1</sup> You also make reference to several other alleged issues in your complaint outside the purview of the Public Access Counselor. It is my understanding you have directed those matters to the appropriate investigatory agencies and those issues will not be addressed here.

The Board responded by contending the conversation during the recess was simply to ask if the member was ready to proceed with the meeting. Furthermore, the Board concedes two members of the Board spoke with you about public business during the recess, which would be a meeting as intended by the ODL, was not open to the public, and there was no notice. Additionally, the Board argues that the off-microphone conversation was not a caucus.

## ANALYSIS

It is the intent of the Open Door Law (ODL) that 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 Ind. Code § 5-14-1.5-3(a).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

The Board is a public agency subject to the ODL. There is no allegation by either party the October 10, 2013 meeting was not open or properly noticed. The allegations stem from activity during a recess of that particular meeting.

The Board's concession a conversation between two Board members and two City Councilors (including you) constituted a meeting of the Board is correct. Two members of the Board were receiving information about public business, which would be considered official business and therefore a meeting without notice. The conversation was abruptly halted by Corporation Counsel Hurley. This meeting would be a technical violation of the Open Door Law. But, because it was initiated by the Councilors and the Board members were immediately informed of the inappropriate nature of the conversation, I do not find it violated the spirit of the law and find the Board was in substantial compliance with the ODL in this instance. It is the duty of the Board members to unilaterally halt the conversation; however, it seems unlikely members of the public were prejudiced in any way by the exchange.

Moreover, I cannot state conclusively if the conversation which took place when the Board member placed her hand over the microphone to speak with another Board member was a violation. The video of the meeting you provided does not allow me to ascertain the subject matter of the exchange. I am not a finder of fact, but based on the information provided, it

seems likely it was merely an inquiry into the readiness of the members to proceed with the meeting. If the subject matter of the conversation was substantive public business matter, then a violation would have occurred. I cannot make a determination based on the information before me.

You also suggest the off-mic meeting may have been a caucus. A caucus is not a meeting as contemplated by the Open Door Law. See Ind. Code § 5-14-1.5-2(c)(4). So even if it was a caucus, it would not be a violation because no meeting occurred. A caucus is defined in Ind. Code § 5-14-1.5-2(h) as a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action. I find it unlikely the two members were holding such a discussion.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Lawrence Board of Public Works and Safety did not substantively violate the Open Door Law. A technical violation of the Open Door Law existed when two members briefly received information from members of another public agency; however, I do not believe this rose to the level of compromising the public's right to be informed.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Ellen Hurley, Esq.