



# STATE OF INDIANA

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January 7, 2014

Mr. Brian N. Culp  
60 S. Jefferson St.  
Martinsville, IN 46151

*Re: Formal Complaint 13-FC-343; Alleged Violation of the Open Door Law by the Madison Township Trustee and Advisory Board*

Dear Mr. Culp,

This advisory opinion is in response to your formal complaint alleging the Madison Township Trustee and Advisory Board (“Trustee”) violated the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et. seq.* The Board responded to your complaint via Mr. Louis Lang, Board Chairman, and Mr. Stephen R. Buschmann, Township Counsel. Their responses are 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 13, 2013.

## **BACKGROUND**

Your complaint alleges the Madison Township Trustee and Advisory Board violated the Open Door Law by conducting a meeting without providing notice to the two periodicals you manage – the Mooresville-Decatur Times and the Martinsville-Reporter Times.

You allege that at the first of every year you circulate a request pursuant to Ind. Code § 5-14-1.5-5, to the public agencies governing your readership that they provide you notice of any upcoming agency meeting. You claim your 2012 request included the Madison Township Trustee.

Furthermore, you allege the Trustee has been inattentive to your requests for notice throughout the year and on December 2, 2013 another meeting was held without your knowledge and in violation of Ind. Code § 5-14-1.5-5.

The Madison Township Board Chairman states the request for notice was never received and was not aware such a request was “officially made”. Township Counsel states it has no record of having received a request from you asking to be notified in accordance with Ind. Code § 5-14-1.5-5. Moreover, the Township concedes an improperly posted notice was given before the meeting, because it failed to take into consideration a weekend in the 48-hour

requirement, however, argues it was remedied by the fact an electronic sign outside of the meeting location included all the details posted five business days prior to the meeting.

## 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).

It appears the notice requirements of Ind. Code § 5-14-1.5-5(b)(1). The electronic sign as described seems to satisfy the notice obligations to the public. As long as there is a continuous, uninterrupted advertisement at the meeting place with the date and time of the meeting, I opine that the public is duly notified.

The issue at hand, however, deals with notification of the media. Ind. Code § 5-14-1.5-5(b)(2) states the governing body of a public agency shall give public notice by delivering notice to all news media which deliver an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency.

The facts are in dispute as to whether the request was made before the 2013 calendar year. I am not a finder of fact, so I can only draw conclusions based upon the assertions of both parties. You contend you delivered a written request to all governing bodies of your readership on December 19, 2012. You claim you received a verbal acknowledgement sometime thereafter. Furthermore, you also allege you encountered this same issue earlier in the year and the Township Trustee once again acknowledged your request.

The Township Counsel, however, denies any public official associated with the Trustee or the Advisory Board is aware of your December 2012 request. I cannot state definitively one way or the other. Because I cannot make a determinative conclusion based upon the facts provided, I will make recommendations as to how the Trustee and Township Board can unambiguously comply with the Open Door Law in the future.

The General Assembly has differentiated what constitutes notice to the public and to the media. Upon request in the prior calendar year, a public agency must provide individual notice to those media outlets who have indicated their desire to be notified separately. This may be done the following ways according to Ind. Code § 5-14-1.5-5(b)(2):

- (A) Depositing the notice in the United States mail with postage prepaid.
- (B) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.
- (C) Transmitting the notice by facsimile (fax).

Email and fax are preferred as they naturally find their intended audience faster. You have written acknowledgement for 2014 the Township Board and Trustee have received your complaint now that this complaint has been filed, See Page 2 of Mr. Buschmann's response. I trust you can rely on their acknowledgement as an affirmative indication to comply with Ind. Code § 5-14-1.5-5(b)(2) for the 2014 calendar year.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Stephen R. Buschmann, Esq.