



STATE OF INDIANA

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March 25, 2013

Mr. Aaron B. Pratt
608 N. Norton St.
Marion, Indiana 46952

*Re: Formal Complaint 13-FC-63; Alleged Violation of the Open Door Law by
the Marion Common Council*

Dear Mr. Pratt:

This advisory opinion is in response to your formal complaint alleging the Marion Common Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Don Gallaway, Attorney, responded in writing on behalf of the Council. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that certain committees ("Committees") of the Council have failed to keep written memoranda of their meetings as required by the ODL. You have provided a copy of an article from the February 9, 2013 *Marion Chronicle-Tribune* where the City Clerk, Kathy Kiley, states that Council members have not provided reports during Council meetings about matters discussed in the Committees.

In response to your formal complaint, Mr. Gallaway advised that the Council does utilize Committees as part of its structure. The Committee meetings have always been properly noticed and open to the public. The past practice of the Committee chairs has been to issue verbal reports to the Council as a body; the Committees had not been preparing written memoranda. It is the Council's contention that the verbal reports serve the purpose of the written memoranda. To find a violation of the ODL would be to observe form over substance.

The practice of the Council had been remedied and the Committees are now preparing written memoranda which are provided to the Clerk. Mr. Gallaway has spoken with you regarding this issue since you filed your formal complaint and is of the belief that the Council's actions have satisfied your initial request.

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 defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon 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 to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. 5-14-3-2(e). In order for the ODL to apply, the meeting must be held by a governing body of a public agency. The parties do not dispute that the Committees appointed by the Council qualify as a governing body pursuant to I.C. § 5-14-1.5-2(b)(3).

Under the ODL, governing bodies that conduct meetings are required to keep memoranda. The ODL does not require that a governing body keep minutes; however if kept, minutes of a meeting must be open for inspection and copying under the APRA. *See* I.C. § 5-14-1.5-4(c). As for memoranda, the ODL specifically provides that the following shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under I.C. § 5-1.5-2-2.4. I.C. § 5-14-1.5-4(b).

The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. *See* I.C. § 5-14-1.5-4(c). In the case of executive sessions, the memoranda requirements are modified in that the memoranda "must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given." *See* I.C. § 5-14-1.5-6.1(d). The public agency must also certify in a statement in the memoranda that no subject was discussed other than the subject specified in the public notice. *Id.*

The past practice of the Committees appointed by the Council was to have the Committee chair issue verbal reports to the Council as opposed to preparing written

memoranda. There is no dispute that the Committee meetings were open to the public and proper notice had been posted. Mr. Gallaway has advised that the Committees' practice has been remedied and written memoranda is now being prepared and submitted to the Clerk. It is my opinion that the Committees acted contrary to section 4(b) of the ODL by failing to keep written memoranda of its meetings. As the Committee's actions have been amended, you have been informed of the new procedures, and all other actions of the Committees have complied with the ODL, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the committees acted contrary to section 4(b) of the ODL by failing to keep written memoranda of its meetings.

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: Don Gallaway