



# STATE OF INDIANA

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*Via email transmission*

March 9, 2017

Ms. Corrine R. Finnerty, Esq.  
38 N. 5<sup>th</sup> St.  
PO Box 90  
North Vernon, IN 47265

*Re: Informal Inquiry 17-INF-01; Regional Planning Commissions*

Dear Ms. Finnerty:

This is in response to your informal inquiry regarding whether a regional planning commission established under Ind. Code § 36-7-7-2 is a public agency or instrumentality of the State of Indiana for the purposes of Ind. Code § 5-14-1.5-3.6.

## **DISCUSSION**

Ind. Code § 5-14-1.5-3.5 states that members of local governing bodies may not be counted present nor may they vote if they participate in a meeting remotely by electronic means (i.e. video or teleconferencing). Ind. Code § 5-14-1.5-3.6 states that state agencies and instrumentalities of the state may do so. Your question is which statute governs regional planning committees as defined by Ind. Code § 36-7-7-2.

The public policy behind section 3.5 being that local government representatives do not have to travel far to attend local public meetings. Most are within the county in which they represent. It is more difficult for members of State governing bodies to physically attend a meeting when members may be appointed from the four corners of Indiana and everywhere in between. It stands to reason that an electronic participation policy may be ratified for those State boards for convenience and efficiency's sake.

Regional boards fall somewhere in between those statutes, however, in the case of regional planning committees, I believe the law can reasonably interpreted to designate them as instrumentalities of the State. Consider their enabling statute at Ind. Code § 36-7-7-2:

The legislative bodies of all the counties in a region may, by concurrent resolutions, request the establishment of a regional planning commission (referred to as a "commission" in this chapter).

Official copies of the resolutions must be forwarded to the governor, who shall then appoint himself or a member of his staff to immediately notify the other members of the commission and to act as temporary chairman for the election of officers.

The statute contemplates some level of state participation and oversight and involves a co-mingling of political subdivisions rather than the autonomy of any one municipality or local unit under home rule. Regions can be quite large and members would ostensibly be required to traverse multiple counties to physically attend meetings<sup>1</sup>. Furthermore, I believe practicality considerations outweigh any harm to transparency by allowing members to exercise its discretion to adopt a policy for electronic communication under Section 3.6 of the Open Door Law.

Based on the foregoing, it is the Opinion of the Public Access Counselor that Regional Planning Commissions are governed by Ind. Code § 5-14-1.5-3.6. Policies may be adopted for electronic communication by its members pursuant to its provisions.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt  
Public Access Counselor

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<sup>1</sup> Please note these considerations may not apply to subregional committees under Ind. Code § 36-7-7-10. They could be considered on a case-by-basis based on geography, however, subregional committees do not appear to have any state involvement. They would be more likely to be considered more akin to local units.