

October 5, 1998

Ms. Linda Lockhart

Post Office Box 243

Paoli, Indiana 47454

Re: PAC Opinion 98-5; Meeting notice requirements for county commissioners.

Dear Ms. Lockhart:

You have asked whether the Orange County Commissioners (hereinafter, "Commissioners,") violated the Indiana Open Door Law when they conducted joint meetings with the Orange County Hospital Board (hereinafter, "Hospital Board,") on August 11, 1998 and August 25, 1998. Specifically, you suggested that the notice requirements of Indiana Code 5-14-1.5-5 were not followed by either the Commissioners or the Hospital Board. The Commissioners, through their attorney, Jennifer A. Tucker, and the Hospital Board, through the hospital administrator's office, have responded to your complaint. I have attached a copy of these responses for your information.

For the reasons set forth below, it is my opinion that, with respect to the Commissioners did not comply, notice should have been provided of the August 11, 1998 and August 25, 1998, joint meetings with the Hospital Board. Further, the claim that the meeting to discuss ambulance service and receive information was an on-site inspection, and therefore not a meeting for which notice was required, is not sound. Also, the exemption from the notice requirements of the Indiana Open Door Law for governing bodies that meet in continuous session does not apply to the Commissioners. The Hospital Board, however, complied with the notice requirements of the Indiana Open Door Law with respect to both the August 11, 1998 and August 25, 1998, joint meetings.

Background

These facts have been gathered from your complaint and the responses of the Commissioners and the Hospital Board. On August 11, 1998, the Commissioners met at their regular meeting time, and after they adjourned, they met jointly with the Hospital Board. According to the minutes prepared by the Commissioners, this gathering was described later as an on-site inspection of, and to learn the latest developments concerning, the county ambulance service program. In addition, the Commissioners and Hospital Board took this opportunity to investigate rumors concerning the ambulance service. The Commissioners did not post a notice of the joint gathering and claim that it was an on-site inspection that is exempt from the Indiana Open Door Law. In any event, the Commissioners claim that, since they meet in continuous session, no notice was required under Indiana Code 5-14-1.5-5. The Hospital Board, however, posted a notice of the gathering, identifying it as a meeting with the Commissioners, well in

advance of the 48-hour deadline. The Hospital Board also sent this notice to the local media.

On August 25, 1998, the Commissioners scheduled another gathering, again described as an on-site inspection of, and to learn the latest developments concerning, the ambulance service program. The Commissioners announced their intent to meet with the Hospital Board again during this meeting. Again, the Commissioners claimed that no notice was required because an on-site inspection is not a meeting under the Open Door Law and that they meet in continuous session and are relieved from the notice requirements of Indiana Code 5-14-1.5-5. The Hospital Board posted a notice of the August 25, 1998 meeting on August 21, 1998, which was at least 96 hours in advance, and sent the notice to the local media by facsimile.

Analysis

The Indiana Open Door Law ("Law") provides 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." ind. code α 5-14-1.5-1. A board of county commissioners and a county hospital board are public agencies and governing bodies subject to the Law. ind. code α α 5-14-1.5-2(a)(2) and (b). The question is whether the Commissioners' failure to provide notice of the joint gathering, identified as an on-site inspection, violated the Law.

As noted above, the Hospital Board did provide evidence that the notice requirements of the Law were met for both the August 11, 1998 and August 25, 1998 meetings. In fact, the Hospital Board characterized the gatherings as meetings. The remainder of this discussion, therefore, focuses solely on the Commissioners.

On-Site Inspections

For the purposes of the Open Door Law, a "meeting" is

a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

* * *

(2) any on-site inspection of any project or program.

Indiana Code 5-14-1.5-2(c). Notice must be provided of meetings of a governing body of a public agency under Indiana Code 5-14-1.5-5(a). An on-site inspection, however is not a meeting under the Law and therefore, notice is not required.

In this case, the Commissioners contend that their joint gathering with the Hospital Board was not a meeting, but an on-site inspection. While some of the activity described in the Commissioners' own

minutes and notice of the August 25, 1998 meeting may qualify as an on-site inspection, receiving information about the ambulance service and the rumors circulating about the service appear to go beyond the scope of an on-site inspection. "On-site inspection" is not defined in the Indiana Open Door Law, therefore, we must turn to the rules of statutory construction to determine the General Assembly's intent.

"Generally, when construing a statute, the interpreting body attempts to give words their plain and ordinary meanings." *Indiana Wholesale Wine v. State of Indiana, Alcoholic Beverage Commission*, _____ N.E.2d _____ (Ind. 1998), *citations omitted*. Non-technical, undefined words are to be defined by their ordinary and accepted dictionary meaning. *Bulkomatic Transport v. Department of Revenue*, 629 N.E.2d 955, 957 (Ind. Tax 1994), *citations omitted*. The plain meaning of "on" is "concerning" or "about." the american heritage dictionary of the english language 918 (1975). "Site" means "the place or setting of an event." *Id.* at 1210. The word "inspection" means "an official examination or review." *Id.* at 680.

The term "on-site inspection," therefore, means an examination or review concerning a place or the setting of an event. The Commissioner's gathering with the Hospital Board to discuss problems with the ambulance service does not fall within the ordinary meaning of an on-site inspection. While there may have been some examination of the facilities or equipment, a gathering to discuss problems with the ambulance service was a meeting and the notice requirements of the Indiana Open Door Law should have been met.

Governing Bodies that Meet in Continuous Session

The general rule is that notice must be provided of meetings of a governing body of a public agency under Indiana Code 5-14-1.5-5(a). There are two exceptions listed at Indiana Code 5-14-1.5-5(f), one for governing bodies that meet in continuous session and another for town and county executives to consider administrative functions of their respective units. If neither of these two exceptions to the notice requirement are met, notice of the date, time and place of any such meeting must be posted at the principal office or meeting location of the governing body. ind. code § 5-14-1.5-5(b). The notice must also be sent, via United States mail, to any news media that asked for any such notices by January 1. *Id.*

The Commissioners claim that they qualify as a body that meets in "continuous session" and are not subject to the notice requirements of the Open Door Law. They cite to *Board of Commissioners of St. Joseph County v. Tinkham*, a case decided in April, 1986, by the Indiana Court of Appeals, as authority for the notion that county commissioners are generally exempt from the meeting notice requirements. *See*, 491 N.E.2d 578. While the Court in *Tinkham* did hold that county commissioners were exempt from the notice requirements of Indiana Code 5-14-1.5-5, this opinion did not hold that county commissioners meet in "continuous session." Rather, the Court of Appeals relied upon the fact that county commissioners were enumerated as one of the governing bodies exempt from the notice requirements of the Open Door Law.

After the *Tinkham* decision, the General Assembly amended the notice exemptions set out at Indiana

Code 5-14-1.5-5(f). *See, P.L. 67-1987, §3.* Indiana Code 5-14-1.5-5(f)(1) remains applicable to governing bodies that meet in continuous session and exempts them from providing notice except for meetings that are required by or held under statute, ordinance, rule or regulation. If the General Assembly intends to characterize a governing body as meeting in continuous session, it does so by specific language. For example, the State Board of Tax Commissioners' enabling act clearly states that they meet in continuous session. *See, ind. code § 6-1.1-30-4.* In contrast, the enabling act for boards of county commissioners provides that the commissioners are to set meetings once each month and at other times as necessary. *See, , ind. code § 33-2-2-6.* The Commissioners, therefore, do not meet in continuous session as contemplated under Indiana Code 5-14-1.5-5(f)(1).

With respect to county executives, the notice requirements under the current version of Indiana Code 5-14-1.5-5 do not apply:

* * * *

if the meetings are held solely to receive information or recommendations in order to carry out administrative functions . . . or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, or any other action creating an obligation or otherwise binding the county.

Indiana Code 5-14-1.5-5(f)(2) [Emphasis added.] A board of county commissioners is only exempt from notice requirements for administrative meetings, and such meetings must still be open for the public to attend and observe them.

One could argue that the Commissioner's meeting with the Hospital Board to discuss the ambulance service might be characterized as a meeting to discuss internal affairs of the unit. Since another governing body, the Hospital Board, was included, it cannot be clearly characterized as a matter of internal management. It is my opinion that the Commissioners should have posted a notice of their August 11, 1998 and August 25, 1998 meetings with the Hospital Board.

Conclusion

It is my opinion that, with respect to the Orange County Commissioners, notice should have been provided of the August 11, 1998 and August 25, 1998, joint meetings with the Orange County Hospital Board. Further, the claim that the meeting to discuss ambulance service and receive information was an on-site inspection, and therefore not a meeting for which notice was required, is not appropriate. In addition, while the Commissioners may be exempt from the notice requirements of Indiana Code 5-14-1.5-5 when conducting administrative function meetings, the meetings with the Hospital Board would not qualify as such. The Orange County Hospital Board complied with the notice requirements of the

Indiana Open Door Law with respect to both the August 11, 1998 and August 25, 1998, joint meetings.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Jennifer tucker, Attorney for the orange county Commissioners

Orange county hospital administrator