

December 16, 1998

Mr. Todd A. Leeth
Hoepfner, Wagner & Evans
NBD Bank Building
103 E. Lincolnway
Valparaiso, IN 46384

Re: PAC Opinion 98-8; Disclosure of draft minutes of public meetings.

Dear Mr. Leeth:

You have requested a written opinion as to whether draft or proposed minutes of public meetings held by boards, commissions, authorities, councils, committees, bodies or other public entities taking official action on public business are "public records" as defined in Indiana Code section 5-14-3-2, and therefore, subject to inspection and copying under the Access to Public Records Act, Indiana Code 5-14-3, et al (hereinafter, "APRA.") For the reasons set forth below, it is my opinion that draft or proposed minutes of public meetings are disclosable public records and must be made available for inspection and copying under the APRA. When disclosing draft minutes, the public agency should also notify the recipient that the minutes are subject to change and the approval of the appropriate person or governing body.

Analysis

Under the Indiana Open Door Law, if minutes are kept, then they are required to be available for inspection and copying. IND. CODE § 5-14-1.5-4(c). The Open Door Law does not distinguish between draft minutes and approved minutes of a governing body. A public record is "any writing, paper, report . . . that is . . . generated on paper" and, as a general rule, public records are open for inspection and copying except as provided in the APRA. IND. CODE §§ 5-14-3-2; 5-14-3-3. Once created, draft or proposed minutes are public records and nondisclosure must be based upon one of the exceptions outlined in the APRA. These exceptions to disclosure are enumerated at Indiana Code section 5-14-3-4; however, a review of the exceptions does not reveal any exception that would allow for the nondisclosure of draft or proposed minutes.

Often, public agencies will attempt to rely on Indiana Code 5-14-3-4(b)(6), which allows public agency discretion as to whether to disclose the following information:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purposes of decision making.

There is very little case law interpreting this statutory provision, in particular, what is deliberative material, and there is no case law directly on point regarding draft minutes of public meetings. We must, therefore, turn to the rules of statutory construction for guidance.

"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 "deliberative" is "assembled or organized for [or] . . . characterized by or for use in deliberation or debate." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 349 (1981). "Deliberation" means "thoughtful and lengthy consideration . . . [t]houghtfulness in decision or action." *Id.* In the context of the Act, deliberative material includes information that reflects, for example, one's ideas, consideration and recommendations on a subject or issue for use in a decisionmaking process.

Applying these principles of statutory construction, it is clear that draft or proposed minutes of public meetings are merely summaries of information received, not deliberative material. While there is naturally a concern about accuracy in draft or proposed minutes, there is no provision in the APRA that would make such information nondisclosable. It is always important, however, that the recipient of the information is notified that the draft is subject to change and approval of the appropriate person or governing body. In this way, disclosure is possible, but the concern about someone relying upon the draft or proposed minutes is minimized.

Conclusion

It is my opinion that draft or proposed minutes of public meetings are disclosable public records and that a public agency should notify any recipient that a draft is subject to change and approval of the appropriate person or governing body.

Sincerely,

Anne Mullin O'Connor