



# STATE OF INDIANA

MICHAEL PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

February 10, 2014

Mr. J. Lee Robbins  
c/o Williams, Barrett and Wilkowsky, LLP  
600 North Emerson Avenue  
Greenwood, IN 46143

*Re: Informal Inquiry 14-INF-02; Administrative Meetings*

Dear Mr. Robbins:

This is in response to your informal inquiry regarding administrative meetings. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5-1 *et seq.* and Ind. Code § 6-1.1-35 *et seq.*

## BACKGROUND

On February 22, 2014, your client, the Town of New Whiteland Town Council is scheduled to meet at your office with other various town officials to discuss the following topics:

1. The Open Door Law, specifically, when are executive sessions permitted and what are the applicable notice requirements;
2. Access to Public Records Law, specifically, what records may be disclosed and by what means must they be disclosed;
3. Proper meeting procedures and protocol;
4. Application of the Fair Labor Standards Act to town employees, exempt v. non-exempt employees, overtime and compensatory time, special rules for firefighters and police officers.
5. The role, duties and responsibilities of the town manager.

The Council members have been advised not to discuss any other topic. Your concern is whether the above topics are considered appropriate for an administrative meeting or whether the topics warrant a properly-noticed public meeting. You state the Town is attempting to be as cautious as possible, which is the reason why you are soliciting my advice before the meeting commences. You also pose the question of whether the

meeting can be held away from Town Hall where meetings are regularly held.

### ANALYSIS

It is the intent of the Open Door Law (ODL) 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 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).

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. See Ind. Code § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. See Ind. Code § 5-14-1.5-5(b)(1).

I have addressed this topic most recently in an Advisory Opinion found at 13-FC-352. I will enclose a copy of that Opinion for your guidance and also use much of the same analysis in this instance.

As you correctly state, the requirements for posting notice do not apply when the executive of a county or the legislative body of a town meets, if the meeting is 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. See Ind. Code § 5-14-1.5-5(f)(2). Administrative functions do not include the awarding of contracts, the entering into contracts or any other action creating an obligation or otherwise binding a county or town. Even though notice is not required, the administrative meetings must be held in the public, since the notice provision of the ODL is the only provision that does not apply to an “administrative function” meeting. See Ind. Code § 5-14-1.5-5(f)(2).

Administrative functions are not defined in the Indiana Code and as I stated in 13-FC-352, I do not find the non-qualifying actions mentioned in Ind. Code § 5-14-1.5-5(f)(2) to be an exhaustive list of what is *not* an administrative function.

Again, I will use Counselor Hoage’s sound analysis found in 12-INF-36:

[D]etermining whether a topic or action is appropriate for an administrative meeting generally requires a highly subjective review of the issues. The ODL does not contain a bright-line list of issues or subjects that are appropriate or prohibited from being discussed at an administrative meeting. In reviewing the previous opinions of the public access counselor that opined that an administrative meeting was proper, the subject matter primarily dealt with the function of carrying out the everyday or routine tasks necessary to ensure the proper management of the county or town. It is my opinion that anytime there is the slightest hesitation on whether an administrative meeting would be appropriate, a meeting should not occur. This is in large part due to the declaration made by the General Assembly in I.C. § 5-14-1.5-1, which provided that it is the intent of the ODL that official action of public agencies be conducted and taken openly and the provisions of the law are to me liberally construed with the view of carrying out this policy. *See* I.C. § 5-14-1.5-1.

In regard to your list of suggested topics, I believe that items 1, 2, and 3, would be appropriate topics for an administrative meeting. They are purely operational in nature and while for the public benefit, are not of specific public interest on business usually associated with the substantive policy consideration of a board.

However, the other two items of business: the application of the Fair Labor Standards act to town employees, and the duties of the Town Manager, would be matters best discussed in a regularly noticed public meeting. Those are policy matters and can be reasonably construed to be of public interest.

It is important to note that just because an administrative meeting does not require notice under the Open Door Law; it is still a meeting which must be open to the public. This simply means that if a member of the public became aware of the meeting and wanted to observe and/or record, they must be able to do so. There is no requirement; however, the Council notifies the public of the meeting.

Similarly, the meeting can occur away from the usual gathering place for a public meeting. There is no requirement that a public meeting must be in a Town Hall or a Council Chamber. It can be anywhere accessible to the public. You propose the meeting take place in your office. Again, if a member of the public were to become aware of the meeting, accommodations must be made to allow them to observe, but generally an attorney's office can be considered accessible to the public. Likewise, because there is no notice requirements of an administrative meeting, notice does not have to be posted 48 hours in advance nor does anything have to be posted at the place of the meeting.

In summation, the first three topics listed on your agenda may be discussed in an administrative meeting in your office without posting any kind of notice. The final two topics should be discussed in a properly noticed public meeting.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor