



# STATE OF INDIANA

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September 9, 2016

Ms. Teresa L. Kelley  
7188 Phillips Road  
Tennyson, Indiana 47367

*Re: Formal Complaint 16-FC-187; Alleged Violation of the Open Door Law by the Town Board of Tennyson*

Dear Ms. Kelley:

This advisory opinion is in response to your formal complaint alleging the Town Board of Tennyson ("Board") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Council has responded to your complaint via Ms. Kristi Adams, Board President. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 5, 2016.

## **BACKGROUND**

Your complaint dated August 5, 2016, alleges the Town Board of Tennyson violated the Open Door Law by conducting an improper executive session and voting on a personnel issue.

You stated that on July 5, 2016 the Board held a public meeting wherein the Board President announced an executive session for the next day on July 6, 2016. During the executive session, the board members voted to terminate the employment of the Utilities Superintendent.

In its response, the Board argues the notice was actually posted on June 30, 2016 -a full seven (7) days prior to the meeting taking place. A copy of the notice was provided and is enclosed for your review. Additionally, the Utilities Superintendent did indeed attend the meeting. The purpose of the executive session was to discuss his status and allegations of misconduct. The Board alleges the Superintendent voluntarily resigned and no vote or binding decision was made during the closed-door session.

## **ANALYSIS**

It is the intent of the Open Door Law ("ODL") 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. *See Indiana Code § 5-14-1.5-1.* Section 6.1 provides an exception, allowing public agencies

to conduct executive sessions which are closed to the public in order to discuss strategies with respect to certain specified topics.

The exceptions to this policy are called executive sessions. Executive sessions are subject-matter-contingent scenarios, which have heightened sensitivity above and beyond regular public business. The Indiana General Assembly has recognized the need for privacy when it comes to these very narrow situations and has carved out executive sessions as instances when it is appropriate for a governing body to meet behind closed doors.

One of those justifications is to discuss employee status and allegations of employee misconduct. *See Indiana Code § 5-14-4.5-6.1(b)(6)*. You have not provided any information to suggest the Board's recitation of events is inaccurate. If the executive session was held to discuss the Utilities Superintendent's status and alleged misconduct, they may do so. If the Superintendent voluntarily resigned during that meeting without a vote, the Board has not violated the Open Door Law. If a vote was taken, however, a violation would have occurred.

Additionally, the Board must be mindful public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See Indiana Code § 5-14-1.5-6.1(d)*. In its notice, the Board stated the executive session would be held "regarding personnel matters". This is a wholly inappropriate and deficient notice. Such a generalized notice does not put the public on alert as to the exact subject matter a governing body is discussing behind closed doors. A compliant notice would have stated the executive session was being held:

Pursuant to Ind. Code § 5-14-1.5-6.1(b)(6), and with respect to an individual over whom the governing body has jurisdiction:

- (A) to receive information concerning the individual's alleged misconduct; and
- (B) to discuss, before a determination, the individual's status as an employee

The employee's name does not have to be given, however, the notice should state with an unequivocal degree of specificity what statute allows the Board to hold an executive session.

## **CONCLUSION**

Based on the aforementioned, it is the Opinion of the Public Access Counselor the Town Board of Tennyson did not violate the Open Door Law as to your allegations. However, the notice for the executive session was non-compliant.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Kristi Adams