

March 29, 2000

Mr. Ed E. Percy  
8515 Otterbein Road SE  
Laconia, IN 47135

Re: Advisory Opinion 00-FC- *Alleged Violation of the Open Door Law by the Harrison County Board  
9 of Commissioners for failure to adjourn.*

Dear Mr. Percy:

This is in response to your formal complaint, which was received on March 16, 2000. You have alleged that the Harrison County Board of Commissioners ("Commissioners") violated the Indiana Open Door Law ("ODL") by failing to adjourn after each meeting. Mr. Gordon Ingle, attorney for the Commissioners, responded to your complaint by letter on March 17, 2000. A copy of his response is enclosed for your reference. For the following reasons, it is my opinion that the Commissioners' failure to adjourn their meetings does not violate the ODL because there is no explicit requirement that governing bodies adjourn.

### BACKGROUND

According to your complaint, at a meeting held on January 18, 2000, you asked the Commissioners why there is no adjournment at the end of their meetings. You indicate that Mr. Ingle, as attorney for the Commissioners, answered your question with the response that the Commissioners are excepted from the requirement of adjourning their meetings under the ODL. Attached to your complaint was a transcript of this verbal communication.<sup>1</sup>

In response to your formal complaint, Mr. Ingle refers to Indiana Code section 5-14-1.5-5(f)(2) as authority for the Commissioners' actions. Mr. Ingle states that this provision excepts the Commissioners from the notice requirements of the ODL<sup>2</sup> for administrative function meetings-meetings that are by definition held to discuss or carry out administrative functions, or confer with staff on matters relating to internal management of the county. The Commissioners do not adjourn, according to Mr. Ingle, because they continue to lawfully conduct the administrative business of the county at all times.

### ANALYSIS

The intent and purpose of the Indiana Open Door Law is that "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." Ind. Code § 5-14-1.5- 1. Indiana Code section 5-14-1.5-3(a) provides, in pertinent part, that:

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.

A meeting is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code §5-14-1.5-2(c). Clearly, the Commissioners are a governing body of a public agency and any gatherings of a majority of the members would constitute a meeting subject to the requirements of the Open Door Law. Ind. Code §§5-14-1.5-2(a) and (b).

You allege that the Commissioners have violated the ODL by failing to adjourn their meetings. In response, Mr. Ingle has stated that the Commissioners are permitted to conduct administrative function meetings and therefore, is not required to adjourn their meetings. In short, there is no specific requirement under the ODL that governing bodies adjourn meetings, therefore, the Commissioners' failure to expressly adjourn a meeting is not a violation. Your complaint and Mr. Ingle's response do, however, indicate some misunderstandings about the ODL as it applies to meetings conducted by the Commissioners. In the following paragraphs, I have provided some guidance that should assist both you and the Commissioners in better understanding the requirements of the ODL.

It is implicit in the notice requirements of the ODL that governing bodies will either conclude business at a meeting or reconvene that same meeting at a later time. Under Indiana Code section 5-14-1.5-5(a),

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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.*

[Emphasis added.] If the Commissioners reconvene a meeting under Indiana Code section 5-14-1.5-5(a), then they need not provide additional notice so long as the date, time and place of the reconvened meeting is announced and there is no change in the agenda.

Under the Commissioners' own enabling act, they are required to hold regular meetings and may hold special meetings. The statute governing regular meetings states that the Commissioners shall meet in a regular meeting at least one (1) time per month and additionally as necessary. Ind. Code §36-2-2-6. Also, if a special meeting is called, notice must be given at least six (6) days in advance of the meeting, unless it is subject to the emergency notice under the ODL. Ind. Code §36-2-2-8. Under Indiana Code section 5-14-1.5-5(a), notice must be provided of both regular and special meetings of the

Commissioners.

The general rule, therefore, is that notice must be provided of meetings of the Commissioners or any other 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 each 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 Indiana Code section 5-14-1.5-5(f)(2) permits them to meet continuously. Indiana Code section 5-14-1.5-5(f)(1), however, applies to 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, they do 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 §§ 36-2-2-6 and 36-2-2-8. The Commissioners, therefore, do not meet in continuous session as contemplated under Indiana Code 5-14-1.5-5(f)(1).

The Commissioners may, however, hold administrative function meetings, and for such meetings, the notice requirements under Indiana Code 5-14-1.5-5 would not apply:

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if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative function or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering of contracts, or any other action creating an obligation or otherwise binding a 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 function meetings, and such meetings must still be open for the public to attend and observe them. Administrative function meetings, as noted above, are limited in scope and cannot be used to bind or obligate the county in any way. It is my opinion that the Commissioners are not required under the ODL to expressly adjourn their meetings, but they must provide notice of any meetings and executive sessions, with the exception of administrative function meetings and reconvened meetings. The Commissioners do not meet in continuous session under Indiana Code section 5-14-1.5-5(f)(1), but as the county executive, they may hold administrative function meetings within the limitations of Indiana Code section 5-14-1.5-5(f)(2). CONCLUSION It is my opinion that the Harrison County Board of Commissioners is not required to expressly adjourn their

meetings, however, the Commissioners must conform to the notice requirements of the Open Door Law except when conducting legitimate administrative function meetings under Indiana Code section 5-14-1.5-5(f)(2).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Gordon Ingle, Attorney  
Harrison County Board of Commissioners

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1 This transcript was prepared from your videotape of the January 18, 2000 meeting.

2 Mr. Ingle's letter does state that IC 5-14-1.5-5(f)(2) exempts the Board from the ODL. In a telephone conversation on March 20, 2000, Mr. Ingle clarified that he meant only that the Board was exempt from the notice requirements of the ODL.