



# STATE OF INDIANA

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March 3, 2010

Mr. Anthony C. Hahn  
Deputy Director  
Indiana State Department of Agriculture  
1 North Capitol, Suite 600  
Indianapolis, IN 46204

*Re: Informal Inquiry 10-FC-7; Meetings of the Indiana State Department of  
Agriculture Advisory Board*

Dear Mr. Hahn:

This is in response to your informal inquiry submitted on behalf of the Indiana State Department of Agriculture ("ISDA") regarding the ISDA's Advisory Board ("Advisory Board"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry regarding the effect of the Indiana Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.*, on the Advisory Board's meetings. My opinion is based on applicable provisions of the ODL.

## BACKGROUND

In your inquiry, you ask whether the Advisory Board is subject to the ODL. The Advisory Board is established pursuant to state statute in I.C. § 15-11-3-5. Members of the Advisory Board serve at the discretion of the director of the ISDA (the "Director"). The Advisory Board does not vote or take any other "final action," it has never adopted formal administrative rules, it exercises no regulatory authority, and it has no budget. The Advisory Board was established to advise the Director in the implementation of the ISDA's programs and duties, but it has no binding authority on either the Director or the ISDA.

## ANALYSIS

The General Assembly enacted the ODL intending 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. I.C. § 5-14-1.5-1. Accordingly, 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. I.C. § 5-14-1.5-3(a).

In order to determine whether or not the Advisory Board is subject to the ODL, the initial question is whether the Advisory Board constitutes a “public agency” under the ODL, the governing body of which would be subject to the meeting requirements of the ODL. The ODL defines a “public agency” as, among other things, “[a]ny advisory commission, committee, or body created by statute, ordinance, or executive order *to advise the governing body of a public agency....*” I.C. §5-14-1.5-2(a)(5) (emphasis added). The plaintiff in a lawsuit under the Open Door Law has the burden of proving that the defendant entity is a “public agency” within the meaning of the statute. *Perry County Dev. Corp. v. Kempf*, 712 N.E.2d 1020 (Ind. Ct. App. 1999).

Here, the Advisory Board was created pursuant to state statute. However, the Advisory Board does not “advise the governing body of a public agency.” I.C. §5-14-1.5-2(a)(5). Rather, the Advisory Board advises the Director, who is not himself a governing body because a governing body is, among other things, “two (2) or more individuals” who are a public agency under the ODL. I.C. §5-14-1.5-2(b). Because the Advisory Board does not advise any governing body, it is my opinion that it is not an “advisory commission” within the meaning of subsection 2(a)(5) of the ODL. Consequently, the Advisory Board is not a “public agency” under the ODL.

The second question is whether or not the Advisory Board constitutes a “governing body” of any public agency. If it is, the Advisory Board would be subject to the ODL, which defines a “governing body” as “any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.” I.C. § 5-14-1.5-2(b)(3). The statute that created the Advisory Board reads, “The director [of ISDA] shall establish a board to advise the department in the implementation of the department’s duties.” I.C. § 15-11-3-5. As such, the Advisory Board was not appointed directly by a governing body or its presiding officer because the Director is neither a governing body nor a presiding officer of a governing body.

The Advisory Board also does not appear to fit within the definition of a governing body that is found in I.C. § 5-14-1.5-2(b)(2), which provides that a governing body is a “board, commission, council, or other body of a public agency which takes official action upon public business” because -- unlike the definition of a public agency in subsection 2(a)(5), which specifically lists an “advisory commission” -- subsection 2(b)(2) does not include advisory commissions. Unlike other entities that are defined as a “board, commission, council, or other body of a public agency,” the Advisory Board is more informally organized and exercises no regulatory or other powers of the State. Based on these considerations, it is my opinion that the Advisory Board is not the type of entity that the General Assembly intended to define as a “governing body” within subsection 2(b)(2). Thus, it is also my opinion that the Advisory Board is not a “governing body” under the ODL.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Advisory Board is neither a “governing body” nor a “public agency” within the meaning of the ODL. Consequently, it is also my opinion that the Advisory Board is not subject to the open meeting or notice requirements of the ODL.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor