



# STATE OF INDIANA

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Mr. Jeff Eakins  
*The Banner*  
P.O. Box 116  
Knightstown, IN 46148

Re: *Informal Inquiry 10-INF-52; Wayne Township Board and Wayne Township Trustee*

Dear Mr. Eakins:

This is in response to your informal inquiry regarding the Wayne Township Board ("Board") and the Wayne Township Trustee ("Trustee"). 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 Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.* and other statutes cited herein.

As an initial matter, I note that many of these issues are related to those presented by you in a formal complaint, in response to which I issued *Opinion of the Public Access Counselor 10-FC-280*. I also note that because these inquiries are addressed informally, I will offer my interpretation of the legal questions presented but will refrain from making judgments regarding disputed facts or allegations of violations. Any alleged violations of the ODL should be addressed through the formal complaint process in accordance with Ind. Code § 5-14-5.

In your inquiry, you allege that the Board and Trustee violated the ODL by failing to make Board meeting minutes open for public inspection. Generally, the ODL does not require governing bodies to create minutes of their meetings. *See generally* I.C. § 5-14-1.5-4. Memoranda from a meeting are to be available within a reasonable period of time after the meeting, and "the minutes, if any, are to be open for public inspection and copying." I.C. § 5-14-1.5-4(c). You claim that Ind. Code § 36-6-6-8 requires the Board to create minutes of its meetings:

The legislative body shall keep a permanent record of its proceedings in a book furnished by the executive. The secretary of the legislative body shall, under the direction of the legislative body, record the minutes of the proceedings of each meeting in full and shall provide copies of the minutes to each member of the legislative body before the next meeting is convened. After the minutes are approved by the legislative body, the

secretary of the legislative body shall place the minutes in the permanent record book. The chairman of the legislative body shall retain the record in his custody.

I.C. § 36-6-6-8. I agree that this language does obligate a township board to create minutes of its meetings. Any failure to do so would violate this provision and fail to comply with section 4 of the ODL.

You also ask “[w]hether the [Trustee] violated the Open Door Law by creating meeting memoranda that contain factually inaccurate information, or which fail to include all information required to be noted[.]” In my opinion, any such mistake or omission would, if anything, be a violation of Ind. Code § 36-6-6-8. The ODL does not address factual inaccuracies or incomplete records; it merely prescribes the disclosability of -- and the process for requesting disclosure of -- records maintained by public agencies. If the Board discovers factual inaccuracies or incomplete information in its minutes, the Board could certainly correct such errors prior to approving the minutes. Any alleged failure to do so, however, is beyond the purview of this office.

You further ask whether the Board and Trustee violated the ODL “by not always keeping meeting memoranda as their meetings progressed.” During meetings of a majority of the governing body of a public agency, subsection 4(b) of the ODL requires the following of the governing body:

As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5.

I.C. § 5-14-1.5-4(b). If a governing body fails to create such memoranda “[a]s the meeting progresses,” the governing body has not complied with this provision. *Id.* However, in my opinion a governing body would substantially comply with the statute by completing the memoranda either by the end of the meeting or soon after the meeting, assuming that all of the above information is contained within the memoranda. If, for example, the Board secretary kept notes during the meeting and later used those notes to create typewritten memoranda, in my opinion that would substantially comply with the ODL.

As to whether the Board violated Ind. Code § 36-6-6-7 by failing to meet and elect a chairman and officer in accordance with the time schedule set out in that statute, in my opinion that issue is beyond the purview of this office. Ind. Code § 5-14-4-10(5) empowers the public access counselor to “respond to informal inquiries . . . concerning the public access laws.” The phrase “public access laws” is defined to include the ODL, the Access to Public Records Act (“APRA”), I.C. § 5-14-3-1 *et seq.*, and “any other state

statute or rule governing access to public meetings or public records.” In my opinion, this language does not authorize the public access counselor to opine on every issue with respect to every provision in any law that in any way regulates access to public records or meetings. Rather, my authority is confined to provisions that address access issues specifically. If my interpretation were otherwise, this office would be required to issue advisory opinions regarding, for example, inheritance taxes because the confidentiality of taxpayers’ information is covered by Ind. Code § 6-4.1-12-12. I do not believe that the General Assembly’s intent was so broad as to require the public access counselor to respond to inquiries regarding violations of provisions of statutes that do not directly relate to accessing public meetings or records.

Finally, you ask whether the Board violated Ind. Code § 36-6-6-9 by not meeting in accordance with the time schedule set out in that statute, which provides:

The legislative body shall meet on or before the third Tuesday after the first Monday in January of each year. At this meeting it shall consider and approve, in whole or in part, the annual report of the executive presented under IC 36-6-4-12.

A township board’s failure to meet in accordance with this schedule would directly relate to the public ability to access the board’s meetings and remain fully informed on its activities. Thus, in my opinion, a board’s failure to follow this schedule would violate this statute.

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Randall Overman  
Ronald Trimmell