



STATE OF INDIANA

MICHAEL R. 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

July 14, 2014

Mr. and Mrs. Clarence and Tina Hall
604 Utica-Sellersburg Rd.
Utica, IN 47130

Re: Formal Complaint 14-FC-127; Alleged Violation of the Open Door Law by the Utica Town Council

Dear Mr. and Mrs. Hall,

This advisory opinion is in response to your formal complaint alleging the Utica Town Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded to your complaint via Mr. C. Gregory Fifer. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 16, 2014.

BACKGROUND

Your complaint dated June 11, 2014, alleges members of the Utica Town Council held discussions after a public meeting had adjourned in violation of Ind. Code § 5-14-1.5 *et. al.*¹

On June 10, 2014, the Council held a regularly-scheduled meeting between 7:00 p.m. and 7:25 p.m. After the public meeting was adjourned, you allege several council members stayed behind and participated in discussions. You have photographic evidence depicting the council members engaged in conversation.

Counsel for the respondent was present during that meeting and has responded to your formal complaint. He has attached an affidavit stating he regularly remains after adjournment of the meetings to make himself available to council members seeking legal advice. He does not contest the discussions took place; however, he contends the subject

¹ You reference a similar situation which took place in January of 2014. As this is outside the timeframe contemplated by Ind. Code § 5-14-5-7 (thirty days after discovery of the violation), it will not be considered or addressed by this Opinion.

matter discussed was not pending before the board and therefore could not be subject to official action.

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 Utica Town Council consists of five board members. If any three of those five members hold a discussion relating to Town business outside of a duly-noticed public meeting, the conversation is a violation of the Open Door Law.

"Meeting" means 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). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14- 1.5-2(d).

A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

The Town appears to be arguing that discussion of future matters not yet pending before the board is appropriate discussion for a majority of the members. I disagree. Ind. Code 5-14-1.5-2(e) does not qualify public business as "pending" or "current". Following the Town's logic, any matters not currently considered by the Council would be a chance or social gathering to discuss matters unrelated to the Town. I interpret the purpose of the Open Door Law and the statutes therein to prohibit discussion of any matter having a relationship to or a nexus to Town business. If the subject matter is germane to any present, future or past public business, it is only to be discussed during a public meeting (or executive session if applicable). See *Opinion of the Public Access Counselor 14-FC-68* for an analogous example.

The social or chance gathering "exception" referenced by the Town applies to an association of governing body members who meet to attend or discuss a matter completely unrelated to town business. Examples would include high school basketball games, church services, funerals, etc. Although I caution against the perception it may create, I believe the Open Door Law allows for fraternization of a majority of members in

any conceivable scenario. Once public business comes up in the course of conversation, however, official action has been taken.

Counsel for the Town has stated he makes himself available after meetings in order that members may approach him for legal advice. While this is not prohibited by individual members seeking counsel, a majority of members gathering to discuss legal strategy or advice becomes subject to the Open Door Law. One-on-one conversations discussing the legalities of an issue are appropriate. That being said, the Town should be mindful of the prohibition on serial meetings under Ind. Code 5-14-1.5-3.1.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that if the discussions depicted in the photographs accompanying the complaint were regarding public business, the Utica Town Council has violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. C. Gregory Fifer, Esq.