



STATE OF INDIANA

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August 27, 2014

Mr. Brent A. Snow
6159 West 100 South
Tipton, IN 46072

Re: Formal Complaint 14-FC-159; Alleged Violation of the Open Door Law by the Tipton County Board of Commissioners

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Board of Commissioners ("Board") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Board has responded to your complaint via Mr. John H. Brooke, Esq. 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 July 28, 2014.

BACKGROUND

Your complaint dated July 22, 2014, alleges members of the Tipton County Board of Commissioners conducted business in violation of Ind. Code § 5-14-1.5 *et. al.*

On July 11, 2014, the Board convened in a special meeting they designated to be pursuant to an emergency. Generally, Indiana County Boards of Commissioners must give 10 day notice of meetings and six day notice of special meetings unless an emergency exists. This differs from the 48 hour notice of most other governing bodies subject to the Open Door Law. Ind. Code § 5-14-1.5-5(d), however, authorizes meetings to take place due to emergent circumstances, waiving all applicable notice requirements.

Notice was actually given of this meeting on July 9, 2014. The notice provided that the "emergency" meeting would be held to "discuss pursuing litigation involving actual or threatened disruption of governmental activity within the Tipton County Commissioners' jurisdiction". You take exception to the Board's definition of emergency and the interpretation of Ind. Code § 5-14-1.5-5(d).

ANALYSIS

Ind. Code § 36-2-2-8(b) states County Commissioners must give six day notice for any special meeting. In emergency circumstances, Ind. Code § 5-14-1.5-5(d) allows the notice requirement to be waived if there is an actual or threatened disruption of governmental activity under the jurisdiction of the public agency.

The Board cites former Public Access Counselor Davis' Opinion found at *Advisory Opinion 06-FC-223* to demonstrate the lack of defined interpretation of the word "emergency". While words are often construed given their plain and ordinary meaning in interpreting statutes, one must be careful not to take those meanings out of context – especially when the context is clear and precise. Consider the following from the preamble to the ODL:

In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter 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. **The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.**

Ind. Code § 5-14-1.5-1 (emphasis added).

As I am charged to construe these statutes liberally, I do not hesitate to do so. The entire purpose and intent of the Open Door Law would be critically eroded if its exceptions were also liberally construed. I often employ a reasonableness or common sense standard to interpreting these laws when there is an absence of authority otherwise.

Pursuant to the statute, for an emergency to exist, it must threaten to compromise the integrity of operations of the government for the present or foreseeable future. A hindrance or inconvenience does not rise to that level. Likewise, pending deadlines or opportunities do not constitute emergency circumstances. Tornados, snowstorms, floods, terrorist attacks – pending or actual catastrophes or crises which are *imminent* are true emergencies. The sky must be falling, so to speak. Indeed, it is a subjective determination and may vary factually on a case-by-case basis. "But you'll know it when you see it" -as Justice Stewart would say.

A decision whether to pursue litigation is not an emergency. Moreover, two days' notice was actually given. On its face, this factual consideration clearly removes the immediacy from the situation.

Curiously enough, Counselor Davis' Opinion, which the Board cites, found violations on the part of that governing body for the failure to prove an emergency existed. I find the same in this situation.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the Tipton County Board of Commissioners violated the Open Door Law by not providing six day notice as required by Ind. Code § 36-2-2-8(b).

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. John H. Brooke, Esq.