



STATE OF INDIANA

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September 26, 2014

Mr. Josh Craven
Ms. Donna K. Ennis
Ms. Tina Barnes

Re: Formal Complaint 14-FC-196; Alleged Violation of the Open Door Law by the City of Charlestown (consolidated)

Dear Concerned Citizens,

This advisory opinion is in response to your formal complaint alleging the City of Charlestown ("City") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The City has responded via Michael A. Gillenwater, City Attorney. 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 September 4, 2014.

BACKGROUND

Your complaint dated September 2, 2014, alleges the City of Charlestown violated the Open Door Law by holding an improper executive session.

On or about August 19, 2014, the City of Charleston City Council held an executive session to hear development plans for a local subdivision. The notice for the session listed eight separate topics under Ind. Code § 5-14-1.5-6.1(d), which would allow the session to take place.

The City acknowledges the executive session took place, recognizes the potential confusion caused by the notice and justifies the actual meeting by citing the executive session justifications actually discussed. Those are "the purchase or real property" and "interviews and negotiations with commercial prospects." No final decisions or votes were taken behind closed doors.

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).

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. All of the subject matters intended to be discussed fall under the permissible discussion topics for a closed door executive session under the ODL.

Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. See Ind. Code § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to Ind. Code § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice.

As I have stated in prior opinions, I take no exception to an executive session being called to discuss multiple subject matters. It is only when a generic notice is used as a catch-all by listing every possible discussion topic do I believe it is a violation of the public’s right to be advised of the goings-on of their public agencies behind closed doors. Although the public is advised after the executive session of the subject matter discussed by way of memoranda, it is also their right to know before the session takes place, what matters will be discussed.

Consistent with my prior opinions, the notice was deficient. In matters of closed-door executive sessions, I scrutinize compliance more closely than issues in other open meetings. Due to the potential prejudice to the public, I expect technical compliance rather than substantial compliance when it comes to executive sessions.

The Open Door Law allows executive sessions when discussing the potential purchase of real estate (see Ind. Code § 5-14-1.5-6.1(b)(2)(D)) and when interviewing and negotiating with potential commercial prospects (see Ind. Code § 5-14-1.5-6.1(b)(4)). While the subject matter is appropriate, it is my sincere hope and expectation certification that these were the only items discussed are contained in the memoranda required to be taken after the sessions closed.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Charlestown violated the Open Door Law by not providing appropriate notice of an executive session, but did not violate the ODL by holding the executive session under the pretense of the two subject matters discussed.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Michael A. Gillenwater, Esq.