



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

November 13, 2014

Mr. Mark O. Pflum
1699 W. Co. Rd. 200N
Connersville, IN 47331

Re: Formal Complaint 14-FC-242; Alleged Violation of the Open Door Law by the Fayette County Board of Commissioners

Dear Mr. Pflum,

This advisory opinion is in response to your formal complaint alleging the Fayette County Board of Commissioners ("Board"), violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded to your complaint via County Attorney, Mr. Christopher J. Appel, 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 October 15, 2014.

BACKGROUND

Your complaint dated October 15, 2014, alleges the Fayette County Board of Commissioners violated the Open Door Law (Ind. Code § 5-14-1.5 *et. al.*) by meeting illegally.

On or about October 7, 2014, you allegedly witnessed two of the three County Commissioners engaged in a conversation with the County Auditor prior to a County Council Meeting. You also allege another unnoticed meeting took place in August 2014. As this meeting is outside the timeframe for filing a complaint under Ind. Code § 5-14-5-7, it will not be addressed by this Opinion.

The Board responded by saying the meeting between the Commissioners was merely a chance gathering and the conversation did not involve discussing public business.

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).

According to Ind. Code § 5-14-1.5-2(c), "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. It does not include any social or chance gathering not intended to avoid this chapter.

Small agencies or governing bodies like Indiana County Commissioners are faced with difficult logistical challenges when trying to maintain compliance with the Open Door Law. When any two of the Commissioners are in the same place at the same time, they must be careful not to discuss public business. Mere interaction, however, is not necessarily public business and they may have conversation about anything not related to their official capacity.

There is no evidence the October 2014 discussion involved public business. If it had, and the conversation regarded more than just administrative matters, then the gathering would have been a violation of the Open Door Law. I am confident the Fayette County Board of Commissioners is now on notice as to its obligation to comply with the Open Door Law and be mindful of the perception of such chance meetings.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Fayette County Board of Commissioners has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Christopher J. Appel, Esq.