



STATE OF INDIANA

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November 17, 2014

Ms. Amy S. Kelso
6771 Lick Creek Rd.
Morgantown, IN, 46160

Re: Formal Complaint 14-FC-245; Alleged Violation of the Open Door Law by the Brown County Board of Commissioners

Dear Ms. Kelso,

This advisory opinion is in response to your formal complaint alleging the Brown 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 Commissioner, Mr. John Kennard. 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 16, 2014.

BACKGROUND

Your complaint dated October 16, 2014, alleges the Brown County Board of Commissioners violated the Open Door Law (Ind. Code § 5-14-1.5 *et. al.*) by taking official action without notice.

On September 29, 2016, two of the three Brown County Commissioners allegedly met with the Brown County Redevelopment Commission to discuss a road project. Commissioner Kennard acknowledges his attendance at the meeting along with another Commissioner; however, he does not consider this a violation of the Open Door Law because official action was not taken.

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).

"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).

It may be true Commissioner Kennard was not attending the meeting in official capacity (the other Commissioner was attending as Commission president); however, their presence at the Redevelopment meeting does not appear to be by chance. When dealing with public business, public officials do not have the luxury under the Open Door Law to change hats when interacting with various boards and governing bodies. They are Commissioners first and foremost. The structure of having only three members of a commission admittedly makes it logistically difficult to avoid violations as two of the three would constitute a majority.

Chance meetings or conversations are not always violations of the ODL even if a majority of a governing body is involved in the gathering. For example, if two of three Commissioners are approached before or after a meeting by a member of the public to address a grievance, this would not, by default, be a violation of the ODL. Likewise, if the Commissioners attended the same meeting without coordinating beforehand and happened to be in the same place at the same time, this would be a chance gathering.

I do not have enough information to determine if the Commissioners knew each other were going to attend the Redevelopment Commission at the same time. If they did know, and if the subject matter of the meeting affected the Brown County Board of Commissioners, they were intentionally taking official action on public business. If it was happenstance they were both there at the same time, it would merely be a coincidence and no intentional violation would have resulted.

Instead of making a conclusive determination, I am issuing this Opinion to place the Commissioners on notice of the potential dangers of congregating at the same place intentionally without notice and the perception it gives to their constituents.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. John Kennard