



STATE OF INDIANA

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December 17, 2014

Mr. Thomas C. Behme
3406 N. Co. Rd. 325 W.
Petersburg, IN 47567

*Re: Formal Complaint 14-FC-278; Alleged Violation(s) of the Open Door Law by
Pike County Public Library Board*

Dear Mr. Behme,

This advisory opinion is in response to your formal complaint alleging the Pike County Library Board ("Board") violated the Indiana Open Door Law ("ODL"), Ind. Code § 5-14-1.5 *et. seq.* Mr. Frank Ropp, President of the Board, responded on behalf of the Board. 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 November 17, 2014.

BACKGROUND

Your complaint dated November 17, 2014, alleges the Pike County Library Board violated the Open Door Law by discussing subject matter during an executive session which was not properly noticed. Moreover, the open meeting held immediately after the executive session was improperly noticed. Additionally, a meeting the next week was held without proper notice.

On Saturday, October 18, 2014, the Pike County Library Board held an executive session to interview prospective employees pursuant to Ind. Code § 5-14-1.5-6.1(b)(5). It appears as if proper notice was given of this executive session. It was set to start at 9:00 a.m., on Saturday, October 18, 2014. A regular Board meeting was scheduled for 10:00 a.m., that same day. The notice, however, listed *Tuesday*, October 18, 2014. This is likely a clerical error.

During the executive session, however, it appears likely that subject matter was discussed which was not related to interviewing prospective employees. It seems as if job performance of an individual employee was discussed, but was not on the notice.

Additionally, the open meeting subsequently after the executive session ended began significantly earlier than 10:00 a.m., deviating from the posted notice.

Finally, a meeting was held October 21, 2014 and the notice of this meeting was not posted a full 48 “business” hours in advance.

The Board President responded to your formal complaint and does not necessarily deny any of the above allegations are untrue.

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. 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.

If performance issues were discussed in the executive session and not posted on a notice, the Board is in violation of the Open Door Law. The posting of the executive session regarding interviewing individual employees is not enough to satisfy notice requirements.

Notice of a public meeting must be given 48 hours in advance of every meeting, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting. See Ind. Code § 5-14-1.5-5. Implicit in appropriate notice is the consideration governing bodies not deviate from the notice. If a board so substantially deviates from notice the public is prejudiced by the adjusted start time, the purpose of the notice is eroded. From the evidence presented, it appears as if the Board conducted public business during the October 18, 2014 public meeting well before the posted start time of 10:00 a.m., and therefore violated the Open Door Law.

Finally, nights and weekends do not count toward the required 48-hour advance notice. Notice of the October 21, 2014 meeting (a Tuesday) was posted on Saturday. This does not give the requisite “business hour” notice to constitute 48 hours.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Pike County Library Board has violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Frank Ropp