



STATE OF INDIANA

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February 2, 2015

Mr. Brian M. Young
959 W. 700 N.
Winamac, IN 46996

Re: Formal Complaint 14-FC-325; Alleged Violation of the Open Door Law by the Pulaski County Council

Dear Mr. Young,

This advisory opinion is in response to your formal complaint alleging the Pulaski County Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded via Mr. Kevin C. Tankersley, 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 December 16, 2014.

BACKGROUND

Your complaint dated December 16, 2014 alleges the Pulaski County Council violated the Open Door Law by allowing a member to participate and vote electronically.

On December 8, 2014, you attended a joint session of the Pulaski County Board of Commissioners and the County Council. Six of the seven Council members were present. At the commencement of the meeting, the seventh member telephoned in via conference call and broadcast over speakerphone. You allege he did not participate in discussion, however, he did vote on motions.

The Council responded by arguing the seventh member did telephone in. It cites to Ind. Code 5-14-1.5-3.6 as justification for participating via telephone.

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 5-14-1.5-3.5(b), which applies to local government agencies such as the Pulaski County Council states:

A member of the governing body of a public agency who is not physically present at a meeting of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication:

(1) may not participate in final action taken at the meeting unless the member's participation is expressly authorized by statute; and

(2) may not be considered to be present at the meeting unless considering the member to be present at the meeting is expressly authorized by statute.

The statute cited by the Council, Ind. Code § 5-14-1.5-3.6 clearly applies only to state agencies and charter schools. See subsection (a). It is inapplicable to the Pulaski County Council which is a political subdivision and not an instrumentality of the state. Even if it were, a roll call vote must be taken. Participation is also contingent on the governing body passing an affirmative policy expressing electronic participation is permitted.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Pulaski County Council violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Kevin C. Tankersley, Esq.