



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)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 7, 2016

Brent Snow
6159 West 100 South
Tipton, Indiana 46072

Re: Formal Complaint 16-FC-117; Alleged Violation of the Open Door Law by the Tipton County Board of Commissioners (Priority)

Dear Mr. Snow:

This advisory opinion is in response to your formal complaint alleging the Tipton County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Commissioners have responded to your complaint via counsel, Ms. Karen Arland, Esq. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10¹, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 26, 2016.

BACKGROUND

Your complaint dated May 25, 2016 alleges the Tipton County Board of Commissioners violated the Open Door Law by conducting a public meeting without proper notice.

On May 20, 2016, Mr. Mark Regnier, the county attorney, posted notice of a special Commissioners meeting to be held on May 25, 2016. The notice read "the meeting will include, but may not be limited to, discussion and possible action with regard to potential industrial to commercial economic development projects." You contend Indiana Code § 36-2-2-8(b) requires a "specific statement of the purpose of the meeting and the executive may not conduct any unrelated business at the meeting." You also contend that any actions beyond the discussion and possible action with regard to potential industrial to commercial economic development projects constitute unlawful action in violation of the Open Door Law.

On June 2, 2016 the Commissioners responded. The Commissioners note the notice specifically referenced resolution no. BOC2016-A, which was adopted at the public meeting. However, the

¹ Also see Indiana Code § 5-14-4-3 ("public access laws" refers to: (3) any other state statute or rule governing access to public meetings or public records.)

Commissioners also adopted resolution no. BOC2016-B, which was not specifically cited. Resolution no BOC2016-B was rescinded at a May 31 meeting because the resolution was not specifically notice as business at the May 25 meeting. .

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 Indiana 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 Indiana Code § 5-14-1.5-3(a)*.

“Public business” means “any function upon which the public agency is empowered or authorized to take official action.” Indiana 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. Indiana Code § 5-14-1.5-2(d).

For county executives (Boards of Commissioners), Indiana Code § 36-2-2-6 states a meeting shall be held at least once each month and at other times as needed to conduct all necessary business. Dates of regular meetings shall be established by resolution at or before the first meeting in February of each year. Subject matter of regular meetings does not have to be posted. For special meetings of a county executive, however, Indiana Code § 36-2-2-8 allows one to be called if it is in the public interest, but the statute requires a “specific statement of the purpose of the meeting.”

The notice in question stated the meeting was related to “potential industrial or commercial economic development projects.” A second notice was provided to the newspaper as a courtesy. A published notice in a newspaper is not required under the ODL. The newspaper notice stated the meeting agenda would “include but may not be limited to discussion and possible action with regard to potential industrial or commercial economic development projects.”

Either way, both notices are vague on their face. The legislature used the term “specific statement of the purpose” which indicates a measure of exactitude missing from the both notices. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). “Specific” means “restricted to a particular individual, situation, relation, or effect.” www.merriam-webster.com.

“Potential industrial or commercial economic development projects” could mean virtually anything. Coupled with the phrase “may not be limited to” further creates ambiguity as to what specifically will be discussed. While this phrasing is fine for a regular meeting, the General Assembly has limited a special meeting situation to a particular reason for necessitating the irregularly-scheduled gathering.

I strongly advise the Commissioners to be mindful of their language when drafting notices. Such ambiguity can lead to the appearance of impropriety, even when none exists. It remains to be seen

whether this technical violation prevented or impaired public knowledge or understanding of the public's business (see *Thornberry v. City of Hobart*, 887 N.E.2d 110, (Ct. App. 2008), however, the potential certainly exists.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Tipton County Commissioners have violated Indiana Code § 36-2-2-8.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Karen Arland, Esq.
Mr. Mark Regnier, Esq.