



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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March 14, 2016

Ms. Alex Poole  
724 East Carr Street  
Milan, Indiana 47031

*Re: Formal Complaint 16-FC-36; Alleged Violation of the Open Door Law by the Ripley County Commissioners*

Dear Ms. Poole:

This advisory opinion is in response to your formal complaint alleging the Ripley County Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. The Commissioners have responded via counsel, Mr. John Ertel, Esq., County Attorney. 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 February 15, 2016.

## **BACKGROUND**

Your complaint dated February 10, 2016 alleges the Ripley County Commissioners violated the Open Door Law by having meetings and executive sessions without proper notice.

It has come to your attention that on several occasions in 2014 and 2015 the Commissioners rescheduled meetings without notice and improperly held executive sessions without notice. You submit as proof minutes you obtained from the county's website, [www.Ripleycounty.com](http://www.Ripleycounty.com). You also allege that on February 8, 2016, commissioners conducted a meeting but you were denied access to this meeting. You note two (2) members of the Ripley County Commissioners entered the annex building but you were denied access.

On March 2, 2016 the Commissioners responded. The Commissioners contend your complaints regarding alleged violations in 2015 are untimely, because a complaint was not brought before the Public Access Counselor within 30 days of the alleged improper meeting. Commissioners also assert proper notice was posted for these meetings.

With regard to the February 2016 meeting, the Commissioners admit that gatherings occurred, but not any meetings within the definition of the Open Door Law. Commissioners note Mr. Busching was upstairs in a break room doing research and Mr. Stutler was in a finance committee meeting with

members of the County Council and other county officials. Commissioners believe this is the meeting you are complaining about, but contend you did not attempt to enter or seek explanation as to the whereabouts of the two Commissioners in the building.

### 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).

Commissioners first state that the majority of your complaint is untimely. Pursuant to Ind. Code § 5-14-5-7(a), a person who chooses to file a formal complaint with this office must do so not later than thirty (30) days after he or she became aware or should have become aware of the improper meeting. However, you submit as proof of these improper meetings from documentation obtained from the county website. Therefore, this information was readily available to you and you should have been aware of the alleged improper meetings from the time the minutes were published online or made available for public inspection.

Dismissing a complaint, especially one which is alleging what may be improper conduct, is not an action I take lightly. When deciding whether to dismiss an untimely complaint, I must look at the potential unfairness to ask the Commissioners to defend their actions with regard to meetings dating back to 2014 and 2015 and balance this against the prejudice to the public. I cannot determine if any final action or binding decisions were made at these unnoticed meetings. For example, you cite to an EMS committee meeting with the Commissioners in attendance from May 2015. While it would be a meeting to take official action (receiving information) on public business and notice indeed should have been posted, the Commissioners were not involved as the governing body of that meeting. See *Opinion of the Public Access Counselor 15-FC-94* for more analysis of the ‘meeting with a meeting’ situation.

Counsel for the Commissioners also provides an argument for the unnoticed reconvened meetings you reference. Please be advised reconvened meetings can take place when announcement of the date, time, and location is made at the original meeting and the subject matter remains the same. See Ind. Code § 5-14-1.5-5. Based upon the documentation provided by the Commissioners, it appears as if at least some of the motions for reconvened meetings were properly stated in the Commissioner’s meeting minutes.

Your sole remaining complaint is the meeting at the annex on February 8, 2016. It is not disputed two (2) commissioners entered the annex building on that date. However, you speculate the two commissioners were entering the building in order to conduct an improper meeting. The Commissioners assert they (the Commissioners) did not meet on that date; there was no gathering of the Commissioners, and the two commissioners were each walking to the annex to perform separate actions. There is no prohibition on Commissioners being in the same building or even the same room if official action on public business is not taking place. Access to a government building when a meeting is not taking place is not a violation of the Open Door Law.

## CONCLUSION

Based on the foregoing, I do not interpret your complaint or the response by the Commissioners to suggest any egregious violations of the Open Door Law. While it appears as if the Commissioners may have committed a technical violation of the Open Door Law by attending a meeting of another governing body in 2015, the complaint of the allegation is untimely. The response by the Commissioners indicates an adequate understanding of the Open Door Law and how to properly comply with the reconvening requirements.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor

Cc: Mr. John Ertel, Esq.