



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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May 23, 2016

David Jones  
319 15<sup>th</sup> Street  
Columbus, Indiana 47201

Kenneth Fudge  
3445 Jonathan Moore Pike  
Columbus, Indiana 47201

*Re: Formal Complaint 16-FC-82 and 95; Alleged Violation of the Open Door Law by the City of Columbus Redevelopment Commission (Consolidated)*

Dear Mr. Jones and Mr. Fudge:

This advisory opinion is in response to your formal complaint(s) alleging the City of Columbus Redevelopment Commission ("Commission") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Commission has responded to your complaint(s) via counsel, Mr. Stanley Gamso, Esq. His response(s) are enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 8 and May 2, 2016.

## **BACKGROUND**

Your complaint(s) dated April 1, 2016 allege the City of Columbus Redevelopment Commission violated the Open Door Law by conducting a meeting closed to the public.

You allege the City of Columbus Development Commission has created subcommittees to review proposals for infrastructure projects. On March 25, 2016 Mr. Jones contacted Ms. Heather Pope, director of redevelopment, asking for the location of the first subcommittee meeting regarding the Riverfront Revitalization project and was told the subcommittee is not subject to the Open Door Law. Mr. Fudge received a similar communication at an unspecified date.

On April 21, 2016 the Commission responded via counsel. The Commission states the Commission is subject to the Open Door Law but not the subcommittee. It notes the subcommittee does not take official action and is merely advisory in nature. Also, it notes only one (1) member of the Commission is a member of the subcommittee and asserts the Commission does not direct the subcommittee. Therefore,

the Commission asserts the subcommittees do not meet the standard of Indiana Code § 5-14-1.5-2(b) and therefore is not subject to the Open Door Law. Counsel's response on May 10, 2016 reiterated this stance.

## 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).

The ODL defines a public agency in Indiana Code § 5-14-1.5-2(a) as:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, School Corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

For the purposes of this discussion, the Redevelopment Committee, exercising the executive function of the City of Columbus, is the public agency.

Furthermore, the ODL defines a governing body as two (2) or more individuals who are:

- (1) A public agency that:
  - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
  - (B) takes official action on public business.
- (2) The board, commission, council, or other body of a public agency which takes official action upon public business.

(3) Any committee **appointed directly by the governing body or its presiding officer** to which authority to take official action upon public business has been delegated.

*Emphasis added. See Indiana Code § 5-14-1.5-2 (b).*

A review of the March 21, 2016 minutes of the Redevelopment Commission references the subcommittee in question. It appears as if the committee is comprised of only one (1) member of the Commission and was formed by the director of redevelopment, who is not a member of the Redevelopment Commission. Based upon the information provided, the committee was not directly appointed by the Commission or its presiding officer to take official action upon public business.

The circumstances regarding the creation of the committee is not known to this office and has not been made available. Without knowing how the subcommittee was originally created and how it was intended to advise the Commission, I am unable to make a conclusive determination.

Please do not hesitate to contact me with any further questions.

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. Stanley A. Gamsco, Esq.