



STATE OF INDIANA

ERIC J. HOLCOMB, 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
Toll Free: 1-800-228-6013
Email: pac@in.gov/opac
Website: www.IN.gov/pac

OPINION OF THE PUBLIC ACCESS COUNSELOR

TED BOOKER,

Complainant

v.

**ST. JOSEPH COUNTY BOARD OF
COMMISSIONERS**

Respondent

)
)
)
)
)
)
)
)
)
)
)

17-FC-42

ADVISORY OPINION

April 7, 2017

This advisory opinion is in response to a formal complaint alleging the St. Joseph County Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Board responded March 8, 2017 via Jamie Woods, Esq., legal counsel for the Board. The response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 8, 2017.

BACKGROUND

The formal complaint alleges the St. Joseph County Board of Commissioners violated the Open Door Law by failing to post notice of meetings and gatherings of a newly appointed committee of the governing board.

The Complainant states a new committee was launched by the Board in order to address the complaints and issues with the leaf pickup program. The initiative was instigated by Commissioner Dr. Deborah Fleming, who states she acted alone to form the committee. No other Commissioner was on the leaf pickup committee, however, at least two (2) County Council members participate.



STATE OF INDIANA

ERIC J. HOLCOMB, 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
Toll Free: 1-800-228-6013
Email: pac@in.gov/opac@in.gov
Website: www.IN.gov/pac

Commissioner Fleming consulted with the two (2) other sitting board members who indicated their acquiescence to move forward with the Committee's formation. The leaf task force held its first meeting on February 2, 2017, with no notice for the meeting. Fleming has stated she did not think it was wise for the Tribune to be in attendance at the task force meetings to avoid possible influence on discussions.

The Board has responded and believes the leaf pickup working group was not directly appointed by any governing body, thus making it not fall under the purview of the Open Door Law definition of a "governing body". During the formation of the working group, Fleming did speak with two others as to its creation, but she was not seeking approval to create the group. The working group is strictly advisory and has no decision-making authority. The St. Joseph County Board of Commissioners have made an effort to ensure the leaf working group was held in a manner as to not violate the ODL.

ANALYSIS

It is the intent of the Open Door Law ("ODL") that 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.*

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 is a newly created governing body pursuant to Indiana Code § 5-14-1.5-2(b)(3).

Based on the information provided, there is no indication the board directly appointed or voted on the creation of the committee. Given that Commissioner Fleming approached the other two (2) Commissioners about the committee is not proof positive she was asking for approval. She may have merely been updating them as to her intentions. The Board states the Committee would have been formed regardless of whether the other Commissioners objected.

Both Commissioner Fleming and the Board's attorney have asked for my guidance on this matter after I spoke with the Complainant in January. Initially, I was skeptical of the formation of the committee, however, after consulting with them I am satisfied Commissioner Fleming acted unilaterally. The Complainant contends the consultation with them was taking official action on public business. In my opinion, this conversation was administrative in nature and did not involve matters of substantive public policy or expenditures. Indiana Code § 5-14-1.5-5(f)(2) contemplates such discussions for county executives (commissioners) and does not require notice. I do not agree with the Board that official



STATE OF INDIANA

ERIC J. HOLCOMB, 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
Toll Free: 1-800-228-6013
Email: pac@in.gov/opac
Website: www.IN.gov/pac

action was not taken, but rather the exchange was administrative in nature and exempt from notice requirements.

Working groups, task forces, or advisory committees – by whatever name – can be useful tools for governing. They often include other public officials and/or volunteer members of the public and can lead to a greater perspective and understanding of the issue at hand. As long as an established governing body does not solely rely on these groups for the decision-making process, information gathering, frank discussion and advisory recommendations can be effectuated and formed behind closed doors.

I do caution the Board on using these groups sparingly and with great care. The press and members of the public not only have the absolute right to be informed of the actions of their government, but they also have the right to scrutinize (and criticize) ideas both good and bad of their representative officials. The law sees no problem with informal committees, however, they should not be utilized to avoid evaluation and critique from the public.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the St. Joseph County Board of Commissioners has not violated the Open Door Law.

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Distribution:

Jamie C. Woods, Esq.