



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

July 31, 2009

Tracy Thornbrugh  
The Hamilton News  
3980 Church Street  
Hamilton, Indiana 46742

*Re: Formal Complaint 09-FC-167; Alleged Violation of the Open Door Law  
by the Town of Hamilton*

Dear Ms. Thornbrugh:

This advisory opinion is in response to your formal complaint alleging the Town of Hamilton ("Town") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by failing to provide you with notice of an executive session at least 48 hours in advance of the executive session. A copy of the Town's response to the complaint is enclosed for your reference. It is my opinion the Town technically violated but substantially complied with the ODL.

## BACKGROUND

You allege the Town violated the ODL by providing notice on Tuesday, July 21, 2009 at 1:12pm of an executive session to be held on Wednesday, July 23 [sic] at approximately 5:30pm. After speaking with the Town Clerk Treasurer, I understand the meeting was held on Wednesday, July 22. You filed the present complaint on July 23.

The Town responded to the complaint by electronic mail message dated July 23 from Clerk Treasurer Hester Stouder. Ms. Stouder indicates, "based off the dated mentioned I complied with the 48 hours notice." I telephoned Ms. Stouder to obtain some clarification regarding her response. She indicated the notice that an executive session would take place, including the date, time and location of the meeting, was sent on Monday. The information regarding the reason for the executive session was sent on Tuesday, July 21, the day before the meeting.

## ANALYSIS

It is the intent of the ODL that 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. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, 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. I.C. § 5-14-1.5-3(a).

An “executive session” is a meeting from which members of the public are excluded, but a governing body may invite anyone necessary to carry out the board’s business. *See* I.C. § 5-14-1.5-2(f).

Notice of an executive session must be sent, to news media who by January 1 of the year have requested notice, at least 48 hours in advance of the executive session. I.C. § 5-14-1.5-5(b)(2). The notice for an executive session must include the date, time and place of the meeting. I.C. § 5-14-1.5-5(a). In addition, the notice “must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b).” I.C. § 5-14-1.5-6.1(d).

Here, the notice of the date, time and location was sent to you on Monday, at least 48 hours in advance of the meeting. But in my opinion the notice was not sufficient notice under the ODL until Tuesday, when Ms. Stouder sent to you information regarding the instance for which the meeting was being held. As such, it is my opinion the Town of Hamilton violated the ODL by failing to provide you a complete notice of the executive session at least 48 hours in advance of the meeting.

While the Town has violated the ODL, the violation is one that I would consider a technical violation. The Town substantially complied with the ODL by providing you notice at least 48 hours in advance of the meeting that an executive session would be held. While the notice did not contain the specific instance for which the meeting would be held, the lack of this information did not affect your right to observe and record the meeting, because executive sessions are by definition closed members of the public. *See* I.C. § 5-14-1.5-2(f). This principle of substantial compliance with ODL is supported by *Riggin v. Bd. of Trustees of Ball State Univ.*, 489 N.E.2d 616 (Ind. Ct. App. 1986).

#### CONCLUSION

For the foregoing reasons, it is my opinion the Town technically violated but substantially complied with the ODL.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Clerk Treasurer Hester Stouder