



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

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Krista Rivera
200 W. Washington
Indianapolis, Indiana 46204

Informal Inquiry 11-INF-51; Economic Development Commissions

Krista,

My initial question would be how members of the economic development commission are appointed and is the Commission audited by the State Board of Accounts?

I.C. 5-14-1.5-2(b)(3) provides that a governing body means two or more individuals who are any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business is delegated. "Official Action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. From what you have provided, it's more likely than not that the Commission qualifies as a governing body of a public agency. The ODL does not take into consideration whether the members of the governing body are compensated.

However, the inquiry does not end there, especially in regards to economic development commissions. I.C. 5-14-1.5-2.1 provides that for the purposes of the Open Door Law, a "public agency" does not mean a provider of goods, services, or other benefits that meets the following requirements:

- (1) The provider receives public funds through an agreement with the state, a county, or a municipality that meets the following requirements:
 - (A) The agreement provides for the payment of fees to the entity in exchange for services, good, or other benefits.
 - (B) The amount of fees received by the entity under the agreement is not based upon or does not have consideration of the tax revenues or receipts of the state, county, or municipality.
 - (C) The amount of the fees are negotiated by the entity and the state, county, or municipality.

(D) The state, county, or municipality is billed for fees by the entity for the services, goods, or other benefits actually provided by the entity.

(2) The provider is not required by statute, rule, or regulation to be audited by the state board of accounts.

If the Economic Development Commission is not required to be audited by the State Board of Accounts and has entered into a Fee for Services contract with the County, then they are except from the requirements of the ODL. We receive a number of inquiries regarding this area of the Open Door Law, and typically the key consideration is whether the Commission is audited by the SBOA. If they are not, more likely than not the Commission has entered into a "Fee for Services" agreement with the County and is therefore exempt from the Law.

Please let us know if we can be other any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor