



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

September 14, 2012

Mr. Clee R. Oliver
5768 W 00 NS
Kokomo, Indiana 46901

Re: Informal Inquiry 12-INF-36; Administrative Meetings

Dear Mr. Oliver:

This is in response to your informal inquiry regarding administrative meetings being held by the Howard County Commissioners ("Commissioners") pursuant to Indiana Code § 5-14-1.5-5(f)(2). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on the applicable provisions of the Open Door Law ("ODL") I.C. § 5-14-1.5 *et seq.* Lawrence Murrell, Attorney, responded on behalf of the Commissioners. His response is enclosed for your reference.

BACKGROUND

You provide that you have actively participated in county government for over four years. You attend meetings held by various local governing bodies, whether it be the county council, Commissioners, city council, Greentown and Russiaville Town Councils, and others meetings affecting Howard County ("County"). You allege that the Commissioners have abused the administrative meetings provisions found in the ODL. For 2011, the Commissioners held twenty-four administrative meetings, twenty-two regular meetings, nine executive sessions, and three special meetings. Thus far in 2012, the Commissioners have held fourteen administrative meetings, twelve regular meetings, three executive sessions, and two special meetings.

On March 29, 2012 you attended an administrative meeting held by the Commissioners along with a reporter from the *Kokomo Tribune*. Prior to the meeting, you provide that the reporter was unaware of the meetings existence. Your understanding of the ODL is that notice is not required to be provided for an administrative meeting to the news media, except that notice must still be posted at the entrance of the conference room where the meeting is held.

Upon entering the March 29, 2012 administrative meeting, the Commissioners' attorney explained that administrative meetings are open to the public. He advised that

he had discovered a loop hole in the Indiana Code which allowed the Commissioners to meet without having to discuss issues in regular meetings. The attorney provided that it was his belief that the County should go to a county executive so that information could be discussed without having to do so in a public setting at all times. He further stated that the ODL burdens the Commissioners and the County when matters need to be taken care of and the entities must first post notice and discuss the issues in a public meeting. You have provided minutes for all administrative and special meetings held by the Commissioners in 2011 and 2012. You inquire whether the Commissioners have complied with the ODL in regards to the frequency of administrative meetings being held and whether the subject matter that was addressed at said meeting was appropriate.

In response to your informal opinion, Mr. Murrell advised that Howard County is the eighteenth largest county in the State, currently maintains 591 full and part-time employees, operates thirty-five departments, and owns eight buildings. Management of the county is vested in the Commissioners, as the county executive. Uniquely, the Commissioners also serve as the County's legislative body. In exercising its purely executive functions, the Commissioners must interact with staff and perform administrative duties on a daily basis, much like a CEO of a mid-sized corporation or the mayor of a city. However, unlike a CEO or mayor, the Commissioners must conduct both its legislative and executive functions within the constraints of the ODL. Even more challenging is the current structure which requires the three Commissioners to share both their legislative and executive functions and take "official action" on both only by a majority vote in a public meeting.

Mr. Murrell further provided that applying the ODL to the unique governing structure prevents the Commissioners from talking face to face outside of a public meeting unless they are in a non-contrived social setting, conducting an onsite inspection, traveling to government functions, or conducting an executive session. In a meager attempt to give the Commissioners at least some flexibility while exercising their executive function in conducting day-to-day county business, the General Assembly has allowed the Commissioners to met without prior notice to address administrative issues.

Guidance on what constitutes "administrative" is limited. In a 2004 opinion regarding the Cloverdale Town Council, the public access counselor advised that deliberating on a town's revised budget goes beyond the administrative functions contemplated under I.C. § 5-14-1.5-5(f). *See Opinion of the Public Access Counselor 04-FC-154*. A 2003 opinion advised that discussing the absence of a town's clerk-treasurer however would be considered an "administrative function". *See Opinion of the Public Access Counselor 03-FC-5*. Mr. Murrell advised that the distinction provided in the Cloverdale opinion is recognition that the process of deliberation is essentially a legislative function, while dealing with the absence of an official is more of an executive function for a town board or commissioners. Thus, it may reasonably be concluded that the General Assembly has recognized the need to give the Commissioners some small concession in performing the executive function, without providing public notice prior to dealing with purely administrative matters.

To properly manage its complex enterprise, the Commissioners have used administrative sessions on occasion to carry out their administrative functions and confer with staff members. These meetings are typically held in the Commissioners' Conference room, an agenda is always posted, and the meeting is open to the public. Minutes are prepared for all such meeting and submitted at the Commissioners regular meetings for approval. Further, final or official action on any matter discussed or information received in an administrative session is always reserved for the Board's regular meetings.

The Commissioners have held administrative meetings to obtain financial data in order to prepare a proposed budget and to meet with staff to discuss possible revisions to the Employee Handbook. The only other alternative in such situations would be for the Commissioners to meet separately with each respective staff members which would waste valuable employee time and prevent the Commissioners from interacting during discussion. The Commissioners clearly understand the requirements of holding administrative meetings and the limitations provided by the ODL. As with any factual analysis, reasonable minds might differ and some disagree over the County's decision on any such given meeting, but the Commissioners absolutely reject Mr. Oliver's assertion that the body "overuses, misuses, and abuses" the administrative meeting provision contained in the ODL.

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. *See* I.C. § 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* I.C. § 5-14-1.5-3(a).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action.

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

The requirements for posting notice do not apply when the executive of a county or the legislative body of a town meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. *See* I.C. § 5-14-1.5-5(f)(2). Administrative functions do not include the awarding of contracts, the entering into contracts or any other action creating an obligation or otherwise binding a county or town. *Id.* Even though notice is not required, the administrative meetings must be held in the public, since the notice provision of the ODL is the only provision that does not apply to an “administrative function” meeting. *See* I.C. § 5-14-1.5-5(f)(2).

The ODL does not limit the frequency in which a governing body may hold an administrative meeting, or any meeting for that matter, whether it be an open public meeting, special meeting, or executive session. Accordingly, it is my opinion that the Commissioners did not violate the ODL by holding twenty-four administrative meetings in 2011 and fourteen administrative meeting thus far in 2012. Although I am not aware of any other county executive or town legislative body that is holding administrative meetings as frequently as the Commissioners, as long as the agency is abiding by all other requirements of the ODL as it relates to administrative meetings, its actions are in compliance with the law. It is worth noting that the Commissioners have prepared minutes from all administrative meetings that have occurred and it has not been alleged that any member of the public was ever denied admission to an administrative meeting, both of which are common mistakes made by county executives or town legislative bodies holding such meetings.

Your next inquire whether the subject matter of the administrative meetings held by the Commissioners was appropriate. You have provided meeting minutes from all administrative meetings held by the Commissioners for 2011-2012. The Commissioners received information and recommendations regarding the following subject matter during its 2011-12 administrative meetings:

- County’s health insurance program (five occasions)
- Administrative and legal aspects of the pending Phase II Kitty Run Reconstruction project and related matters (four occasions)
- The legal status and potential short-term uses of the old jail facility (three occasions).
- Administrative and procedural aspects of responding to Kokomo Common Council Resolution No. 2579 (two occasions).
- Revisions to the Howard County Employee Handbook (on two occasions).
- The operation of the Novia on-site medical clinic and related matters (two occasions).
- Current personal property assessment matters.
- Space needs and availability of staff members Scott Reed and Greg Sheline.
- Certain resident fund balances

- Proposed formation of a joint drainage board with Cass County to address problems with E.Moss/Conwell regulated drain.
- Financial data necessary to complete the 2012 County Budget
- Potential criminal justice related technology and equipment upgrades.
- Vote Center data and demographics relating to county council and commissioners districts.
- Status of regional planning and ongoing development of a comprehensive economic development strategy.
- County's pending grant application for the Darrough Chapel sewer project.
- 2012 Budget and Capital Improvement Plan.
- Howard Regional Hospital, proposed changes to animal control ordinance, 2012-13 Capital Improvement Plan, tax sale properties, proposed joint resolution with Center Township, and the flood mitigation project.
- County draining issues.
- Administrative and scheduling issues pertaining to proposed Commissioners' certificate tax sale.
- Possible loans to finance pending drain reconstructions.
- Receipt of information and discussion of the Darrough Chapel Sewer Project with the Stormwater Board.
- Proposed operation of an on-site medical clinic and related matters.
- Deferred compensation plan for County employees
- Proposed abatement of a health hazard on the citizen's property
- Print concept solutions for Howard County Offices
- Recommendations from Department of Health Officials

As provided *supra*, the ODL provides that an administrative meeting may be held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. See I.C. § 5-14-1.5-5(f)(2). Administrative functions do not include the awarding of contracts, the entering into contracts or any other action creating an obligation or otherwise binding a county or town. *Id.* I am not aware of any case law from the Indiana's Supreme Court or Court of Appeals that addresses administrative meetings under the ODL.

Previous counselors addressing administrative meetings have noted that said meetings are limited in scope and cannot be used to bind or obligate the county in any way. See *Opinions of the Public Access Counselor 00-FC-09 and 01-FC-82*. Counselor Neal opined:

I would urge the Commissioners to be mindful of the subject matter of the administrative function meetings. It appears the meetings at the highway garage have become routine, and I would urge the Commissioners to consider carefully, before every meeting, whether the meeting is being held *solely* to receive information or recommendations in order to carry

out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit, as allowed by I.C. § 5-14-1.5-5(f)(2). If at any point the subject matter reaches beyond administrative function, the meeting should be a properly noticed public meeting. *See Opinion of the Public Access Counselor 09-FC-30.*

In previous opinions, the following have been considered to be an appropriate topic for discussion at an administrative meeting:

- Preliminary matters regarding the status of an individual's employment with the County, provided that all final actions or any decisions regarding the employment status or obligating the governing body are made at an open public meeting. *See Opinions of the Public Access Counselor 07-FC-250, 10-INF-56, 11-FC-14, 11-INF-69.*
- Making copies of documents with no substance discussion regarding public business. *See Opinion of the Public Access Counselor 09-FC-69.*
- Determining when a meeting will occur and setting an agenda. *See Opinion of the Public Access Counselor 07-FC-62.*
- Signing documents. *See Opinion of the Public Access Counselor 09-FC-62.*
- Creation of an equipment list and to direct the return of equipment from a Town employee. *See Opinion of the Public Access Counselor 00-FC-04.*
- Receiving status update on ongoing debris removal work. *See Opinion of the Public Access Counselor 12-FC-77.*
- Discussion on the placement of photographs, decorating, and physical configuration of Town Hall. *See Opinion of the Public Access Counselor 12-FC-74.*
- Organize and administer plans to hold the Town Festival. *See Informal Opinion of the Public Access Counselor 11-INF-13.*
- How to deal with the absence of the clerk-treasurer at meetings (e.g. who would be responsible for drafting the meeting memoranda). *See Opinion of the Public Access Counselor 03-FC-05.*
- Alteration of county employee work schedule and amending the county employee handbook. *See Opinion of the Public Access Counselor 08-FC-137.*

Alternatively, the following have been deemed to be an inappropriate issue to be addressed at an administrative meeting:

- Terminating an employee. *See Opinion of the Public Access Counselor 07-FC-250.*
- Considering or evaluating the sale or lease of real property. *See Opinion of the Public Access Counselor 04-FC-138 & 139.*
- Making formal motions with respect to whether the body would allow a document to be inspected or copied and setting an appropriate fee. *See Opinion of the Public Access Counselor 06-FC-200.*

- Approving financial claims. *See Opinions of the Public Access Counselor 07-FC-7, 8, & 9.*
- Discussing whether the governing body was prepared to vote. *See Opinion of the Public Access Counselor 08-FC-186.*
- Hiring a town attorney. *See Opinion of the Public Access Counselor 01-FC-79.*
- Holding deliberations on a town's budget. *See Opinion of the Public Access Counselor 04-FC-154.*
- Discussions regarding ambulance service between the Commissioners and a separate governing body. *See Opinion of the Public Access Counselor 98-FC-5.*

The Commissioners noted in their response to your informal inquiry that at no time did the Commissioners take final action (i.e. vote) on any matter at an administrative meeting. However, I would note that any governing body takes “official action” on public business, as the term is defined under the ODL, anytime it holds an administrative meeting.¹ The summation of Commissioners response is that it did not take any action that created an obligation or bound the County in any fashion.

I would agree with Counselor Neal and Mr. Murrell analysis that determining whether a topic or action is appropriate for an administrative meeting generally requires a highly subjective review of the issues. The ODL does not contain a bright-line list of issues or subjects that are appropriate or prohibited from being discussed at an administrative meeting. Further, my review of the previously held administrative meetings is limited solely to the minutes that have been provided. In reviewing the previous opinions of the public access counselor that opined that an administrative meeting was proper, the subject matter primarily dealt with the function of carrying out the everyday or routine tasks necessary to ensure the proper management of the county or town. *See Opinion of the Public Access Counselor 07-FC-250.* It is my opinion that anytime there is the slightest hesitation on whether an administrative meeting would be appropriate, a meeting should not occur. This is large part due to the declaration made by the General Assembly in I.C. § 5-14-1.5-1, which provided that it is the intent of the ODL that official action of public agencies be conducted and taken openly and the provisions of the law are to me liberally construed with the view of carrying out this policy. *See I.C. § 5-14-1.5-1.*

As such, it is my opinion that the following administrative meetings held by the Commissioners would have been proper pursuant to I.C. § 5-14-1.5-5(f)(2), where the Commissioners received information and recommendations as to:

- Revisions to the Employee Handbook
- Space needs and availability of certain staff members
- Potential criminal justice related technology and equipment upgrades, including renovations
- County drainage issues

¹ “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See I.C. § 5-14-1.5-2(d).*

- Administrative and scheduling issues pertaining to proposed Commissioners' certificate tax sale
- Print concept solutions
- Department of Health recommendations
- Resident fund balances
- Pending grant applications
- Flood mitigation project
- Operation of on-site medical clinic

I have singled out the following administrative meetings to emphasize that although it is my opinion that the meeting was proper, the Commissions should be extremely mindful that they should only be receiving information or recommendations at said meetings, and taking no further action:

- County Health Insurance Program
- County Budget
- Capital Improvement Plan
- Employee Deferred Compensation Plans

For the following meetings, it is my opinion that the following subject matter was improper for an administrative meeting and the Commissioners should have provided notice pursuant to I.C. § 5-14-1.5-5(a)-(b):

- Administrative and legal aspects of pending reconstruction of the pending Phase II Kitty Run Reconstruction project
- Legal status and potential short-term uses of former jail facility
- Administrative and procedural aspects of responding to Council Resolution No. 2579
- Personal property assessment matters
- Proposed formation of joint drainage board
- Voter Center data and demographics
- Status of regional planning and ongoing development of a comprehensive economic development strategy
- Proposed changes to animal control ordinance and joint resolutions
- Possible loans to finance pending drain reconstruction
- Receipt of information and discussion regarding the Darrough Chapel Sewer Project with the Stormwater Board.
- Proposed abatement of a health hazard of citizen's property

I would provide that I would agree with Mr. Murrell that the action of the Commissioners in holding administrative meetings does not demonstrate that the agency had the specific intent to violate the ODL. This is evidenced by the Commissioners taking and providing minutes for all administrative meetings that were held, an agenda was always posted outside the meeting room, the administrative meeting minutes were discussed and passed at the Commissioners open meetings, and that it has not been alleged in any fashion that a

citizen was denied admission to any administrative meeting. While I am mindful of the alleged constraints cited by the Commissioners in having to comply the ODL, the law ensures that acts of the government are conducted openly to ensure that all citizens are fully informed, a hallmark of any democracy.

Please let me know if I can be of 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 "H".

Joseph B. Hoage
Public Access Counselor

cc: Larry Murrell