



STATE OF INDIANA

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September 25, 2012

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

Re: Informal Inquiry 12-INF-36(b); Administrative Meetings

Dear Mr. Oliver:

This is in response to your subsequent informal inquiry, submitted after our office issued 12-INF-36, regarding administrative meetings being held by the Howard County Commissioners ("Commissioners"). 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

As a follow up to your informal inquiry, you have provided information on topics discussed by the Commissioners in administrative meetings held in July and August of 2012. You inquire whether the topics discussed were appropriate for discussion at an administrative meeting, as defined under the ODL. Specially, the Commissioners held the following administrative meetings in July and August 2012:

July 25, 2012 at 11 a.m. Commissioners Tyler Moore and Paul Wyman received information and recommendations from County Attorney Larry Murrell and Sheriff Steve Rogers regarding operation and status of interlocal cooperative agreements with the City of Kokomo. Councilmen Dick Miller, Stan Ortman, and Dwight Singer were also in attendance.

July 25, 2012 at 3:00 p.m. Commissioners Moore and Wyman received information and recommendations from County Attorney Murrell regarding operation and status of interlocal cooperative agreement with the City of

Kokomo. Also present were Councilmen Miller, Ortman, and Singer.

August 1, 2012 at 8:00 a.m. The Commissioners received information and recommendations from County Attorney Murrell and Sheriff Rogers regarding operation and status of interlocal cooperative agreements with the City of Kokomo. Also present were Councilmen Miller, Ortman, and Singer.

August 3, 2012 at 7:30 a.m. Commissioners Moore and Wyman received information and recommendations from staff regarding the operation and status of interlocal cooperative agreements with the City of Kokomo. Also present were Councilmen Miller, Ortman, and Singer; County Assessor Jamie Shepherd; Mayor Goodnight; and Director of Operation Randy Morris.

August 10, 2012 at 3:30 p.m. Commissioners Moore and Wyman received information and recommendations from County Assessor Shepherd regarding County financial and budget information. County Attorney Murrell was also present.

August 13, 2012 at 8:00 a.m. The Commissioners received information and recommendations from County Attorney Murrell and County Assessor Shepherd regarding status of interlocal cooperative agreements and financial and budget information. Also present were Councilmen Miller, Ortman, and Singer.

In response to your informal opinion, Mr. Murrell advised the previous informal opinion issued by the Public Access Counselor's Office regarding administrative meetings provided helpful guidance that was not previously available. *See Informal Opinion of the Public Access Counselor 12-INF-36.* Mr. Murrell provided that all administrative meetings that have been cited were to carry out administrative functions and to receive information and recommendations regarding those functions. Further, the Commissioners utilized an agenda that was posted; the meetings were open to the public; memoranda was kept, which was thereafter approved at the following open public meeting; the meetings were held with the sole intent to discharge the executive duties of the agency and with no intent to violate the ODL. The ODL does not prohibit other public officials from attending an administrative meeting, as the meetings are open to the public.

With respect to the subject matter of said meetings, although the Commissioners were addressing administrative aspects of its EMA and Weights and Measures operations, they were at the same time attempting to deal with the City of Kokomo's unexpected decision to abruptly terminate the underlying interlocal agreements governing the two agencies. Without having the benefit of the prior informal opinion (e.g. 12-INF-36), the Commissioners now understand that these meetings most likely should not have included the broader discussion of the interlocal agreements. Mr. Murrell noted in closing that in addition to establishing legal guidelines for interpreting I.C. § 5-14-1.5-5(f)(2), the previous informal opinion established a very practical test, which the Commissioners intend to follow, in that, ". . . anytime there is the slightest hesitation on whether an administrative meeting would be appropriate, a meeting should not occur." *See Informal Opinion of the Public Access Counselor 12-INF-36.*

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. Further, the ODL does not prohibit other public officials from attending an administrative meeting of a county executive or town’s legislative body, as the meetings are open to the public. As to the appropriateness of the subject matter, 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 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 memoranda that have been provided. In reviewing the previous opinions of the 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 administrative meetings held by the Commissioners to receive information from the County Assessor and/or County Attorney regarding the County's financial and budget information would be appropriate topic of discussion. As stated prior, the Commissioners should be extremely mindful that they

should only be receiving information or recommendations at said meetings, and taking no further action. *See Informal Opinion of the Public Access Counselor 12-INF-36.*

As to the issues related to the interlocal cooperative agreements, it is my opinion that it would not be an appropriate topic of discussion for an administrative meeting. As noted by Mr. Murrell, the Commissioners were not in receipt of the previous informal opinion prior to the administrative meetings that were held in July and August 2012. Further, I again 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 approved by the Commissioners at an open, public meeting, and that it has not been alleged in any fashion that a citizen was denied admission to any administrative meeting.

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 stylized "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Larry Murrell