



STATE OF INDIANA

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September 27, 2012

Aaron Smith
2625 Countryside Drive
Lebanon, Indiana 46052

Re: Informal Inquiry 12-INF-44; I.C. § 5-14-1.5-5(b)(3)

Dear Mr. Smith:

This is in response to your informal inquiry regarding I.C. § 5-14-1.5-5(b)(3). Pursuant to Ind. Code § 5-14-3-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.*

BACKGROUND

On August 14, 2012, you submitted a request to the Lebanon Public Library Board of Trustees ("Board"), pursuant to I.C. § 5-14-1.5-5(b)(3), to provide you with notice, via electronic mail, of any meetings, executive sessions, rescheduled, or reconvened meetings held by the Board. You allege that the Board held a meeting on September 25, 2012, to which it failed to provide you with notice via electronic mail.

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).

In 2012, the General Assembly amended the notice requirements for certain governing bodies under the ODL. Specifically, I.C. § 5-14-1.5-5(b)(3) provides:

(3) This subdivision applies only to the governing body of a public agency of a political subdivision described in section 2(a)(2), 2(a)(4), or 2(a)(5) of this chapter that adopts a policy to provide notice under this subdivision. Notice under this subsection is in addition to providing notice under subdivisions (1) and (2). If the governing body adopts a policy under this subdivision, the governing body of a public agency shall give public notice by delivering notice to any person (other than news media) who delivers to the governing body of the public agency an annual written request for the notices not later than December 31 for the next succeeding calendar year. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Transmitting the notice by electronic mail, if the public agency has the capacity to send electronic mail.

(B) Publishing the notice on the public agency's Internet web site at least forty-eight (48) hours in advance of the meeting, if the public agency has an Internet web site.

As provided in the subsection, the Board may adopt a policy that would allow for meeting notices to be provided to individuals who have requested as such. The notices shall be delivered either via electronic mail or by the Board publishing the meeting notice on the agency's internet website. It should also be noted that the notice requirements contemplated under (b)(3), is in *addition* to the notice requirements found under I.C. § 5-14-1.5-5(b)(1)-(2) (emphasis added).

It is not evident from your inquiry whether the Board has adopted a policy pursuant to I.C. § 5-14-1.5-5(b)(3). If the Board has not adopted a policy pursuant to (b)(3), it would not violate the ODL by failing to provide notice in the manner defined in the subdivision. The decision to adopt a policy under (b)(3) is left to the Board. Alternatively, if the Board has adopted a policy, if it provided notice to the September 25, 2012 meeting via its internet website, at least forty-eight hours in advance of the meeting,

it would not have violated the ODL by failing to provide notice to you via electronic mail.

If I can be of additional assistance, please do not hesitate to contact me.

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

cc: Kay Martin