



# 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) 234-0906  
Fax: (317) 233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 12, 2012

Mr. Elliot Tompkin  
*The Madison Courier*  
310 Courier Square  
Madison, Indiana 47250

*Re: Informal Inquiry 12-INF-47; I.C. § 5-14-1.5-2(a)*

Dear Mr. Tompkin:

This is in response to your informal inquiry regarding I.C. § 5-14-1.5-2(a) and its application to meetings conducted by the Mayor of the City of Madison with the presidents of the City Council, County Council, and Board of Commissioners. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Joe Jenner, City Attorney, responded on behalf of the City.

## BACKGROUND

In your informal inquiry you provide that Mayor Damon Welch ("Mayor") called together on several occasions the presidents of the City Council, County Council, and Board of Commissioners to discuss a new approach to economic development. The Mayor does not have a vote on the City Council. For the purposes of this informal opinion, I will refer to this selection of elected officials as the "Group."

The Mayor's Blue Ribbon Panel on Economic Development ("Panel") had recommended that these four elected officials form a "super-council" to be in charge of economic development and to spend economic development funds. It is unknown if the group of elected officials have formed such a body, as an expected joint statement has not been issued. On July 17, 2012, the Mayor stated:

"I have said from the beginning, economic development in our community is both a City and County responsibility. In recent communications with representatives from both City and County government bodies and the City and County attorneys, it is thought absolutely necessary that all interlocal agreements and ordinances be considered before major changes be put into place. In order to move forward on the Panel's recommendations, I have reached out to the Presidents of the County

Commissioners, City Council, and County Council so that we begin discussions on how to create the best possible economic climate (and report back to their colleagues). It would be my goal to release a joint statement in early August as to how we will move forward with changes and how they would be implemented.”

The Group’s meetings were not advertised or posted, and were not announced so the public and the media could attend. You inquire if the Group is considered a public agency pursuant to I.C. § 5-14-1.5-2(a).<sup>1</sup>

In response to your inquiry, Mr. Jenner advised that the Group, which also included a member of the Hanover Town Council, was invited to gather by the Mayor to review an 80+ page document created by the Panel. Mr. Jenner maintains that the key inquiry is whether the Group is a “governing body”, as opposed to a public agency. The Group was not a committee appointed by a presiding officer; rather the Mayor has stated that he invited the various individuals to meet. Further, the Group had no authority delegated to them. Each of the individuals had no power or authority to make any decisions or take any action. Thus, these individuals meeting as a group had no authority.

By way of example, Mr. Jenner provides that if the Mayor wanted to invite five (5) people to dinner to discuss issues that involve the City, it could not be said that the Mayor would be required to provide notice under the statute. Some claim that the issues involving the Group are different because it issued a joint statement and that all members are also elected officials. Mr. Jenner would argue that the joint statement took no official action outside of outlining general goals that all communities have and says nothing about the Group being appointed to take action. The statement further provides nothing about the individuals taking the recommendations back to their respective bodies. The mere fact that the Group consisted of elected officials does not in and of itself mean that it is a public agency. Mr. Jenner opines that this was merely a group of people who gathered to discuss a document regarding economic development that issued a joint statement. As such, the Group would not qualify as a public agency or a governing body under 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).

I.C. § 5-14-1.5-2 provides that a “public agency” is:

---

<sup>1</sup> The issue of whether the Group would be considered a “governing body” of the City was addressed in Opinions of the Public Access Counselor 12-FC-248 and 12-FC-253.

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
  - (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) audit by the state board of accounts that is required by statute, rule, or regulation.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medicals staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by I.C. 4-33, including any department, division, or office of the commission.
- (7) The Indiana Horse Racing Commission established by I.C. 4-31, including any department, division, or office of the commission.

As to (1), it has not been alleged nor has it be shown that the Group is or would be exercising the executive, administrative, or legislative power of the state, nor has it been delegated such powers; as such subsection (1) would not be applicable to the Group. In regards to (3)(A), the Group's budget is not subject to review by the Department of Local Government Finance; nor does it appear that the Group has a budget. Further, the Group is not subject to audit by the State Board of Accounts, therefore (3)(B) would not be applicable. In regards to (4), I do not have anything before me to indicate that the Group has issued bonds for the purpose of constructing public facilities, nor would it have the authority to take such action. As to subsection (5), the Group was not created by statute, ordinance, or executive order. On its face, the Group would not qualify as a "public agency" under subsection (6) or (7). Thus, the key inquiry is whether the Group is exercising a delegated local governmental power which would qualify it as a "public agency" pursuant to subsection (2).

It its current state, I do not believe the Group would qualify was a "public agency" pursuant to subsection (2). The Group was not created by statute, rule, regulation, or ordinance, nor has it been shown that any other governing body or public agency has delegated authority to the Group to exercise any local governmental power. Mr. Jenner is correct in nothing that just because the Group was comprised of elected officials does not automatically qualify it as a public agency. "Moreover, the fact that PCDC's fifteen person board of directors includes twelve public agencies does not compel the conclusion that the PCDC is itself a public agency. *Perry County Dev. Corp. v. Kempf*, 712 N.E.2d 1020, 1024-25 (Ind. Ct. App. 1999); *see also State Bd. of Accounts*

*v. Indiana Univ. Found.*, 647 N.E.2d 342, 345 (Ind. Ct. App. 1995). Lastly, it has not been shown that Group receives any funding from any source, either public or private. Accordingly, in its current state, it is my opinion that the Group is not a public agency pursuant to any provision in I.C. § 5-14-1.5-2(a).

I would note that you provided in your inquiry that the recommendation from the Panel concluded that the Mayor and heads of the City Council, County Council, and Board of Commissioners) *should* form a “super-council” to be in charge of economic development and to be responsible for the expenditure of all economic development funds. If such a “super-council” was in fact formed, and the proposed entity was delegated the authority for all economic development in the area, it is likely that such an entity would be considered a public agency under the ODL, minus any application of I.C. § 5-14-1.5-2.1. However, minus such action, again it is my opinion that the Group would not qualify as a public agency pursuant to any provision in I.C. § 5-14-1.5-2(a).

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'.

Joseph B. Hoage  
Public Access Counselor

cc: Joe Jenner