



STATE OF INDIANA

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February 23, 2016

Mr. Joseph C. Svetanoff, Esq.
Harris Law Firm P.C.
11410 Broadway
Crown Point, Indiana 46307

Re: Informal Inquiry 16-INF-02; Clerk Treasurers and Executive Sessions

Dear Mr. Svetanoff:

This is in response to your informal inquiry regarding whether Clerk-Treasurers may be excluded from executive session. I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-2(f).

BACKGROUND

You seek a determination as to whether a town council can exclude a Clerk-Treasurer from an executive session. You specifically note that under Ind. Code § 36-5-2-8(b), the Clerk-Treasurer "is an ex-officio member [of the legislative body] for the purpose of casting the deciding vote to break a tie."

You raise the possibility that if a Clerk-Treasurer is excluded from an executive session, the Clerk-Treasurer would not have the knowledge base necessary to cast an informed vote at a town council meeting if the Clerk-Treasurer was excluded from the executive session.

ANALYSIS

According to the ODL, Ind. Code § 5-14-1.5-1, Indiana public policy provides that, "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."

Ind. Code § 5-14-1.5-6.1 lists an exemption to this general policy and allows public agencies to conduct executive sessions that are closed to the public. However, for the purposes of this analysis a Clerk-Treasurer is not a member of the public. The Clerk-Treasurer is an elected official with duties to the town which cannot be delegated to other individuals. Specifically, the Clerk-Treasurer shall "[s]erve as clerk of the legislative body by attending its meetings and recording its proceedings." See Ind. Code § 36-5-6-6(a)(10).

Clerk-Treasurers not only cast a tie-breaking vote, but also have the duty to keep minutes and memoranda of the executive session. Clerk-Treasurers are also in the position as an objective party to ensure the members of a town council do not discuss any matters unrelated to the purpose of the executive session and ensure the town council does not take any final action in the executive session. There is a clear conflict of interest in delegating these duties to a member of the town council.

Because of this potential conflict of interest and the strong public policy and statutory justifications for including the Clerk-Treasurer in executive sessions, Clerk-Treasurers should not be barred from executive sessions.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor