



STATE OF INDIANA

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September 27, 2019

The Honorable John Ditslear
Mayor of Noblesville
16 S 10th St
Noblesville, IN 46060

Re: Informal Opinion; 19-INF-7; Open Door Law

Dear Mayor Ditslear:

This informal opinion is in response to your request for an informal opinion on two scenarios arising under the Open Door Law. In accordance with Indiana Code section 5-14-4-10(5), I issue the following informal opinion to your inquiry.

BACKGROUND

You raised two issues in your informal inquiry to this office:

1. A council committee that meets the definition of "governing body" convenes in an executive session for purposes of interviews and negotiations pursuant to IC 5-14-1.5-6.1(b)(4). At the conclusion of the interview and negotiation, the prospect leaves the meeting. It is our understanding that the council committee may remain in executive session to further discuss the negotiation and interview, debrief, and strategize about options and the next steps provided there is no final action on the terms of a request or offer of public financial assistance.
2. City staff and members of the city council gather to discuss an industrial or commercial prospect. This gathering does not include recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources. It is our understanding that this gathering is not considered a meeting and would not be subject to the Open Door Law.

I will address each scenario in turn.

DISCUSSION

1. The Open Door Law (“ODL”)

It is the intent of the Open Door Law (“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* Ind. Code § 5-14-1.5- 1.

So, unless an exception applies under the law, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14- 1.5-3(a).

The City of Noblesville is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. Ind. Code § 5-14-1.5-2. The Noblesville Common Council is a governing body of the city for purposes of the ODL. *See* Ind. Code § 5-14- 1.5-2(b). As a result, unless an exception applies, all meetings of the council must be open at all times to allow members of the public to observe and record.

2. Scenario A

This issue primarily concerns the scope of Indiana Code section 5-14-1.5-6.1(b)(4), which authorizes the governing bodies of several public agencies to meet in executive session for the purpose of “[i]nterviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects.”

Essentially, the question presented by Noblesville is whether this exception authorizes a governing body—in this case a council committee—to remain in executive session after the prospect leaves the meeting to further discuss the interview and negotiation, debrief, and strategize about how to proceed without taking final action.

Generally, a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources is not considered to be a “meeting” as defined by the Indiana Open Door Law. *See* Ind. Code § 5-14-1.5-2(c)(5). The executive session justification listed above only pertains to interviews and negotiations with the prospect. Therefore as a technical matter, an executive session would need to be formally adjourned after a prospect makes a proposal or pitches a project. After which the non-meeting to discuss the prospect may commence.

The executive session under Indiana Code section 5-14-1.5-6.1(b)(4) ostensibly exists to give the public notice that a municipality is considering an economic development project. The legislature has given the municipality the latitude to discuss the prospect outside of a public meeting as a majority, however, any action on the matter must be done at a public meeting.

3. Scenario B

The question is whether a gathering of city staff and members of the city council may gather to discuss an industrial or commercial prospect without including recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources constitutes a meeting under the Open Door Law.

Except for executive sessions, under 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. Ind. Code § 5-14-1.5-3.

For purposes of the ODL, “meeting” means “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c). Notably, the statutory definition of meeting excludes, among other things, “a gathering to discuss an industrial or commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.” Ind. Code § 5-14-1.5-2(c)(5).

Again, pursuant to the statute governing both scenarios, discussion of a commercial prospect, even as a majority of a governing body, is not considered to be a meeting subject to the Open Door Law.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor