



# STATE OF INDIANA

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October 4, 2022

Bradley M. Dick  
Bose McKinney & Evans, LLC  
111 Monument Circle, Ste. 2700  
Indianapolis, IN 46204

**RE: 22-INF-4: Majority Attendance of a Board at a Non-Board Meeting**

Dear Mr. Dick,

This informal opinion examines whether the Hendricks County Board of Commissioners violated the Open Door Law when two of the three members attended an informational meeting called by the public.

The facts do not appear to be in dispute by the parties. On July 28, 2022, a group of concerned citizens held an informational meeting to discuss a rezoning application for a planned unit development (PUD), which included an Islamic community center. Notification of the meeting was announced on social media. It does not appear any governing body called the meeting. It is unclear whether the meeting was called by like-minded individuals opposing the project, or whether supportive community members were also invited.

Nevertheless, a Hendricks County Commissioner was in attendance from the outset. At some point during the meeting, another Commissioner arrived. For a short period of time, they were both in attendance simultaneously and the latter Commissioner provided some remarks regarding the PUD.

The question is whether the presence of two Commissioners in this context constituted a public meeting necessitating compliance with the Open Door Law.

## 1. Open Door Law

The Open Door Law ("ODL") requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* Ind. Code § 5-14-1.5-1.

As a result, 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).

Hendricks County is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. *See* Ind. Code § 5-14-1.5-2. The Hendricks County Board of Commissioners is a governing body of the county for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Commissioners must be open at all times to allow members of the public to observe and record.

## **2. Defining “meeting”**

Under the ODL, “meeting” means a gathering of a majority of the governing body of a public agency for the purpose of taking official action<sup>1</sup> upon public business.<sup>2</sup> Ind. Code § 5-14-1.5-2(c). In other words, unless an exception applies, any time at least two of the Hendricks County Commissioners gather to take official action on public business it will constitute a meeting for purposes of the Open Door Law; and thus, must be open to the public.

The issue presented here involves a possible exception to the ODL’s open meeting requirement. While the law defines meeting in unambiguous terms, it also carves out several exceptions based on context. One of those exceptions involves “any social or chance gathering not intended to avoid this chapter.”<sup>3</sup> When evaluating these kinds of non-meetings, intent is crucial in determining whether the gathering was truly by chance, or whether it was premeditated. Prior public access counselor opinions have noted that coordinated attendance at events – including meetings of other governing bodies – would constitute a public meeting that requires notice. If attendance was individual and autonomous of other board members, however, it likely would fall under the “chance” category. Stated differently, a gathering can include a majority of a governing body of a public agency taking official action upon public business and not be considered a meeting if the majority does not attend purposefully.

Here, a commissioner attended a nonpublic meeting from the outset. The question remains whether the subsequent presence of another Commissioner was by happenstance or whether they knew each other would join the

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<sup>1</sup> “Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d).

<sup>2</sup> “Public business” means any function upon which the public agency is empowered or authorized to take official action. Ind. Code § 5-14-1.5-2(e).

<sup>3</sup> Ind. Code § 5-14-1.5-2(c)(1)

gathering contemporaneously. Because this office cannot take sworn testimony, it is often difficult to make a definitive conclusion as to intent.

Given the brevity of the simultaneous presence of the two commissioners, any harm or prejudice visited upon the public is likely minimal. Still, perception should certainly be part of any public official's regular concern. Irrespective of the Commissioners' motivations, this event was high-profile in nature, enough so that concerned citizens organized an information session to discuss the issue. It might very well be that the two Commissioners did not manufacture "chance" in an attempt to subvert the Open Door Law, but their presence, at the very least, raised the question. The Commissioners should be mindful of such situations so as not to—even unintentionally—erode the public's trust.

### **3. Conclusion**

Without more, it does not appear the Hendricks County Board of Commissioners violated the Open Door Law. The mere presence of two commissioners is not enough to conclude a violation took place. In the future, however, it is the recommendation of this office that care is taken in similar situations to avoid the perception of impropriety.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mark J. Crandley; E. Timothy DeLaney