



STATE OF INDIANA

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November 27, 2023

Leslie Hanson

VIA EMAIL: jewishmother4@gmail.com

Re: Informal opinion 23-INF-14; Remote participation

Dear Ms. Hanson:

This informal opinion is in response to the inquiry you submitted September 29, 2023. Specifically, you requested an informal opinion regarding a county tourism commission.

BACKGROUND

The Putnam County Tourism Commission (Commission) was created and governed by local ordinance, however, its enabling statute is found at Indiana Code section 6-9-18-5. It receives the Uniform County Innkeeper's Tax revenue from the county.

Additionally, the Putnam County Convention and Visitors Bureau (CVB) is a non-profit entity with which the Commission contracts for marketing purposes. All eleven Commission members serve on the CVB.

Your question whether meeting of the CVB would be the same as Commission members for Open Door Law (ODL) purposes given its membership. Your inquiry implies that the Commission may consider those meetings subject to the ODL, however, you seek confirmation.

ANALYSIS

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).



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2. Definition of governing body

While any person has the right to observe and record meetings of a public governing body, this right does not generally extend into the private sector. Therefore, our analysis begins with the definition of a governing body.

Under the ODL, governing body means two (2) or more individuals who are any of the following:

Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

Ind. Code § 5-14-3-2(q)(1). The Putnam County Tourism Commission (Commission) qualifies under this analysis. Established by statute, it exercises the statutory provisions of Indiana Code section 6-9-18-6.

Conversely, the Putnam County Convention and Visitors Bureau (CVB), all else being equal, is a private entity organized as a domestic nonprofit corporation. While it is unclear from the inquiry what constitutes the totality of the CVB's membership, it is clear that all eleven *Commission* members participate on the CVB's board.

Although the types of activities engaged in by the CVB are not inherently governmental in nature, in context, it would be nearly impossible to separate the Commission from the CVB when all eleven members constitute, at least partially, membership of the CVB board.

Therefore, at minimum, every CVB board meeting would be a Commission meeting even if every Commission meeting is not a CVB board meeting. The Commission is inextricably intertwined with CVB business. Therefore, it would be exceedingly difficult, if not impossible, for Commission members to participate in those meetings without conducting some measure of public business. A public official simply cannot take off their "public business" hat when participating in the affairs of something so near in proximity to their official capacity as a governmental representative.



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In sum, the CVB board meetings are transformed into public meetings when all (or a majority of) Commission members participate. With that comes notice, openness, and minutes requirements as if the meeting was purely a public governing body meeting.

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

Sincerely,

A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt
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