

January 3, 2008

Corinne Finnerty  
McConnell Finnerty Waggoner PC  
38 North 5<sup>th</sup> Street  
PO Box 90  
North Vernon, Indiana 47265

Dear Ms. Finnerty:

This is in response to your informal inquiry dated December 4, 2007. I apologize for the delay in the response. Upon my appointment by Governor Daniels effective July 1 of this year, I found a backlog of informal inquiries. I am currently endeavoring to address those inquiries and issue an opinion in each matter pursuant to Indiana Code §5-14-4-10(5).

#### BACKGROUND

In your inquiry, you ask whether the Advisory Board to the Certified Livestock Producer Program (“Board”) established by the Indiana Department of Agriculture (“Department”) is subject to the Indiana Open Door Law (“ODL”)(Ind. Code 5-14-1.5). You indicate members of the Board were appointed by the Director of the Department, and the Board was formed to “advise on the development of the Certified Livestock Producer Program.”

DeAnna Brunner, Chief Counsel for the Department, responded to your complaint by letter dated December 11, 2007. She contends the Certified Livestock Producer Program (“CLPP”) Board meetings are not subject to the ODL because the CLPP is not a public agency for the purposes of the ODL. She relies upon the Public Access Counselor’s *Handbook on Indiana’s Public Access Laws (“Handbook”)*, which indicates that I.C. §5-14-1.5-2 defines “public agency” as “any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency...” *Handbook* at 6 (2003 Ed.). She further asserts the CLPP was not created by statute, ordinance or executive order and simply exists to help with the general duty of the Department. Because CLPP is not a public agency, it is not subject to 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. I.C. §5-14-1.5-1. 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. I.C. §5-14-1.5-3(a).

A “public agency” means the following:

(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. . .

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

I.C. §5-14-1.5-2(a).

“Governing body” means two or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business . . .

I.C. §5-14-1.5-2(b).

The question here is whether the CLPP is a public agency for the purposes of the ODL. As I understand it, the CLPP is a program created by the Department to carry out its duties to administer state programs and laws regarding agriculture pursuant to I.C. §15-9-2-3. The CLPP was not created by statute, nor was it created by ordinance or executive order to advise a governing body of a public agency. Further, it is my understanding the CLPP is a program and not a board or commission exercising a portion of the executive or administrative power of the state. As such it is my opinion the CLPP is not a public agency for the purposes of the ODL.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: DeAnna Brunner, Chief Counsel, Indiana Department of Agriculture