

November 16, 2004 Inquiry Regarding Historic Hotel Preservation Commission's Committee Meetings

November 16, 2004

Representative Jerry L. Denbo
Indiana House of Representatives
200 West Washington Street
Indianapolis, Indiana 46204

Re: Informal Inquiry Regarding Historic Hotel Preservation Commission

Dear Rep. Denbo:

You have asked me to give you an opinion regarding whether a four-member committee created by the ordinances of the Town Councils of West Baden Springs and French Lick is subject to the Open Door Law. I am responding to your request under IC 5-14-4-10(5). In my opinion, the four-member committee (or to use the term in the ordinances, "advisory board") is a governing body under the Open Door Law, and therefore, its meetings are subject to the requirements of the Open Door Law.

BACKGROUND

Public Law 92-2003 provides for the establishment of a historic hotel district within towns that are adjacent to one another and where both towns contain a qualified historic hotel, or one contains a historic hotel and the other town contains a qualified historic hotel. IC 36-7-11.5. The historic hotel district is established by means of an interlocal agreement of the towns. IC 36-7-11.5-2(b). The legislation also provides for creation, by ordinance, of a historic hotel preservation commission to administer the historic hotel district. IC 36-7-11.5-3(a). The ordinance is required to provide for certain membership on the eight-member commission. IC 36-7-11.5-3(b). The ordinance may also provide for the appointment of advisory members that the town councils consider appropriate. IC 36-7-11.5-3(d).

You have provided me with a copy of the French Lick Ordinance #03-06. You also sent me electronic versions of the West Baden Springs Ordinance, which appears to be identical to the French Lick Ordinance. You have also sent me copies of the interlocal agreement and joint project agreement between the towns of West Baden Springs and French Lick.

From these documents, I have gleaned the following information. The town of West Baden Springs contains a qualified historic hotel and the town of French Lick contains a historic hotel. The towns have entered into an interlocal agreement under IC 36-7-11.5-2(b) to establish a historic hotel district, the French Lick-West Baden Springs Historic Hotel District. Also, the towns have enacted ordinances setting out the boundaries of the historic hotel district, the terms of office of the members of the historic hotel preservation commission, and the powers of the historic hotel preservation commission, among other things. Section 5 of French Lick Ordinance 03-06 states:

“The Commission shall have an advisory board consisting of a member of the French Lick Town Council designated by the French Lick Town Council, a member of the West Baden Springs Town Council designated by the West Baden Springs Town Council, a member of the Orange County Commissioners designated by the Orange County Commissioners and a fourth member designated by the preceding three members of the advisory board who is a resident of Orange County. The advisory board shall be non-voting but shall be permitted to participate in all meetings and deliberations of the Commission. The Commission shall adopt rules for the transaction of its business.”

The four-member advisory committee that is the subject of your question appears to be the advisory members that are contemplated in IC 36-7-11.5-3(d) and the advisory board contemplated in the French Lick Ordinance 03-06.

ANALYSIS

I begin by taking note of the purpose statement of the Open Door Law:

“In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter 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. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.”

Ind. Code 5-14-1.5-1.

Under the Open Door Law, 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. IC 5-14-1.5-3. The issue presented in your question is whether the advisory board is a governing body. If it is, then a gathering of the majority of the governing body for the purpose of taking official action upon public business constitutes a meeting subject to the Open Door Law. The question, then, turns on the definition of “governing body” in the Open Door Law.

“Governing body” means two (2) 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
- (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
- (3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

IC 5-14-1.5-2(b).

Also relevant to this inquiry is the definition of a “public agency.” In pertinent part, “public agency” includes:

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power; or

(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.

The historic hotel preservation commission created under IC 36-7-11.5 is a governing body of a public agency. The commission meets the definition of a governing body of a public agency because it is two or more individuals who are the commission of a public agency [the public agency being the towns jointly establishing the commission] which takes official action upon public business. IC 5-14-1.5-2(b)(2). Supporting this conclusion is IC 36-7-11.5-5(c), which provides that all meetings of the commission must be open to the public and a public record of the commission’s resolutions, proceedings, and actions must be kept.

The advisory board created by the town ordinances fits the definition of a public agency because the advisory board is a body created by ordinance to advise the governing body of a public agency, that is, the historic hotel preservation commission. IC 5-14-1.5-2(a)(5). In turn, the advisory board meets the definition of a governing body where it is two or more individuals who are a public agency that is a board and takes official action on public business. IC 5-14-1.5-2(b)(1). “Public business” means any function upon which the public agency is empowered or authorized to take official action. IC 5-14-1.5-2(e). Although you have stated, and the ordinance confirms, that the advisory board is made up of non-voting members, “official action” means more than just taking a vote. It includes: 1) receiving information; 2) deliberating; 3) making recommendations; 4) establishing policy; 5) making decisions; or 6) taking final action (defined as taking a vote). IC 5-14-1.5-2(d).

The advisory board meets with applicant/developers who are interested in development projects within the historic hotel district. The advisory board also participates in the meetings of and deliberates with the historical hotel preservation commission. In my opinion, this activity meets the definition of taking official action on public business.

Because the advisory board is a governing body under the Open Door Law, its meetings must be open to the public. In addition, the advisory board must post notice of its meetings 48 hours prior to the meeting, and keep memoranda of its meetings.

This opinion is advisory only. Also, if any of the facts as I have recited them are incorrect or change, it may alter my opinion.

Please feel free to call me with any questions.

Sincerely,

Karen Davis
Public Access Counselor