

December 13, 2004

Mark E. Manship  
2891 East Plantation Drive  
Salem, IN 47167

*Re: Formal Complaint 04-FC-211; Alleged Violation of the Open Door Law by the Board of Trustees of the Washington County Memorial Hospital*

Dear Mr. Manship:

This is in response to your formal complaint alleging that the Board of Trustees of the Washington County Memorial Hospital violated the Open Door Law by holding an executive session without giving proper notice. I find that the Washington County Memorial Hospital violated the Open Door Law.

#### BACKGROUND

You allege that the Washington County Memorial Hospital Board of Trustees (“Board”) held an executive session on November 4, 2004. You further allege that the notice that was provided by the Board does not comport with the requirements of the Open Door Law (“ODL”), because it failed to make reference to the enumerated instance or instances for which executive sessions may be held. You also allege that the purpose for the executive session listed in the notice, “contractual negotiations,” does not meet the requirements of IC 5-14-1.5-6.1 or of IC 16-22-3-28.

I sent a copy of your complaint to the Board, and Mr. Jay D. Allen, attorney for the Board responded. I have enclosed a copy of his response for your reference. In its response, the Board states that state law allows county hospitals to meet in executive session for reasons in addition to those found at IC 5-14-1.5-6.1(b). He also states that the meeting was to discuss proposals that would be competitive among health care providers. No decisions were made at the executive session. He acknowledges that the notice did not give the proper information regarding the purpose for the executive session, but assures me that as hospital board attorney, he intends to make sure that notices for executive sessions meet the requirements for notices under IC 5-14-1.5-6.1 in the future.

## ANALYSIS

It is the intent of the Open Door Law 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. IC 5-14-1.5-1. One of the exceptions to open meetings is an executive session, which is defined as a meeting from which the public is excluded. IC 5-14-1.5-2(f). Although executive sessions are closed to the public, a public agency must provide notice of the date, time and place of an executive session, and must state the subject matter of the executive session by specific reference to the enumerated instance or instances for which executive sessions may be held under IC 5-14-1.5-6.1(b). IC 5-14-1.5-5(a); IC 5-14-1.5-6.1(d).

Although for most public agencies, the enumerated instances for which executive sessions may be held are only those listed at IC 5-14-1.5-6.1(b), the governing board of a county hospital may also hold executive sessions for the reasons listed in IC 16-22-3-28(c). One of those reasons includes the reason given by the Board in response to this complaint: to discuss and prepare bids, proposals, or arrangements that will be competitively awarded among health care providers. IC 16-22-3-28(c)(1).

In response to an informal inquiry that you made on November 4, 2004, you stated that you believed the discussion at the November 4 executive session was actually about the hospital's management contract with a limited liability company. Your complaint does not allege this, and Mr. Allen's response states that the purpose of the executive session was to discuss proposals that would be competitive among health care providers. If the executive session was held to discuss the management contract, or the management contract was discussed as part of the executive session, I do not believe that discussion would have met the requirements of either IC 5-14-1.5-6.1(b) or IC 16-22-3-28(c). Although I did not find a statutory definition of "health care providers" that applies to IC 16-22-3, the definition of "health care provider" that prevails for other parts of the Indiana Code does not include a hospital management company. *See* IC 16-18-2-163. If the discussion were solely about arrangements that will be competitively awarded among health care providers, that discussion would have been proper under IC 16-22-3-28(c). Also, Mr. Allen's statement that "no decisions were made at the executive session" is taken by me to mean that no final action was taken, which would have been impermissible under IC 5-14-1.5-6.1(c).

You also provided me with a copy of the notice that you allege was posted before the executive session. As you allege and Mr. Allen admits, it does not comport with the requirements of IC 5-14-1.5-6.1(d) because it states only "contractual negotiations" and omits any reference to the statute permitting executive sessions for county hospitals. It also does not describe where the meeting was to be held. I also note that the Board was required to maintain memoranda that certify that no subject matter was discussed in the executive session other than the subject matter specified in the public notice. IC 16-22-3-28(d); IC 5-14-1.5-6.1(d). The memoranda must also identify the subject matter discussed in the executive session, in the same manner as it was required to be placed in the notice. You do not allege that the Board violated this requirement, and I make no finding regarding memoranda in this opinion, since I am not aware whether any were maintained.

## CONCLUSION

For the foregoing reasons, I find that the Board of Trustees of the Washington County Memorial Hospital violated the Open Door Law by failing to post proper notice of the November 4 executive session.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Jay D. Allen