



# STATE OF INDIANA

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June 14, 2010

Mr. Edward J. Connett  
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*Re: Formal Complaint 10-FC-124; Alleged Violation of the Open Door Law by the Jefferson Township Board*

Dear Mr. Connett:

This advisory opinion is in response to your formal complaint alleging the Jefferson Township Board (the "Board")<sup>1</sup> violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Agencies' joint response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that the Board violated the ODL by making a decision outside of a public meeting. As a regular meeting of the Jefferson Town Council on May 10, 2010, the Board "handed over a letter from Oct. 9, 2009 and stated that their decision to not pursue [a Fire Protection Territory] had not changed." You question whether "a meeting needed to be held to determine that and . . . question the fact that [the Board] had a public meeting back in October of 2009 to make a decision not to pursue the Territory." You believe that the Board should have made its decision in a meeting open to the public.

In response to your complaint, the Board claims it did not have a meeting regarding the Territory in October in 2009. Beginning in 2005, the Board had meetings regarding the Territory at the regular advertised meetings of the Ossian Town Board. The Board attended all of the Ossian Town Board's meetings at the request of Mary Shafer. The Board stated numerous times that it was not in favor of forming a fire territory. Subsequently, the Indiana Department of Local Government Finance advised the Board to put something in writing. That prompted the Board to create the October

<sup>1</sup> Your complaint identified both the Board and the Jefferson Township Trustee. Because the Board is the only party subject to the ODL, the Board is the proper respondent in this matter.

5th letter, which the Board describes as “simply a written form of the decision made previously by the [Board].” The Board also held two meetings in September of 2009 to discuss and adopt the 2010 budget for Jefferson Township. The fire territory was not discussed at either of those meetings.

## ANALYSIS

The General Assembly enacted the ODL intending 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. Accordingly, 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). The Board does not dispute that it is a “governing body” within the meaning of the ODL.

Here, you allege that the Board took action outside of a public meeting. Under the ODL, a “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. IC 5-14-1.5-2(g). The ODL explicitly requires that a final action be taken at a meeting open to the public. IC 5-14-1.5-6.1(c).

It is important to note that the ODL does not require a governing body to hold a public meeting every time its members engage in some sort of official action. Public meetings are only necessary if the governing body engages in official action while in a meeting, which is a “gathering of the majority of the governing body.” I.C. § 5-14-1.5-2(c). Thus, even if the Board received information, deliberated, made recommendations, established policy, or made decisions, it did not violate the ODL unless it did so during a gathering of a majority of its members. Here, I have no information indicating that the Board conducted an illegal meeting. On the other hand, if the Board actually *voted* on a course of action, the vote would have constituted final action that should have occurred at a public meeting under subsection 6.1(c) of the ODL. Again, nothing before me indicates the Board held a vote on the fire territory issue.

The Board also notes that it attended meetings of the Ossian Town Board. I am not aware of whether or not the Board provided public notice of those meetings. If a majority of the Board attended those meetings, the Board should have provided public notice of the meetings according to Section 5 of the ODL.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Board either held a vote outside of a public meeting or failed to publish notice of a Board meeting, the Board violated the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack  
Public Access Counselor

Cc: Richard McCoy  
Dan Rupright  
Jeannette Dickey  
Lloyd Meyer