



# STATE OF INDIANA

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December 29, 2010

Mr. Clee R. Oliver  
5768 W. County Rd. 00 N.S.  
Kokomo, IN 46901-8803

*Re: Formal Complaint 10-FC-301; Alleged Violation of the Open Door Law by the Citizen Consolidation Committee*

Dear Mr. Oliver:

This advisory opinion is in response to your formal complaint alleging the Citizen Consolidation Committee (the "Committee") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* My office forwarded a copy of your complaint to the Committee, but as of today we have not received a response.

## BACKGROUND

In your complaint, you allege that the Committee was "appointed by Commissioners, Councils, Mayor, [sic] and Town Boards to receive information and to make recommendations regarding government consolidations." At the Committee's November 19, 2010, meeting, the Committee scheduled an executive session for November 23rd. At the November 19th meeting, you opposed the executive session on the grounds that "circumstances [under] which this committee was formed does [sic] not justify having executive sessions." You also allege that the Committee held an executive session on November 15th. You claim that the Committee did not give notice of either executive session or approve the minutes of those meetings. You argue that the Committee is subject to the ODL, that all of its meetings should be open to the public, and that it "should not conduct executive sessions . . . at all due to [the] responsibilities given [it] by the Howard County Commissioners."

## ANALYSIS

The General Assembly enacted the ODL with the intent 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, 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).

The issue here is whether the Committee constitutes a governing body of a public agency under the ODL. If it is, the Committee would be subject to the meeting requirements of the ODL. I.C. § 5-14-1.5-2(a). A governing body is, among other things, two or more individuals who are 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. I.C. § 5-14-1.5-2(b)(3). “‘Official action’ means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.” I.C. § 5-14-1.5-2(d).

Here, you allege that the Committee was appointed by various public agencies and officials. In reviewing the minutes of the Howard County Commissioners’ (“Commissioners”) meetings, it appears that the Commissioners directly appointed the Committee to take official action (i.e., receive information, deliberate, and make recommendations) upon public business (i.e., the consolidation of various government entities in the area. See *Minutes of Howard County Bd. Comm’rs Meeting Held April 5, 2010*, available at <http://co.howard.in.us/comm/2010/040510.pdf>. The minutes include the following entry:

A Citizens Committee for Consolidation shall be established by the Howard County Board of commissioners in cooperation with the City of Kokomo. The Committee shall be commonly called the “Consolidation Committee”. The names Citizens Committee for Consolidation, Consolidation Committee, or the acronym CCC may all be used interchangeably.

The Committee shall consist of twelve (12) members; four (4) appointed by the Howard County Board of Commissioners, four (4) appointed by the City of Kokomo, two (2) appointed by the Greentown Town Board, and two (2) appointed by the Russiaville Town Board.

Because this language indicates that the Commissioners directly appointed the Committee, the Committee is a governing body under I.C. §5-14-1.5-2(b)(3). Consequently, all meetings of the Committee would be subject to the requirements of the ODL. As such, the ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a) (emphasis added). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. I.C. § 5-14-1.5-5(b). Notice has not been given in accordance with Section 5 of the ODL if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. I.C. §5-14-1.5-5(h).

Nothing in the ODL prohibits the Committee from conducting executive sessions. The ODL defines an executive session as “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” I.C. § 5-14-1.5-2(f). The purposes for which executive sessions may be held are limited to the circumstances listed at Ind. Code § 5-14-1.5-6.1(b). If the Committee were to hold an executive session for any reason not allowed under subsection 6.1(b) of the ODL, the executive session would be in violation of the ODL. In addition to the information required for open meetings, the ODL requires that “[p]ublic notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection [6.1](b).” I.C. § 5-14-1.5-6.1(d).

### CONCLUSION

For the foregoing reasons, it is my opinion that the Committee is subject to the ODL. To the extent that the Committee failed to provide public notice of any meetings or executive sessions, the Committee violated the ODL. Nothing prohibits the Committee from conducting an executive session, provided that such executive session is held for one of the reasons allowed by subsection 6.1(b) of the ODL.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Isabella Chism