



STATE OF INDIANA

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April 5, 2010

Mr. Edward Hager
1530 W. Alabama
New Castle, IN 47362

Re: Formal Complaint 10-FC-60; Alleged Violation of the Access to Public Records Act and Open Door Law by the Henry County Commissioners

Dear Mr. Hager:

This advisory opinion is in response to your formal complaint alleging the Henry County Commissioners (the "Commissioners") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* I have enclosed the Commissioners' response for your reference.

BACKGROUND

According to your complaint, the Commissioners' "regular session" is scheduled for 7:00 p.m. on the last Wednesday of every month. The Commissioners held a meeting with the full County Council on February 24, 2010. As a result of that meeting running long, the Commissioners' meeting did not begin until approximately 8:00 p.m. You believe that meeting violated the ODL.

In response to your complaint, Henry County's attorney, Joseph Bergacs, initially argues that you do not have standing to challenge the Commissioners' February 24th meeting because you were, in fact, in attendance at that meeting. Mr. Bergacs further explains that the reason the meeting started late is because the joint meeting that preceded the Commissioners' meeting began at 6:30 p.m. and lasted until almost 8:00 p.m. Mr. Bergacs notes that anyone who came to the courthouse at 7:00 p.m. to attend the Commissioners' meeting would have seen that the Commissioners were meeting with the Council and could have waited for the Commissioners' meeting to begin. Mr. Bergacs notes that a better approach might have been to convene the Commissioners' meeting at 7:00 p.m. and then adjourn until the joint meeting concluded. Nevertheless, Mr. Bergacs maintains that the Commissioners did not violate the ODL.

ANALYSIS

The intent and purpose of the ODL is 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. The provisions of the ODL are to be “liberally construed with the view of carrying out its policy.” I.C. § 5-14-1.5-1. The Commissioners constitute a public agency and a governing body subject to the ODL. I.C. §§ 5-14-1.5-2(a), (b).

Notice of the date, time and place for a meeting or executive session of a governing body must be provided at least forty-eight (48) hours in advance, not including Saturdays, Sundays or legal holidays. I.C. § 5-14-1.5-5(a). In addition, the ODL provides that

notice [of a meeting] has not been given in accordance with [the ODL] if a governing body . . . 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.

I.C. § 5-14-1.5-5(h).

Under the facts presented, it appears that your complaint is directed at the fact that the Commissioners's February 24th meeting did not begin until approximately one hour after the scheduled time. The ODL requires that a public meeting convene at a time not is not so “unreasonably” different from the scheduled time of the meeting. I.C. § 5-14-1.5-5(h). In a prior decision from this office, Counselor Davis opined that a delay of the same length was a violation of the ODL. *See Opinion of the Public Access Counselor 05-FC-64*. In that case, the public agency argued that it did not violate the ODL because the meeting started late because one member of the governing body was late in arriving to the meeting. In response to that argument, however, Counselor Davis noted:

I do not find that the mere fact of the late arrival of a member of the governing body constitutes good cause, but in any case, there is no “good cause” exception to the requirement that the governing body convene the meeting at a time that does not unreasonably depart from the time stated in the notice. Where the March 22 meeting began nearly one hour after the stated time, I believe the time that the meeting was convened did unreasonably depart from the time stated in the public notice.

Id. While I sympathize with the Commissioners’ situation in this case because it appears that the meeting began late not due to an intent to violate the ODL but due to the fact that the prior meeting ran long, I agree with Counselor Davis insofar as the ODL does not contain a “good cause” exception to the notice requirements of section 5. Based on this

precedent, it is my opinion that a one-hour delay was an unreasonable departure from the posted meeting time and, thus, a violation of section 5 of the ODL. Any other result would, in my opinion, encourage deviations in meeting times that would deprive the public of the right to access public meetings. Such a decision would not further the purposes of the ODL. *See* I.C. 5-14-1.5-1.

CONCLUSION

For the foregoing reasons, it is my opinion that the Commissioners violated the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Joseph J. Bergacs