



STATE OF INDIANA

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August 15, 2011

Mr. Kevin A. Lynch
66803 Rosewood Road
North Liberty, Indiana 46554

*Re: Formal Complaint 11-FC-173; Alleged Violation of the Open Door Law
by the Liberty Township Trustees Office*

Dear Mr. Lynch:

This advisory opinion is in response to your formal complaint alleging the Liberty Township Trustees Office ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Board's response is enclosed for your reference.

BACKGROUND

In your complaint you allege that the Board did not provide or post notice of its July 21, 2011 meeting.

In response to your formal complaint, Liberty Township Trustee, Sue Dittmar, responded on behalf of the Board. Ms. Dittmar provided that on July 21, 2011 the Board met to discuss the upcoming budget. The board members were sent notices of the meeting, but it was not posted. Ms. Dittmar indicated that the meeting that occurred on July 21, 2011 was not the public hearing for the budget, but a time for the Board to set salaries and discuss possible changes to the budget.

ANALYSIS

It is the intent of the ODL 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. *See* 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. *See* I.C. § 5-14-1.5-3(a).

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. *See* I.C. § 5-14-

1.5-2(c). “Public business” means any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* 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. *See* I.C. § 5-14-1.5-2(g).

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. *See* I.C. § 5-14-1.5-5(a). 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. *See* 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. *See* I.C. § 5-14-1.5-5(h).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must be given 48 hours in advance of every session and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2)

The Board does not dispute that it is a public agency or that a meeting occurred on July 21, 2011. Thus, the Board was required to give public notice of the meeting and when it failed to do so, violated I.C. § 5-14-1.5-5(a). I would note that “Official action” is defined broadly by the ODL, and includes receiving information, deliberating, or making recommendations. Even if the Board were to argue that the meeting was an executive session, it still would have been required to provide notice pursuant to I.C. § 5-14-1.5-6.1(d). Ms. Dittmar further advised that the meeting was held to set salaries and discuss possible changes to the budget. The ODL defines “final action” as a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order. *See* I.C. § 5-14-1.5-2(g). Any final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). Any final action taken by the Board at July 21, 2011 meeting would have been contrary to the ODL as the meeting was not open to the public.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the ODL when it failed to provide notice of the July 21, 2011 meeting.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Sue A. Dittmar