



STATE OF INDIANA

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October 11, 2011

Mr. Gary A. Robinson
595 S. Sugar Street
Marengo, Indiana 47140

*Re: Formal Complaint 11-FC-242; Alleged Violation of the Open Door Law
by the Crawford County Commissioners*

Dear Mr. Robinson:

This advisory opinion is in response to your formal complaint alleging the Crawford County Commissioners ("County") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* John E. Colin, Attorney, responded on behalf of the County. His response is enclosed for your reference.

BACKGROUND

In your complaint you allege that the Commissioners held an executive session on August 30, 2011 and failed to provide proper notice. The meeting notice provided the following:

"Executive Meeting 5:30 p.m."

You further allege that a statement was not read into the minutes or memoranda that certified that no matter was discussed in the executive session that was not permitted or noticed, which is required pursuant to I.C. § 5-14-1.5-6.1(d).

In response to your formal complaint, Mr. Colin stated a copy of the ratified minutes for the August 30, 2011 County meeting, which comply with the requirements of I.C. § 5-14-1.5-6.1(d). Mr. Colin provided that his office has advised the County that notice of an executive session must comply with I.C. § 5-14-1.5-6.1(d), and must list the reason for holding the executive session as described in I.C. § 5-14-1.5-6.1(b).

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).

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)

This office has consistently addressed the requirements of notice for an executive session. *See Opinion of the Public Access Counselor 07-FC-64; 08-FC-196; 11-FC-39; 11-FC-170.* In *Opinion of the Public Access Counselor 05-FC-233*, Counselor Davis wrote the following:

This office has stated on many occasions that “personnel issues” is wholly inadequate under the Open Door Law. First, there are several enumerated instances involving personnel-related matters that are permissible for an executive session. Accordingly, “personnel issues” lacks the required specificity, because the Open Door Law states that notice of an executive session must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. IC 5-14-1.5-6.1(d). *This requires that the notice recite the language of the statute and the citation to the specific instance*; hence, “To discuss a job performance evaluation of an individual employee, pursuant to IC 5-14-1.5-6.1(b)(9),” for example, would satisfy the notice requirements. (emphasis added).

Here, the County has not disputed that it failed to provide proper notice for the August 30, 2011 executive session. As such, it is my opinion that the County violated the ODL. An example of a proper notice for the August 30, 2011 executive session would have been:

“Executive Session

Notice of Executive Session of the Crawford County
Commissioners
Tuesday, August 30, 2011 at 5:30 p.m.
City Hall Meeting Room, 101 Main Street, Anytown,
Indiana 46202

The Council will meet to discuss a job performance
evaluation of an individual employee as authorized under
I.C. § 5-14-1.5-6.1(b)(9).”

As the County has been advised of the requirements of providing proper notice for an executive session, I trust that it will comply fully in the future.

Under the Open Door Law, public agencies that conduct meetings are required to keep memoranda. As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.

I.C. § 5-14-1.5-4(b). In the case of executive sessions, the memoranda requirements are modified in that the memoranda "must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given." *See* I.C. § 5-14-1.5-6.1(d). The public agency must also certify in a statement in the memoranda that no subject was discussed other than the subject specified in the public notice. *Id.*

Here, the County provided the following in the ratified minutes of the August 30, 2011 executive session:

“The Crawford County Commissioners met in executive session on August 30, 2011 at 5:30 p.m. No subject matter was discussed in executive session other than that defined by I.C. § 5-14-1.5-6.1(b)(6). No official decisions were made in executive session.”

Thus the County has complied with the requirements of I.C. § 5-14-1.5-6.1(d) as it cited to an applicable section of the ODL in I.C. § 5-14-3-4(b)(6) that would allow the County to meet in executive session. Although not specifically required by the ODL, I would encourage the County to include the language of the statutory citation for which the

executive session was held in the memoranda, as is required with the public notice of an executive session.

CONCLUSION

For the foregoing reasons, it is my opinion that the County violated the ODL by failing to provide proper notice for the August 30, 2011 executive session. As to all other issues, it is my opinion that the County did not violate the ODL.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: John E. Colin