



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 27, 2011

Ms. Gladys Rita Kopala
66559 Ivy Road
Lakeville, Indiana 46536

*Re: Formal Complaint 11-FC-254; Alleged Violation of the Open Door Law
by the St. Joseph County Council and Board of Commissioners*

Dear Ms. Kopala:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Council ("Council") and Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Kathleen Cekanski-Farrand, Deputy County Attorney, responded on behalf of the Commissioners. Her response is enclosed for your reference. My office forwarded a copy of your complaint to the Council, as of today we have not received a response.

BACKGROUND

In your complaint you allege that the Council failed to provide proper public notice for its August 29, 2011 meeting. You further allege that the Council and Commissioners failed to provide an agenda at the September 13, 2011 and September 23, 2011 meetings.¹

In response to your formal complaint, the Commissioners asked that the formal complaint filed against it be dismissed, as the August 29, 2011 meeting was held by the Council, not the Commissioners.

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

¹ You further allege in your formal complaint that the Commissioners violated the Access to Public Records Act ("APRA") in failing to respond to your March 2, 2011 records request and various ODL violations regarding meetings that took place in January of 2011. Formal complaints alleging violations of either the ODL or the APRA must be filed not later than 30 days after the alleged violation. See I.C. § 5-14-5-7. As such, I will not address these allegations.

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).

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). Therefore, if the Council failed to provide proper public notice for the August 29, 2011 meeting, it acted contrary to the ODL.

As to the second part of your complaint, a governing body of a public agency is not required to use an agenda, but if it chooses to utilize one, the agency must post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. *See* I.C. § 5-14-1.5-4(a). If a public agency chooses to utilize an agenda, the ODL does not prohibit it from changing or adding to the agenda during the meeting. *See Opinion of the Public Access Counselor 09-FC-40*. Thus, the Council and Commissioners did not violate the ODL by not utilizing an agenda at the September 13, 2011 and September 23, 2011 meetings.

CONCLUSION

For the foregoing reasons, it is my opinion that the Council violated the ODL if it failed to provide public notice for its August 29, 2011 meeting. Further, it is my opinion that the Council and Commissioners did not violate the ODL by not utilizing an agenda at the September 13, 2011 and September 23, 2011 meetings.

Best regards,

A handwritten signature in black ink, appearing to read 'Joe Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Kathleen Cekanski-Farrand, St. Joseph County Commissioners
Mike Trippel, St. Joseph County Council