



STATE OF INDIANA

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February 23, 2011

Mr. Warren A. Auxier
P.O. Box 215
Hanover, IN 47243

Re: Formal Complaint 11-FC-39; Alleged Violation of the Open Door Law by the Jennings County Commissioners

Dear Mr. Auxier:

This advisory opinion is in response to your formal complaint alleging the Jennings County Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Commissioners, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that the Commissioners violated the ODL by holding an illegal executive session on January 17, 2011. The Commissioners posted notice of the meeting, which read, "The Jennings County Commissioners will meet on Monday, January 17, 2011 at 7:00 p.m. in the Government Center in Vernon Indiana. This will be an executive session concerning personnel per I.C. § 5-14-1.5-6.1 [sic]." Prior to the executive session, you expressed concern to the Commissioners that the notice failed to cite a provision of the ODL that permitted such a gathering. You also state that you learned during the Commissioners' public meeting on January 3rd that the purpose of the executive session was to "discuss hiring a consultant versus hiring a county engineer."

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. 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).

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 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 issue here is whether the notice for executive session, which stated that the meeting was scheduled to address issues “concerning personnel,” complied with the ODL. This office has addressed this issue in the past. In *Op. 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.

I agree with the opinion of Counselor Davis. Consequently, because discussing issues “concerning personnel” is not a permissible reason for an executive session under section 6.1 of the ODL, it is my opinion that the Commissioners’ January 17th executive session violated the ODL.¹

CONCLUSION

For the foregoing reasons, it is my opinion that the Commissioners violated the ODL by holding an executive session for a reason not permitted by the ODL.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Jeff Day

¹ I also note that there are a number of personnel matters which may *not* be discussed in executive session. To the extent the Commissioners conduct executive sessions to discuss personnel matters allowed to be discussed in executive session, the Commissioners must cite the specific statutory instance allowing the executive session. If the Commissioners intend to address personnel matters not specifically enumerated in Ind. Code § 5-14-1.5-6.1, the Commissioners should address those matters at a meeting open to the public.