



STATE OF INDIANA

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July 25, 2012

Mark Buckley
8225 North State Road
Worthington, Indiana 47471

Re: Formal Complaint 12-FC-176; Alleged Violation of the Open Door Law by the White River Valley School Corporation

Dear Mr. Buckley:

This advisory opinion is in response to your formal complaint alleging the White River Valley School Corporation ("School") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Susan Traynor Chastain, Attorney, responded on behalf of the School. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that that School failed to provide proper notice for an executive session held by the School Board on June 28, 2012.

In response to your formal complaint, Ms. Chastain acknowledged that the School had received the advisory opinion issued by the Public Access Counselor in response to your previous formal complaint dealing with this issue. *See Opinion of the Public Access Counselor 12-FC-154.* Ms. Chastain advised that the notice for the June 28, 2012 executive session provided:

"An executive session will precede the open meeting at 6:00 p.m. to discuss personnel; IC 5-14-1.5-6.1(b) to receive information concerning the individual's alleged misconduct; and to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is a physician or school bus driver. 5-15-1.5-6.1(b)."

The Agenda for the executive session provided:

The White River Valley Board of School Trustees will meet in regular session on Thursday, June 28, 2012 at 7:30 p.m. at the Administrative Center in Switz City. An executive session will precede the open meeting at 6:00 p.m. to discuss personnel. IC 5-14-1.5-6.1(b) to receive information concerning the individual's alleged misconduct; and to discuss, before a determination, the individual's status as an employee, student, or an independent contractor who is a physician or school bus driver. IC 5-14-1.5-6.1(a)(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). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). Notice of an executive session must be given 48 hours in advance of every session, excluding nights and weekend, 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). 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 I.C. § 5-14-1.5-6.1(b)(9)" would satisfy the requirements of an executive session notice. *See Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39.* It is my opinion that the School violated the ODL in failing to provide proper notice to its June 28, 2012 executive session by not providing the *specific* statutory citation that would allow it to meet in such fashion. I would note that all other requirements of the School in providing notice for the executive session were met, including reciting the language of the specific statutory citation.

CONCLUSION

Based on the foregoing, it is my opinion that the School Board failed to provide proper notice for the June 28, 2012 executive session.

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" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Susan Traynor Chastain