



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

September 28, 2012

Beverly J. Austin  
1201 Cedar Court  
Elwood, Indiana 46036

*Re: Formal Complaint 12-FC-268; Alleged Violation of the Open Door Law by  
the Elwood Park Board*

Dear Ms. Austin:

This advisory opinion is in response to your formal complaint alleging the Elwood Park Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* James W. Wilson, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on September 10, 2012, a notice in the *Elwood Call-Leader* provided that an executive session of the Board was to be held on Wednesday, September 12, 2012 at 7:30 p.m. The notice failed to provide the location where the executive session was to take place and the subject matter by specific reference to the enumerated instances providing for the specific reason the executive session was to be held. Given this non-compliance, you notified various individuals associated with the Board. You were advised that the Board concurred with your analysis and that the executive session was cancelled. You are concerned that this is the second executive session that has been improperly advertised.

In response to your formal complaint, Mr. Wilson advised that upon being notified regarding the alleged errors, he reviewed the notice and found it to be insufficient. As such, the executive session was cancelled. Mr. Wilson has now discussed the issues with the Board, administrative individuals, and the local newspaper regarding the proper guidance in posting and publishing notices for all meetings held by the Board. Should any future errors occur, which Mr. Wilson does not expect, the Board will immediately cancel any meeting to which improper notice was provided.

## 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, excluding nights and weekend, and must contain, in addition to the date, time and place of the meeting. The notice must be posted at the principal office of the agency, or if no 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, generally nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).<sup>1</sup>

In addition, an executive session notice must include 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.*

The Board upon being notified that the notice provided was insufficient cancelled the executive session, which was the appropriate action under the ODL.<sup>2</sup> If the Board had conducted the executive session, when the notice for the session failed to comply with all requirements under the law, the Board would have violated the ODL. As such, it is my opinion that the Board did not violate the ODL as it cancelled the executive session immediately upon being notified of the legally insufficient notice.

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<sup>1</sup> For the purposes of this advisory opinion, I am assuming that the notice posted by the Board at its principal office was identical to that which was provided in the local newspaper.

<sup>2</sup> Although not applicable here due to time constraints, a governing body could also post an amended notice for the executive session to cure the original defect.

## CONCLUSION

Based on the foregoing, it is my opinion that the Board did not violate the ODL.

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: James W. Wilson