



STATE OF INDIANA

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May 2, 2012

Mr. Jed Steven
509 N 2nd Street
Boonville, Indiana 47601

*Re: Formal Complaint 12-FC-86; Alleged Violations of the Open Door Law by
the Boonville City Council*

Dear Mr. Steven:

This advisory opinion is in response to your formal complaint alleging the Boonville City Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Our office forwarded a copy of your formal complaint to the Council. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that the meetings of the Council are conducted in such a manner as to make it impossible for the public to hear the meeting and understand the nature of the business being discussed. The Council does not utilize microphones during its meetings. The business of the Council is being discussed by agenda item or reference number and not described in a manner to which the public can understand the nature of the discussion. Further, the Council refuses to answer questions to clarify the nature of the business being discussed or voted upon. Lastly, the Council does not follow the agenda that is being 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).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations,

establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action.

The ODL does not specifically require that microphones or other amplification methods be used to ensure that all persons can hear the discussion of the governing body. *See Opinion of the Public Access Counselor 01-FC-45*. However, common courtesy and the spirit of the ODL would provide that if an issue arose regarding the audience’s inability to hear the Council’s discussions, the fact should be brought to the Council’s attention. Upon being notified of the audible deficiency, the Council should, at a minimum, attempt to address the issue. Without the benefit of a response from the Council, it is unclear to me if the Council was aware of the public’s inability to hear its discussions, and what, if anything was done in response. As such, it is my opinion that the Council violated the ODL if it ignored concerns raised by the public’s inability to hear the discussions of the Council held during its open public meetings.

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 utilizes 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 04-FC-166; 09-FC-40; and 12-FC-43*. The ODL provides no guidelines for the content or structure of a meeting agenda, and this office has indicated that an agenda can take essentially any form. *Opinion of the Public Access Counselor 04-FC-02 and 08-FC-17*. However, a rule, regulation, ordinance, or other final action adopted by reference to the agenda number or item alone is void. *See* I.C. § 5-14-1.5-4(a). As such, if the Council adopted a rule, regulation, or other final action by reference to the agenda number or item alone, such action is void pursuant to I.C. § 5-14-1.5-4(a).

CONCLUSION

Based on the foregoing, it is my opinion that the Council violated the ODL if it ignored concerns raised by the public's inability to hear the discussions of the Council held during its open public meetings. In addition, it is my opinion that if the Council adopted a rule, regulation, or other final action by reference to the agenda number or item alone, such action is void pursuant to I.C. § 5-14-1.5-4(a).

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: Boonville City Council