



# STATE OF INDIANA

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April 22, 2013

Mr. Michael R. Johnson  
408 West Main Street  
Bloomfield, Indiana 47424

*Re: Formal Complaint 13-FC-117; Alleged Violation of the Open Door Law by  
the Bloomfield Town Council*

Dear Mr. Johnson:

This advisory opinion is in response to your formal complaint alleging the Bloomfield Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Councilmen Eric Harrah and Dave Harding responded in writing to your formal complaint. Their response is enclosed for your reference.

## BACKGROUND

You provide that on or about April 8, 2013 at 20:07 hours you were traveling east on Indiana Avenue in Bloomfield, Indiana. When you approached the intersection of Indiana Avenue and Judge Street, you observed Councilmen Harrah and Harding having a conversation. You provide that Councilman Harrah owns the property at the corner of said intersection.

While driving by you noticed Councilman Harrah directing Councilman Harding's attention the sidewalk and curb area of the property. You allege that Mr. Harrah made a sweeping motion with his hands, pointing to the sidewalk, curbing and storm sewer. You allege that the conversation between the Councilmen was a "meeting" under the ODL and the Council violated the law by failing to provide proper notice. In a subsequent conversation with Council attorney, Mr. Lucas M. Rudisill, you conveyed your concerns regarding the ODL. You provide that Mr. Rudisill stated that he truly felt that Councilmen Harrah and Harding were meeting with no malicious intent, which you believe is an acknowledgement that the two were having a "meeting." Mr. Rudisill stated he would remind and advise the Council regarding the requirements of the ODL.

On April 9, 2013, you spoke with Council President Doug Frye. You advised President Frye that your intention was simply to inform him of the actions of the other members of the Council. You allege that President Frye defended the actions of Councilmen Harrah and Harding and attacked your motives for the accusation. You

allege that President Frye stated that it was his belief that the only way the Council could conduct any kind of business was to meet at various times, without public notice, to discuss matters related to the Town. President Frye further allegedly stated that all votes were taken at public meetings. You provide that President Frye later “acquiesced in his position and acknowledged that meeting without notice was illegal.”

In response to your formal complaint, Councilmen Harrah and Harding advised that they were present at a certain property located at the intersection of Indiana Street and Judge Street in Bloomfield, Indiana on the evening of April 8, 2013. The Councilmen met at that time as they had been friends for 20-30 years and Councilman Harding and his wife were interested in seeing the process of the demolition and construction that was occurring on Mr. Harrah’s property. At no point during the informal meeting of friends was any Town business discussed. The discussion involved the new building Mr. Harrah was constructing on his private property, Mr. Harding’s search for housing for a summer intern, and the health of a mutual friend.

The definition of a meeting under the ODL does not include any social gathering not intended to avoid the requirements of the ODL or any on-site inspection or any project or program. The interaction between the Councilmen on April 8, 2013 was a social gathering, no official action of the Council was taken; nor was there even any discussion of Council business. Even if the Councilmen were discussing a public project, said actions would not constitute a meeting as an inspection or a project or program is not considered a meeting under the ODL.

## 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. *See* I.C. § 5-14-1.5-2(e). A vote is not required to take place in order for a “meeting” of a governing body to occur. However, a “meeting” does not include a social or chance gathering not intended to avoid the requirements of the ODL or an onsite inspection of a project or program. *See* I.C. § 5-14-3-2(c)(1), (2). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c).

The ODL requires that 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). The notice must be posted at the principal office of the agency, or if not 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 notice, generally nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

The basis of your formal complaint is that there are three members of the Council. Thus, when two Councilmen met on April 8, 2013 a meeting of the Council occurred and the Council failed to provide proper notice. You were not able to hear the conversation conducted by the Councilmen on April 8, 2013 but in light of Mr. Harrah's hand gestures, you believe the discussion involved issues related to the Council, including, but not limited to, sidewalks, curbing, and storm sewers. In response to your complaint, both members of the Council stated that the meeting was purely social in nature and no Town or Council business was discussed. The Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. Thus, if the gathering of Mr. Harrah and Harding on April 8, 2013 was social in nature and not intended to avoid the requirements of the ODL, then a meeting of the Council did not occur and it is my opinion that the Council did not violate the ODL. Alternatively, if Mr. Harrah and Harding met to discuss public business on April 8, 2013, it is my opinion that a meeting of the Council did occur and the Council acted contrary to the requirements of the ODL by failing to provide proper notice.

#### CONCLUSION

Based on the foregoing, if the gathering of Mr. Harrah and Harding on April 8, 2013 was social in nature and not intended to avoid the requirements of the ODL, then a meeting of the Council did not occur and it is my opinion that the Council did not violate the ODL. Alternatively, if Mr. Harrah and Harding met to discuss public business on April 8, 2013, it is my opinion that a meeting of the Council did occur and the Council acted contrary to the requirements of the ODL by failing to provide proper notice.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Lucas M. Rudisill