



STATE OF INDIANA

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May 28, 2013

Ms. Pamela M. Frazee
9040 US HWY 52 S
Lafayette, Indiana 47905

*Re: Formal Complaint 13-FC-147; Alleged Violation of the Open Door Law by
the Tippecanoe County Board of Commissioners*

Dear Ms. Frazee:

This advisory opinion is in response to your formal complaint alleging the Tippecanoe County Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Douglas J. Masson, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that after repeated calls to the Tippecanoe County Sheriff's Department regarding trespass violations perpetrated upon your vacant property by Mr. Skees, the abutting property owner, Mr. Tom Murtaugh, Board member, requested that you attend a meeting to address the complaints regarding the property line. You stated that the property line has already been determined by the County, however you provided that Mr. Murtaugh still desired that the parties meet. You inquired who would be in attendance at the proposed meeting. Mr. Murtaugh stated that he, along with the County Attorney and Mr. Skees would be present. You thereafter learned that the County Highway Director, Mr. Opal Kuhl, would also be in attendance. You believe that the proposed gathering violates the ODL in that the ordinance is already written and enforced. If the ordinance or vacation process is to be changed by Mr. Murtaugh, said changes should be made at a public meeting conducted by the Board.

In response to your formal complaint, Mr. Masson stated that the proposed gathering addressed in your formal complaint does not meet the requirements of a "meeting" under the ODL as a majority of the Board will not be in attendance. The Board is comprised of three members; the only member of the Board alleged to be in attendance would be Mr. Murtaugh. Thus no "meeting" under the ODL will take place. Regardless, Mr. Murtaugh would be unable to affect or amend the ordinance or vacation process without at least one other member of the Board present.

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). “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 does not instruct governing bodies as to what actions require the governing body to vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-144.*

As applicable here, the gathering addressed in your formal complaint would be attended by yourself, Mr. Murtaugh, Mr. Skees, Mr. Kuhl, and the County’s attorney. Mr. Murtaugh would be the only member of the Board in attendance; thus a “meeting” as defined under the ODL would not occur as a majority of the Board would not be in attendance. As to your concern that Mr. Murtaugh would unilaterally amend the ordinance or vacation process, Mr. Masson advised that Mr. Murtaugh would not have the authority, acting alone, to take such action. Thus, the no “final action”, as defined by the ODL, would take place at the gathering. As such, it is my opinion that the Board did not violate the ODL.

CONCLUSION

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

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Douglass J. Masson