



STATE OF INDIANA

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September 3, 2013

Mr. Jesse Davis
PO Box 10205
South Bend, Indiana 46680

*Re: Formal Complaint 13-FC-229; Alleged Violation of the Open Door Law by
the City of South Bend*

Dear Mr. Davis:

This advisory opinion is in response to your formal complaint alleging the City of South Bend ("City") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The City, through corporation counsel Cristal Brisco, has provided a response which is attached for your review.

BACKGROUND

You allege that you were denied the opportunity to record a conversation with the Mayor of South Bend during a public gathering on July 31, 2013. In response to your formal complaint, the City asserts that the gathering did not constitute a public meeting and therefore is not subject to Indiana's Open Door Law. The City describes the meeting as a meet and greet event with the Mayor and other public officials called the "Mayor's Night Out". The City advertises the time, date and location of the monthly event on their website and encourages citizens to attend.

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).

The City is a public agency under the ODL. If the “Mayor’s Night Out” event were to be considered a meeting under the ODL statute, then the public would have the right to observe and record the event by reasonable means. The meet and greet event, however, is not a meeting for the purposes of the Open Door Law. To be considered a public meeting under the Indiana Code, the gathering would need to entail some kind of official action. There is no allegation in your complaint that the event included any kind of official deliberations, recommendations, policy decisions or final actions.

Recording a public meeting is well within the scope of the ODL. If practicable, public officials shall allow the public to record said meetings by any means they choose, however, this only applies to public meetings. The Mayor’s Night Out does not fall within that scope and appears to be strictly informational and educational in nature.

Clearly the purpose of these events is to establish a means of communication between the Mayor and his constituents in a social setting. This fosters a spirit of approachability and accessibility that runs parallel with the intent of the Open Door Law and other public access statutes.

CONCLUSION

Based on the foregoing, it is my opinion that City of South Bend did not violate the Open Door Law by prohibiting audio and/or visual recordings at the Mayor’s Night Out event.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

cc: Cristal Brisco