



STATE OF INDIANA

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February 21, 2013

Aaron J. Smith
2625 Countryside Drive
Lebanon, Indiana 46052

*Re: Formal Complaint 13-FC-23; Alleged Violation of the Open Door Law by the
Center Township Board*

Dear Mr. Smith:

This advisory opinion is in response to your formal complaint alleging the Center Township Board (“Board”) 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 Mr. Randall O. Large, Township Trustee, on January 25, 2013. The Board’s response was due no later than February 18, 2013. As of today’s date, we have yet to receive a response from the Board.

BACKGROUND

In your formal complaint you provide that on December 28, 2012 you submitted a written request to be notified of the Board’s 2013 meetings pursuant to I.C. § 5-14-1.5-5(b)(3). As of January 25, 2013, you have yet to receive any response from the Board.

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 defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon 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 to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. 5-14-3-2(e).

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 notices nothing, requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

In 2012, the General Assembly amended the notice requirements for certain governing bodies under the ODL. Specifically, I.C. § 5-14-1.5-5(b)(3) provides:

(3) This subdivision applies only to the governing body of a public agency of a political subdivision described in section 2(a)(2), 2(a)(4), or 2(a)(5) of this chapter that adopts a policy to provide notice under this subdivision. Notice under this subsection is in addition to providing notice under subdivisions (1) and (2). If the governing body adopts a policy under this subdivision, the governing body of a public agency shall give public notice by delivering notice to any person (other than news media) who delivers to the governing body of the public agency an annual written request for the notices not later than December 31 for the next succeeding calendar year. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:

(A) Transmitting the notice by electronic mail, if the public agency has the capacity to send electronic mail.

(B) Publishing the notice on the public agency's Internet web site at least forty-eight (48) hours in advance of the meeting, if the public agency has an Internet web site.

As provided in the subsection, the Board *may* adopt a policy that would allow for meeting notices to be provided to individuals who have requested as such (emphasis added). If such a policy is adopted, the notice shall be delivered either via electronic mail or by the Board publishing the meeting notice on the agency's internet website. It should also be noted that the notice requirements contemplated under 5(b)(3), are in *addition* to the notice requirements found under I.C. § 5-14-1.5-5(b)(1)-(2) (emphasis added).

Without the benefit of a response from the Board to your original request or your formal complaint, I am uncertain whether the Board has adopted a policy pursuant to I.C. § 5-14-1.5-5(b)(3). The burden is on the Board to demonstrate that it has complied with the requirements of the ODL. If the Board has not adopted a policy pursuant to 5(b)(3), it would not violate the ODL by failing to provide notice in the manner defined in the subdivision. The decision to adopt a policy under section 5(b)(3) is left to the Board.

Accordingly, it is my opinion that the Board acted contrary to the ODL by failing to demonstrate that it complied with the requirements of I.C. § 5-14-1.5-5(b)(3).

CONCLUSION

Based on the foregoing, it is my opinion that the Board acted contrary to the ODL by failing to demonstrate it complied with the requirements of I.C. § 5-14-1.5-5(b)(3).

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: Randall O. Large, Township Trustee