



# STATE OF INDIANA

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August 16, 2013

Mr. Richard F. Eklund  
1608 Flintlock Drive  
Jeffersonville, Indiana 47130

*Re: Formal Complaint 13-FC-231; Alleged Violation of the Open Door Law by  
the Jeffersonville Urban Enterprise Zone Association*

Dear Mr. Eklund:

This advisory opinion is in response to your formal complaint alleging Jeffersonville Urban Enterprise Zone Association ("JUEZA") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Les D. Merkley, Corporation Counsel and Director of Legal Affairs, responded on behalf of the JUEZA. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint you provide that you attended the JUEZA Board's ("Board") monthly meeting on July 10, 2013. After the meeting was called to order, but prior to the agenda being approved, the Board Chairman added an additional item concerning the salary of the executive director. The Board thereafter approved the revised agenda. When the matter regarding the executive director's salary was called upon for discussion, you were asked to leave the meeting. After the Board had finished its discussion, you were invited back into the meeting. You allege that the Board's actions of having you leave the public meeting violated the ODL.

In response to your formal complaint Mr. Merkley advised that the JUEZA is a local nonprofit 501(c)(3) corporation established in 1983 pursuant to I.C. § 5-28-15. The Indiana Economic Development Corporation administers the Enterprise Zones located in the State while the JUEZA is managed locally by a 12-member board of directors appointed by the Jeffersonville City Council and the Mayor. The primary function of the JUEZA is to administer the direct enterprise zone activities and reinvestment in the zone. The JUEZA is not supported in whole or in part by public funds. Funding is derived from participation fees paid by JUEZA businesses who take advantage of certain zone tax incentives. The JUEZA is not subject to audit by the State Board of Accounts ("SBOA") and its budget is not subject to review by the Department of Local

Government Finance or the Jeffersonville City Council. As JUEZA is not considered to be a public agency, it is not subject to 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).

Under the Access to Public Records Act, the Indiana Supreme Court has held that the party seeking to inspect and copy records has the burden of proving that the entity in possession of the records is a public agency within the meaning of the APRA. *Indianapolis Convention & Visitors Ass'n, Inc. v. Indianapolis Newspapers, Inc.* 577 N.E.2d 208, 212 (Ind. 1991). A similar burden would apply to a person seeking admission to a meeting of an entity that it believes to be a governing body of a public agency under to the ODL. *Id*; *See Opinions of the Public Access Counselor 11-FC-95; 12-INF-07*. Once the complainant has met his burden, the burden would shift to the entity to establish that it complied with the requirements of the law. Accordingly, you will have the burden to demonstrate that the JUEZA Board is a governing body of a public agency.

I.C. § 5-14-1.5-2(a) provides that a “public agency” is:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
  - (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) audit by the state board of accounts that is required by statute, rule, or regulation.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medicals staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by I.C. 4-33, including any department, division, or office of the commission.

(7) The Indiana Horse Racing Commission established by I.C. 4-31, including any department, division, or office of the commission.

As to subsection (1), it has not been alleged nor has it be shown that JUEZA is exercising the executive, administrative, or legislative power of the state, nor has it been delegated such powers. The same analysis is applicable to subsection (2), in that JUEZA is a locally formed nonprofit entity that is not supported in any part by public funds. JUEZA is funded entirely by fees and donations collected from private businesses located within the zone. There has been no showing that the entity is exercising any delegated local governmental power. In regards to subsection (3)(A), JUEZA's budget is not subject to review by the Department of Local Government Finance; nor is the entity subject to audit by the State Board of Accounts by statute, rule or regulation, thus subsection (3)(B) would not be applicable. In regards to subsection (4), I do not have anything before me to indicate that JUEZA has issued bonds or has the authority to issue bonds for the purpose of constructing public facilities. As to subsection (5), it has not been shown that JUEZA was created by statute, ordinance, or executive order to advise a governing body of a public agency. On its face, the Group would not qualify as a "public agency" under subsections (6) or (7). Accordingly, it is my opinion you have not met your burden to demonstrate that JUEZA is considered to be a "public agency" pursuant to I.C. § 5-14-1.5-2(a) and therefore the Board is not required to comply with the requirements of the ODL.

#### CONCLUSION

Based on the foregoing, it is my opinion that you have not met your burden to demonstrate that the JUEZA is considered to be a public agency under the ODL and therefore the Board is not subject to the law's requirements.

Best regards,



Joseph B. Hoage  
Public Access Counselor

cc: Les D. Merkley