



STATE OF INDIANA

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September 17, 2013

Mr. Jon D. Jeffries
174 S. Street
Bedford, Indiana 47421

Re: Formal Complaint 13-FC-240; Alleged Violation of the Open Door Law by the Town of Oolitic

Dear Mr. Jeffries:

This advisory opinion is in response to your formal complaint alleging the Town of Oolitic ("Town") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Town, through Counsel James G. Pittman, Esq., has provided a response which is attached for your review.

BACKGROUND

You allege the Town Council meeting held on July 29, 2013 constituted a violation of the Open Door Law when the Council continued to meet after it had adjourned the meeting. Additionally, you assert the Town was in violation of the Open Door Law by receiving bids prior to the meeting. Further, it is your allegation the Town was in violation of the ODL when, on August 13, 2013, Council members and the Clerk-Treasurer met to discuss funding for the local fire department an telephone conversations took place finalizing the action.

In response to your formal complaint, the Town asserts the July 29, 2013 meeting was not officially adjourned when discussions regarding additional Town business were discussed. The minutes of the July 29, 2013 meeting are attached to the Town's response and provided for your review. The Town also contends the bids received by the Town were not in violation of the Open Door Law and were gathered pursuant to Ind. Code § 34-1-12-5(i). As to the August 13, 2013 meeting, the Town alleges no official action was taken and there was not a quorum present when the proposed budget was discussed. They have not addressed any telephone conversations between council members.

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* Ind. Code § 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* Ind. Code § 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* Ind. Code § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* Ind. Code § 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* Ind. Code § 5-14.1.5-2(e).

The Town is a public agency under the ODL. Your first allegation involves the Town discussing public business after the meeting had been adjourned. The Public Access Counselor is in receipt of the minutes of the July 29, 2013 meeting and indeed it appears two council members called for adjournment before certain matters were discussed, but the proposal was never finalized by a vote. It is clear from the minutes the meeting continued to address concerns of other residents and the minutes indicate some residents remained in the meeting after the proposed adjournment.

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*. You allege the meeting was called to a close. Taking official action on public business after the close of a meeting would be in violation of the ODL. However, it appears from the minutes the council continued the meeting and it was never actually adjourned. Because other residents continued to present concerns during the meeting, it is presumed the meeting never officially concluded. There is no indication any members of the public were excluded from the meeting (and your complaint does not allege this). Therefore, the Town did not violate the ODL in respect to the July 29, 2013 meeting.

The second issue raised in your complaint was the issue of the Town receiving bids for a paving project. Although not stated explicitly, it is presumed you take exception with the Town Council being made aware of the price of the quotes before the meeting commenced. This is an issue that would best be addressed by the State Board of Accounts who administers the rules for sealed bids for local government requests for proposals. This issue extends beyond the scope of Public Access Counselor, however, Ind. Code § 36-1-12 et. al. suggests that the bids be sealed if the cost of the public works project exceeds \$150,000.

The third issue addressed in your formal complaint is your concern a final action was taken during an August 13, 2013 gathering in which the Council President, a Council member and the Clerk-Treasurer engaged in a discussion about a budget proposal. Again, the Public Access Counselor is not a finder of fact; however, your complaint, as well as

the Town's response, states only two of the five members of the Council were present during the discussion. This does not constitute a majority of the Council. The Clerk-Treasurer is not a Council member and his presence would not constitute a quorum in addition to the other two members.

If any final action was made as to adopting the proposed budget during that meeting, a violation of the ODL would occur. This Office has been advised any final action as to the adoption of the proposed budget will occur at a later meeting and the Council will vote on the issue when a quorum is present and the public is properly notified of the meeting.

CONCLUSION

Based on the foregoing, it is my opinion the Town of Oolitic did not violate the Open Door Law at the July 29, 2013 meeting, the August 13, 2013 meeting, or by receiving bids for the paving project.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

cc: James G. Pittman