



# STATE OF INDIANA

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October 18, 2013

Mr. Warren Auxier  
P.O. Box 215  
Hanover, IN 47243

*Re: Formal Complaint 13-FC-264; Alleged Violation of the Open Door Law by the Jefferson County Board of Commissioners*

Dear Mr. Auxier,

This advisory opinion is in response to your formal complaint alleging the Jefferson County Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board responded to your complaint on October 18, 2013. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 9, 2013.<sup>1</sup>

## BACKGROUND

Your complaint alleges the Jefferson County Board of Commissioners violated the Open Door Law by holding an executive session without posting notice of the specific subject matter to be discussed.

You allege that on or about September 6, 2013, the Board held an executive session with the Jefferson County Animal Shelter Director to discuss the construction of a new animal shelter. The Board's posted executive session notice states the items to be discussed during the meeting pertained to pending litigation and the job performance of an employee. They did not reference any subject matter relating to the animal shelter other than listing the Jefferson County Animal Shelter Director would be attending the meeting.

The Board, in their response, indicates that the executive session was held and items were discussed that went beyond the scope of their notice and what is allowed under the executive

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<sup>1</sup> Please note that this Opinion has been amended from the original Opinion after it was discovered that the formal complaint you provided to the Public Access Counselor was incorrect. Despite your reliance on a Board letterhead, the notions of fairness and the policy of equal opportunity to respond has prompted me to take into consideration the Board's subsequent submission of a response.

session statute. Specifically, they addressed plans for the demolition of the current shelter and the request for proposals for a new shelter.

### ANALYSIS

It is the intent of the Open Door Law (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* I.C. § 5-14-1.5-3(a).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance.

The statute sets forth with specificity the only authorized subject matter which may be discussed in the meeting. Among the topics in 6.1, deliberations or discussions regarding animal shelters or related matters are not included. Therefore, any discussion of such matters is not authorized by the statute. Their response includes the subject matter of the executive session including a discussion of plans for a new animal shelter. It matters not that those issues were already discussed in an open meeting. Any deliberation regarding anything beyond the scope of section 6.1 is a violation.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that, in absence of any response alleging otherwise, the Jefferson County Board of Commissioners violated the Open Door Law.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Wilmer E. Goering, II, Esq.