



STATE OF INDIANA

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November 4, 2013

Mr. Owen Leon Ratliff, Jr.
8 Fox Run
O'Fallon, IL 62269

Re: Formal Complaint 13-FC-286; Alleged Violation of the Open Door Law by the Tipton County Board of Zoning Appeals

Dear Mr. Ratliff,

This advisory opinion is in response to your formal complaint alleging the Tipton County Board of Zoning Appeals ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has not responded to your complaint. They were invited to do so on October 1, 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 October 1, 2013.¹

BACKGROUND

Your complaint alleges the Tipton County Board of Zoning Appeals violated the Open Door Law by conducting a meeting in which the public was not invited to attend.

On August 28, 2013, the Board held a properly noticed open meeting to discuss the Prairie Breeze Wind Farm ("PBWF") project. Based on the provided transcript, the Chairman of the Board, Mr. Jerry Acres, conducted the meeting pursuant to guidelines set forth in a July 31, 2013 meeting. Chairman Acres solicited comment from the PBWF's counsel. Chairman Acres also limited the comments in scope to testimony regarding a property value guarantee. Your contention is the Board convened a meeting in advance of the open meeting that was not open to the public to discuss the issue to be presented before the Board at that meeting.

¹ As your complaint was filed on October 1, 2013 and the alleged violation occurred on August 28, 2013, it falls outside the thirty day timeframe for filing a complaint under Ind. Code § 5-14-5-7. Therefore, this opinion is strictly educational in nature and should not be used in any other forum as persuasive authority. Furthermore, this Advisory Opinion is being issued past the thirty day timeframe for the Public Access Counselor to publish the Opinion. This is due to the large number of complaints filed against the Tipton County Board of Zoning Appeals in regard to the referenced wind farm issue (of which this Office is familiar based on past complaints) and my decision to address them individually as opposed to consolidating the complaints. It is my sincere hope the delay has not caused any inconvenience.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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 public agency may conduct their meetings in a manner they see fit. Local government open meeting procedures are generally at the discretion of the agency holding the meeting. Limiting the scope of testimony is an example of a meeting procedure over which the Public Access Counselor has no purview.

The more troubling aspect of your complaint is the allegation the Board held a closed meeting to discuss how the open meeting would be conducted. Although there is no tangible evidence of such a meeting, you suggest discussions took place to set the procedures for the August 28, 2013 meeting. There are no meeting minutes of the July 31, 2013 meeting; however, the transcript you provided indicates that Chairman Acres contends such procedures were discussed at that open meeting and minutes were taken (*See* August 28, 2013 Transcript, Pg. 10; 17-21). There is some suggestion that the July 31, 2013 meeting was conducted without proper notice, but there is no evidence as to that fact. Notice requirements are found at Ind. Code § 5-14-1.5-5.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Tipton County Board of Zoning Appeals would have violated the Open Door Law if the suspected closed meeting took place. If not, then no violation occurred.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor