



STATE OF INDIANA

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November 14, 2013

Mr. David Etherington
6571 W. 600 S.
Russiaville, IN 46979

Re: Formal Complaint 13-FC-300; Alleged Violation of the Open Door Law by the Tipton County Board of Zoning Appeals

Dear Mr. Etherington,

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 responded to your complaint via Mr. Jerry Acres, the President of the Board. His response is enclosed for your review. 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 15, 2013. Please be advised as the meeting held on September 10, 2013 was more than thirty days before the filing of your formal complaint. Ind. Code § 5-14-5-7(b) sets forth the deadline of thirty (30) days after the alleged violation; therefore, this Opinion is for informational use only.

BACKGROUND

Your complaint alleges the Tipton County Board of Zoning Appeals violated the Open Door Law by conducting a meeting without notice.

You allege that on September 10, 2013, the Tipton County Board of Zoning Appeals held an open meeting to discuss a lawsuit filed by the Prairie Breeze Wind Farm, LLC ("PBFW"). This Office is familiar with the controversy surrounding this issue and have addressed concerns with the Tipton County Board of Zoning Appeals in relation to PBFW. Tipton County residents are greatly interested in this matter.

As the meeting adjourned, you observed three of the five members of the Board congregating in the room where the meeting was held. You suspect the discussion was concerning the PBFW issue and was a private meeting not in conformity with the Open Door Law. You recorded the gathering and submitted it along with your complaint.

The Board, through Mr. Acres, responded and denied the conversation entailed any discussion of public matters.

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).

I have watched the recording of the three members engaged in a discussion; however, the audio of the recording was mostly unintelligible. Therefore, I must address both parties' arguments in the hypothetical.

If the conversation did not revolve around any public business, as Mr. Acres maintains, then it would not be a violation of the Open Door Law. A discussion would be considered a social gathering and although there was a majority of the Board, it does not meet the definition of a public meeting under the ODL. *See* Ind. Code § 5-14-1.5-2(c)(1).

On the other hand, if your assertion is correct and the discussion involved any public business at all, then it would be a violation of the Open Door Law in respect to Ind. Code § 5-14-1.5-3(a) and the notice section of the ODL found at Ind. Code § 5-14-1.5-5 et. al.

CONCLUSION

For the foregoing reasons, it cannot be conclusively determined if the Tipton County Board of Zoning Appeals violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Jerry Acres