



# STATE OF INDIANA

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November 21, 2013

Mr. Ed R. Adams  
210 Dogwood Pl.  
Mt. Vernon, IN 47620

*Re: Formal Complaint 13-FC-312; Alleged Violation of the Open Door Law by the Posey County Board of Commissioners*

Dear Mr. Adams,

This advisory opinion is in response to your formal complaint alleging the Posey 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 via Mr. William H. Bender, Esq., Board General Counsel. Her 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 28, 2013.

## **BACKGROUND**

Your complaint alleges the Posey County Board of Commissioners violated the Open Door Law by conducting a meeting without notice.

It is unclear by the wording of your complaint and its attachments exactly what violations you allege. Mr. Bender surmises your complaint purportedly alleges a resolution was drafted prior to the open meeting of the Board of Commissioners on October 1, 2013

At that meeting the Board removed three members from the Posey County Redevelopment Commission ("Commission") due to inactivity of the Commission. Mr. Bender and the Board concedes the resolution was prepared in advance by Mr. Bender himself, however, they contend the drafting of the document was not at the direction of a quorum of the Board, but rather by Commission President alone.

The resolution was passed two to three by the Board. The issue raised several red flags with the dissenting member. Much was also made in the press regarding the vote and the preparation of the draft resolution. You have attached the meeting minutes as well as the media coverage.

## ANALYSIS

It is the intent of the Open Door Law (ODL) 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).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

There is no dispute the Board is a public agency under the obligations of the Open Door Law. There is also no dispute the drafting of the resolution and the vote was official action on public business. If taken as true, the unilateral directive of the President of the Board to Mr. Bender to draft the resolution cannot be considered a meeting as intended by the Open Door Law. The Board consists of three members; therefore, a majority would consist of two of the three members.

I have reviewed the minutes of the October 1 and 15, 2013 minutes and it does not appear anything would indicate the Board members convened in a majority to discuss the resolution before its drafting. If they did, then it would be a violation of the Open Door Law. It does appear from the October 1, 2013 minutes the resolution was *provided* to the Board members in advance, but that is not a violation.

If Mr. Bender was directed by only the Commission President to draft the letter then no violation occurred. If more than one member was involved in the decision, then the Open Door Law would have been violated.

## CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Posey County Board of Commissioners did not violate the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Mr. William Bender, Esq.