



STATE OF INDIANA

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December 5, 2013

Mr. Dan A. Carney
606 Jane Drive
Sharpsville, IN 46066

Re: Formal Complaint 13-FC-320; Alleged Violation of the Access to Public Records Act by the Tipton County Plan Commission

Dear Mr. Carney,

This advisory opinion is in response to your formal complaint alleging the Tipton County Plan Commission ("Commission") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Commission responded to your complaint via Mr. John Brooke, Commission attorney. 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 30, 2013.

BACKGROUND

Your complaint alleges the Tipton County Plan Commission violated the Open Door Law by taking final action during an open meeting without notice the subject matter of which was not on the published agenda.

You allege on or about October 4, 2013, the Tipton County Plan Commission held a properly noticed public hearing regarding amendments to the Tipton County Zoning Ordinance ("Ordinance"). During that meeting, you assert the Commission took final action in recommending amendments to portions of the Ordinance not listed on the posted agenda. Those recommendations would be brought before the Tipton County Board of Commissioners for final ratification.

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).

"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).

The Commission concedes it is a public agency subject to the ODL, although its primary purpose is advisory in nature. It appears as if the Commission abided by all of the notice requirements found at Ind. Code § 5-14-1.5-5(b). The controversy at hand, however, deals with the agenda posting requirements of Ind. Code § 5-14-1.5-4(a). It states: A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. This implies that an agenda does not need to be posted at all unless it is the usual practice of the agency to do so.

I have held on several occasions in the past that the public's right to government transparency is not compromised by a deviation from a posted agenda. Naturally, meetings often branch off into any number of tangential discussions and digressions. The Open Door Law does not require that a meeting stay "on topic". This applies to final actions and votes as well. As a motion was made regarding a topic that was not enumerated on the agenda, the Commission allegedly deviated from its set agenda. This is permissible under the ODL. It may be in the Commission's (and the best interest of the public) to adhere to an agenda if they are discussing particularly controversial matters; however, it is certainly not a violation if they do not. Given the final action was to make an advisory recommendation to another public agency, I trust you have not been unreasonably prejudiced by the Commission's actions.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Tipton County Plan Commission did not violate the Open Door Law.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. John Brooke, Esq.