



STATE OF INDIANA

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February 25, 2013

Darrell D. Lutz
205 Orchard Lane
Kokomo, Indiana 46901

Re: Formal Complaint 13-FC-33/13-INF-12; Alleged Violation of the Open Door Law by the Harrison Township Trustee

Dear Mr. Lutz:

This advisory opinion is in response to your formal complaint alleging the Harrison Township Trustee ("Trustee") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* Alan D. Wilson, Attorney, responded in writing on behalf of the Trustee. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that the Trustee failed to provide proper notice for a public meeting held on November 21, 2012. Thereafter, you allege that Township Trustee, Ms. Joyce Ancil, held several meetings in regards to terminating the contract of the Harrison Township Volunteer Fire Department. Notice was not provided for any of these meeting. On December 18, 2012, the Board held a public meeting to which proper notice was not provided. You allege that Ms. Ancil stated that she had never in the past notified the media or the public of the Board's meetings and proper notice was not going to change the outcome of the meeting.

In response to your formal complaint, Mr. Wilson advised that neither the Trustee nor the Board of Trustee's conducted a meeting on November 21, 2012 or December 18, 2012. The meetings were held by the Harrison Township Fire Department, an entirely separate entity. Further, as your formal complaint was filed on February 1, 2013, you do not have standing as more than thirty days have passed since the alleged violation of the ODL occurred.

ANALYSIS

I.C. § 5-14-5-7 provides that a person that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after the denial or the person filing the complaint receives notice in fact that a meeting was held by a public

agency, if the meeting was conducted secretly or without notice. The meetings referred to in your formal complaint are alleged to have occurred on November 21, 2012 and December 18, 2012. Your formal complaint was not received by our office until February 1, 2013. Therefore, you would not have standing to file a formal complaint as more than thirty days have passed since the date the meeting were held and the date your formal complaint was filed. However, you are entitled to make an informal inquiry about the state's public access laws. The substance of your formal complaint will be addressed as an informal inquiry. *See* I.C. § 5-14-4-10(5).

It is the intent of the 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* I.C. § 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).

Your formal complaint was filed against the Trustee. Mr. Wilson noted that neither the Trustee nor the Board of Trustees held a meeting on November 21, 2012 or December 18, 2012. The meeting in question was held by the Harrison Township Fire Department, a completely separate entity. As a result, the Trustee or Board of Trustees could not violate the ODL as a result of the conduct of a separate governing body.

Regardless, as a refresher to all parties I note that a “meeting” is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. 5-14-3-2(e). A governing body could only meet in executive session (i.e. a meeting in which the public was not invited) in those limited instances provided under I.C. § 5-14-1.5-6.1.

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notice, generally nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2). Any governing body that failed to provide proper notice would be subject to a formal complaint being filed with the Public Access Counselor or possible litigation pursuant to section 7 or 7.5 of the ODL that could result in the payment of the complainant’s attorney fees and/or civil penalties by the governing body.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Alan D. Wilson