



STATE OF INDIANA

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April 15, 2013

Mr. Jeremy R. Eiler
8555 Wesley Chapel Rd SW
Mauckport, Indiana 47142

*Re: Formal Complaint 13-FC-91; Alleged Violation of the Open Door Law by the
Indiana University Southeast*

Dear Mr. Eiler:

This advisory opinion is in response to your formal complaint alleging that Indiana University Southeast ("University") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Kiply S. Drew, Associate General Counsel, responded on behalf of the University. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on February 15, 2013, a meeting was conducted by the University's Student Life Committee ("Committee"). You provide that the Committee proposes where funds should be allocated for student activity fees ("Fee"). The Committee reports to the Chancellor, who reviews and/or revises its allocation and submits the allocation to the Board of Trustees ("Board") for approval. The Fee is assessed to all students who attend the University and the rate is set by the Board. You were denied access to the meeting of the Committee. The University provided that the Committee is not required to comply with the ODL as it is not appointed by the Board. You maintain that the ODL provides that a body that can be audited by the State Board of Accounts ("SBOA") should hold its meetings in public. You advise that the Fee can be audited by the SBOA and has to follow all the same rules as other University accounts. The Committee decides where more than \$500,000 in public money is spent. You maintain that since approval by the Chancellor is basically a formality, this is the only level of process where the public can have meaningful impact and advocate for change.

In response to your formal complaint, Ms. Drew advised that the ODL applies only to governing bodies of public agencies. The Committee does not meet the definition of a governing body under the ODL; thus its meetings are not required to be open to the public. The University's interpretation of the applicable provisions of the ODL is consistent with prior opinions of the Public Access Counselor and previous case law from

the Indiana Court of Appeals. Specifically, the Court of Appeals held in *Robinson* that the petitioner was not entitled to attend the University's Animal Care Committee and School of Medicine subcommittee meetings because the committees did not derive their existence from the University's Board of Trustees. *Robinson v. Indiana University*, 638 N.E.2d 435, 438 (Ind. Ct. App. 1994). As a result, the committees were not subject to the requirements of the ODL. *Id.*

As applicable here, the Committee is neither directly appointed by the University's Board nor does it derive any authority directly from the Board. As a result, the Committee is not a governing body of the University; thus the requirements of the ODL do not apply.

ANALYSIS

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).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on 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 any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c).

Any entity that is subject to audit by the SBOA by statute, rule, or regulation is deemed to be a "public agency" under the ODL. *See* I.C. § 5-14-1.5-2(a)(3)(B). There is no dispute that the University is a public agency pursuant to the ODL as it is required to be audited by the SBOA pursuant to statute, rule, or regulation. There has been no showing that the Committee, by itself, is a public agency under the ODL. However, if the Committee is deemed to be a governing body of the University, the Committee would be required to comply with the requirements of the ODL. A governing body is defined as:

- (b) "Governing body" means two (2) or more individuals who are:
 - (1) a public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business;

- (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
- (3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter. *See* I.C. § 5-14-1.5-2(b)

A committee that is not appointed directly by a governing body or its presiding officer does not constitute a governing body under the plain language of the ODL. *See Opinions of the Public Access Counselor 05-FC-219, 09-INF-29, 13-FC-97.* The Indiana Court of Appeals addressed this issue in *Robinson v. Indiana University*, 638 N.E.2d. 435 (Ind. Ct. App. 1994). *Robinson* was decided after the General Assembly amended the definition of “governing body” to add the word “directly” after “any committee appointed.” In *Robinson*, the Indiana University’s Board of Trustees (a governing body for ODL purposes) delegated the authority to appoint a committee and subcommittee to the university president who, in turn, passed the duty on to an associate vice president for research. *Id.* at 437. The Court held that “the Committee and Subcommittee did not derive their authority directly from the governing body” because the board delegated its appointment authority to the university administration. *Id.* at 438. Consequently, the committee and subcommittee were not governing bodies under the ODL. *Id.* at 437-38; *See also Frye v. Vigo County*, 769 N.E. 2d 188, 196-196 (Ind. Ct. App. 2002). The Court in *Robinson* held:

“It is apparent to us that the legislature’s enactment of the amendment [adding the word “directly”] effectively limits the types of committees that are subject to the Open Door Law...The legislature has clearly narrowed the scope of the Open Door Law’s effect as it applies to various committees.” *Id.* at 438.

As applicable here, the University has provided that the Committee is neither directly appointed by the Board or the Board’s presiding officer; nor does the Committee derive any authority directly from the Board. As such, it is my opinion that the Committee is not considered to be a governing body of a public agency and therefore it is not required to comply with the requirements of the ODL.

CONCLUSION

Based on the foregoing, it is my opinion that University did not violate the ODL.

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 long horizontal stroke.

Joseph B. Hoage
Public Access Counselor

cc: Kiply S. Drew