



STATE OF INDIANA

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June 23, 2014

Ms. Wanda Jones
P.O. Box 1759
60 N. Jefferson St.
Nashville, IN 47448

Re: Formal Complaint 14-FC-109; Alleged Violation of the Open Door Law by the Nashville/Brown County Stellar Committee and the Nashville Town Council

Dear Ms. Jones,

This advisory opinion is in response to your formal complaint alleging the Nashville/Brown County Stellar Committee ("Committee") and the Nashville Town Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Committee has responded to your complaint via Mr. James T. Roberts. 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 May 21, 2014.

BACKGROUND

Your complaint dated May 21, 2014, alleges the Nashville/Brown County Stellar Committee and the Nashville Town Council may have violated the Open Door Law ("ODL") by failing to post a notice and by not allowing public admittance to a Committee meeting, in violation of Ind. Code § 5-14-1.5-5 & -3(a). You seek an opinion as to whether the Stellar Committee is subject to the ODL, and, if so, if the Committee and the Town Council in fact violated the ODL with regard to Committee meetings.

On April 23, 2014, the Committee conducted a meeting in the Brown County Government Building. The Committee did not provide public notice of the meeting and it denied public access to the meeting by locking the building doors.

The Town, in its response, provides a brief background of the Committee. The Committee was formed as part of an attempt by Brown County and the Town of Nashville to be selected for Indiana's Stellar Communities program, which provides funding for selected communities to foster development. The Committee was not

appointed by a governing body; rather, it was formed by citizens who have agreed to help the community pursue selection to the Stellar Communities program. Although the Town Council did discuss the Stellar Communities program in a February 6, 2014 meeting, the Town only determined to submit a letter of intent, not to form the Committee.

The Town also argues the Committee is not governed by the ODL. First, it argues the Committee is not a public agency as defined by Ind. Code § 5-14-1.5-2(a). “It does not exercise any power of the state, it does not exercise any executive, administrative, or legislative power”, nor is it subject to audit by the State Board of Accounts. Second, as the Committee is not a public agency, it is not governing body as defined by IC 5-14-1.5-2(b).

The Town does admit the doors were locked during the April 23, 2014 meeting, but “[t]he locking of the doors was simply inadvertent and caused by the actions of another entity.” The City also admits that notice of the April 23, 2014 meeting was not posted, but notice has been posted for all meetings after May 27, 2014.

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).

In relevant part, under Ind. Code § 5-14-1.5-2(b), a governing body is:

- (2) [two] 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.

Consider former Counselor Hoage’s Opinion in 12-FC-248:

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. 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* opined that “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.

I have no reason to deviate from the analysis in Counselor Hoage’s Opinion. While the *Robinson* case is interesting in that it addresses the directly-appointed-twice-removed status of governing bodies’ delegations, I only use the opinion as illustrative purposes. The Stellar Committee appears to be borne out of volunteers from various community agencies and not galvanized under one particular agency’s banner. Therefore, the Committee is not a delegation or sub-committee at all, but rather a community action group or an association of volunteers. These types of entities are not contemplated by the Open Door Law or the Access to Public Records Act.

As an aside, it is worth mentioning *Opinion of the Public Access Counselor 14-FC-68* in which I opined that a majority of members of one governing body serving on or attending another organization’s meeting regarding public business could be construed as a meeting of the first governing body. I have been advised this is not the case in the current circumstance, however, as the Committee could be discussing public business in their meetings, area public officials should be mindful of these considerations.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Nashville/Brown County Stellar Committee and the Nashville Town Council has not violated the Open Door Law as the Stellar Committee is not a public agency.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. James T. Roberts