



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

February 2, 2015

Mr. Warren A. Auxier  
P.O. Box 215  
Hanover, IN 47243

*Re: Formal Complaint 14-FC-313; Alleged Violation of the Open Door Law by the Jefferson County Board of Commissioners*

Dear Mr. Auxier,

This advisory opinion is in response to your formal complaint alleging the Jefferson County Board of Commissioners ("Board") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Board has responded via Mr. William E. Goering II, County 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 December 16, 2014.

## BACKGROUND

Your complaint dated December 16, 2014, alleges the Jefferson County Board of Commissioners violated the Open Door Law by failing to give proper notice of an executive session.

On November 18, 2014, two of the three members of the Board allegedly met before Jefferson County Council to discuss the purchase of property. The presiding officer of the Board indicated the decision to agree to the purchase took place during an executive session; however, details of the session could not be provided. Audits of the prior year's meeting minutes do not reference an executive session to discuss the purchase of property. You also allege, according to the County Attorney, some of the discussions may have been held during administrative function meetings.

The Board responded by arguing there was no discussion during an executive session regarding the purchase of any property. The Board outlines the history of issues leading up to the need for the purchase. The Board does concede parking issues were discussed during an administrative function session; however, no specific discussion of the purchase of a new building took place. The owner of the proposed property purchase has

contacted individual members of the Board of Commissioners, but not as a quorum. As for the attendance of two of the three Board members at the County Council meeting, the Board argues it was not a planned meeting and the members attended individually – therefore, separate notice would not be required.

### 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).

It appears as if the presiding member of the Board caused much of this controversy by stating official action was taken during an executive session to determine the need and use of the proposed property.

According to Ind. Code § 5-14-1.5-6.1, executive sessions may be held only in the following instances:

(2) For discussion of strategy with respect to any of the following:

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

You are correct that discussions regarding the need and use of the property would need to be held in public if a majority of the Board is contemplating the purchase of new property. It is conceivable the need and use considerations could be held in an administrative function meeting; however, these meetings are open to the public; only the usual 48-hour notice obligation is not required. See Ind. Code § 5-14-1.5-5(f)(2).

If the Board did indeed hold an executive session to discuss these issues, a violation of the Open Door Law has occurred. If the president of the Board misspoke and the discussions took place in a *public* administrative function meeting, a violation has not occurred. If the administrative function meeting *excluded* the public, however, that would be a violation of the Open Door Law as well.

Regards,



Luke H. Britt

Public Access Counselor