



STATE OF INDIANA

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February 11, 2016

Mr. Keith Benman
601 West 45th Street
Munster, Indiana 46321

Re: Formal Complaint 16-FC-05; Alleged Violation of the Open Door Law by the Gary/Chicago International Airport Authority; Daniel Vicari, Interim Director

Dear Mr. Benman:

This advisory opinion is in response to your formal complaint alleging the Gary/Chicago International Airport Authority (“Authority”) and Interim Director Daniel Vicari violated the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 et. seq. The Authority responded via counsel, Mr. Michael E. Tolbert, Esq. 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 January 7, 2016.

BACKGROUND

Your complaint dated January 7, 2016 alleges the Gary/Chicago International Airport Authority violated the Open Door Law by improperly holding an executive session.

You note in your complaint that on December 28, 2015, an executive session was held to discuss the purpose or lease of real property. In attendance were three (3) executives from a tenant located at the airport, B. Coleman Aviation. You contend this is a violation of Ind. Code 5-14-1.5-6.1(b)(2) because bargaining adversaries are not allowed to attend executive sessions. You note other potential tenants at the airport were not provided an opportunity to attend an executive session.

Counsel contends the language of the lease does not transform the executives into adversaries for purposes of the Open Door Law. Counsel notes the purpose of the meeting was regarding leases at the airport. However, while B. Coleman is a tenant at the airport, it also provides the Authority “with oversight and management of T-Hanger space on Airport grounds.”

ANALYSIS

It is the intent of the Open Door Law (ODL) that 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).

Under Indiana Code, executive sessions may only be held under certain circumstances, one of them being strategy sessions in specific instances. *See* Ind. Code 5-14-1.5-6.1(b)(2). Under the Code, bargaining or competitive adversaries may not be included in the strategy session:

(b) 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.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

With the exception of subsection (b)(2), other kinds of executive sessions may involve other members of the public necessary to the meeting. See Ind. Code § 5-14-1.5-2(f). However, the General Assembly has clearly indicated that strategy discussions related to the purchase or lease of real property are to be conducted by the governing body itself and not the party with whom a lease is being considered.

While no case law to my knowledge interprets the meaning of “adversary” for the purpose of the Open Door Law, “Non-technical, undefined words are to be defined by their ordinary and accepted dictionary meaning.” (*Bulkomatic Transport v. Department of Revenue*, 629 N.E.2d 955, 957 (Ind. Tax 1994)). The dictionary definition of adversary is “one that contends with, opposes, or resists.” See Miriam-Webster.com.

An adversary in this case would be a person or persons that opposing the Authority’s bargaining position, i.e. an entity having an interest in the specific lease being discussed. The Authority contends the inclusion of the B. Coleman executives in the executive session was not to discuss B. Coleman’s lease, but management of other potential leaseholders. B. Coleman is an authorized manager of other hangar space.

To be clear, had the strategy discussion involved B. Coleman’s lease, the executives would be considered adversaries and would need to be excluded from the executive session discussion. But because it is a management partner for the purposes of administration of other leases, the inclusion of the executives is not a violation of the executive session statute.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Gary/Chicago International Airport Authority has not violated the Open Door Law

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Michael Tolbert, Esq.