



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 16, 2016

Mr. Tom Terry
3804 West Allen Court
Muncie, Indiana 47304

Re: Formal Complaint 16-FC-105; Alleged Violation of the Open Door Law by the Madison County Board of Commissioners

Dear Mr. Terry:

This advisory opinion is in response to your formal complaint(s) alleging the Madison County Commissioners (“Commissioners”) violated the Open Door Law (“ODL”), Indiana Code § 5-14-1.5-1 et. seq. The Commission has responded to your complaint via Mr. Jeffrey K. Graham, Esq. His response is enclosed for your review. Pursuant to Indiana 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 9, 2016.

BACKGROUND

Your complaint dated May 9, 2016, alleges the Madison County Board of Commissioners violated the Open Door Law by conducting a meeting without proper notice.

On April 11, 2016, you allege the Board met with their attorney regarding actions to be taken at the Commissioners’ Certificate Sale. The attorney met separately with two (2) commissioners to discuss a computer system failure which impacted an ongoing Commissioners’ Sale, thereby causing it to end prematurely on April 8, 2016. Each Commissioner independently indicated to the attorney he did not wish to extend the hours for the sale, although it had ended prematurely. You contend these communications constituted a meeting in which official action was conducted by the Commissioners and the requisite notice was not posted. You also allege the tax sale clerk in the Madison County Auditor’s office and the Secretary to the Commissioners stated a Board meeting was held on April 11, 2016.

On June 7, 2016 the Board responded. The Board confirmed that discussions with the county attorney took place on April 11, 2016, but stated two (2) commissioners met with the county attorney separately. The Board denies a meeting as defined by the Open Door Law occurred, because the commissioners did not deliberate or receive information together and the decisions were independently made by each

Commissioner. The Board also stated the issue of the Commissioners' Certificate Sale was not added to the agenda of any future Board meeting.

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 Indiana 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 Indiana Code § 5-14-1.5-3(a)*.

A "meeting" is defined as a gathering of a majority of the governing body for the purpose of taking official action on business. *See Indiana Code § 5-14-1.5-2(c)*. "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. *See Indiana Code § 5-14-1.5-2(d)*.

The purpose of the conversations were to discuss the Commissioners' Certificate Sale. However, the Board contends no meetings took place because there was no gathering of the majority of the Board. Under Indiana Code § 5-14-1.5-2(c), "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." If the majority of the Board did not gather to discuss the hours of the sale, then there is no violation.

Even if a majority of the Board gathered to discuss the hours of the Sale, there is still no violation of the Open Door Law because the matter was purely administrative. Under Indiana Code § 5-14-1.5-5(f)(2), notice is not required for meetings of

"the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit."

Deciding to not extend or close a lien sale is inherently administrative and related to the internal management of local government. While the extension of the sale may result in revenue ramifications, the fact they may have met to discuss a logistical issue and make a spot decision based on a computer failure does not, in my opinion, prejudice the public in any tangible way. The Board of Commissioners has the authority to conduct such meetings without notice as the executive of the County.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Madison County Board of Commissioners did not violate the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Jeffrey K. Graham, Esq.