



# STATE OF INDIANA

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November 10, 2016

Ms. Debbie Lowe  
C/o Carroll County Comet  
P.O. Box 26  
Flora, Indiana 46929

*Re: Formal Complaint 16-FC-252; Alleged Violation of the Open Door Law by the Carroll County Board of Commissioners*

Dear Ms. Lowe:

This advisory opinion is in response to your formal complaint alleging the Carroll County Board of Commissioners ("Board"), violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 *et. seq.* The Board has responded to your complaint via Counsel Mr. Ted Johnson, 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 September 30, 2016.

## **BACKGROUND**

Your complaint dated September 30, 2016, alleges the Carroll County Board of Commissioners violated the Open Door Law (Indiana Code § 5-14-1.5 *et. al.*) by holding an inappropriate administrative function meeting.

The Carroll County Commissioners met in regular session on September 6, 2016 at 9:00 a.m., the meeting was adjourned at 11:30 a.m. Soon after the meeting was adjourned the commissioners called to reconvene the meeting as one issue was not discussed. Attorney Ted Johnson suggested the subject matter of the meeting could be considered an "administrative" meeting. The administrative meeting took place according to the minutes from 11:40 to 11:49 a.m.

## **ANALYSIS**

It is the intent of the Open Door Law 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. Indiana Code § 5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, 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. Indiana Code § 5-14-1.5-3(a). "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. Indiana Code 5-14-1.5-2(c).

As I have stated previously to both parties, public notice of the date, time, and place of any meeting of a governing body, shall be given at least forty-eight (48) hours before the meeting. *See Indiana Code § 5-14-1.5-5*. The forty-eight (48) hour notice requirement does not apply to the following instance in subsection (f)(2):

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. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

This complaint is similar to the controversy addressed in *Opinion of the Public Access Counselor 15-FC-15* when I opined on various administrative meetings. In that Opinion, I reasoned that only managerial or operational matters are appropriate for a Commissioner's administrative function meeting. The administrative function meeting appears to be a result of an oversight in the public meeting wherein the Commissioner's omitted a discussion topic regarding a roofing estimate to a public building.

After review of the minutes, it appears as if during the administrative function meeting, the Board authorized the County Auditor to submit a request to the County Council for an additional appropriation for the project. In my opinion, this is a substantive matter of public business. Requesting funds falls outside the realm of internal management and is a discussion regarding taxpayer monies. These types of discussions should always take place in a duly noticed public meeting.

While the matter may not have been appropriate for an administrative meeting, there remains a question of whether the Board could reconvene the original meeting. The Open Door Law speaks to this in Indiana Code § 5-14-1.5-5. Reconvened meetings can take place when announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda. It does not appear as if these requirements were met.

Adjourning the original meeting appeared to simply be an oversight before every agenda item was discussed. I do not have any information to support a finding of whether the public was prejudiced by these actions. There was a ten (10) minute gap between meetings. In my opinion, whether there was substantial harm to the public depends on if there were interested members who left before the second meeting commenced without notice, including you as a member of the press. If this was the case, then I would consider the second meeting to be in substantive violation of the Open Door Law. However, if the meeting was simply adjourned then quickly reconvened when no one left the room, I would consider it part of the original meeting and a procedural technicality.

To be clear, the subject matter of the second meeting is not administrative in nature, however, I decline to make a determination without being aware whether the public's awareness of the reconvened meeting was jeopardized.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, consisting of stylized initials and a surname, likely 'L. H. Britt'.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Ted Johnson, Esq.