



STATE OF INDIANA

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Mr. Michael V. Knight, Esq., Partner
Barnes & Thornburg LLP
700 1st Source Bank Center
100 North Michigan
South Bend, Indiana 46601-1632

Mr. James E. Dehner
2300 Fairway Drive
Long Beach, Indiana 46360

*Re: Formal Complaint 16-FC-57; Alleged Violation of the Open Door by the
Town of Long Beach Advisory Plan Commission*

Dear Mr. Knight and Mr. Dehner:

This advisory opinion is in response to your formal complaint alleging the Town of Long Beach Advisory Plan Commission ("APC") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 et. seq. The APC has not responded despite an invitation to do so on March 16, 2016. 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 March 15, 2016.

BACKGROUND

Your complaint dated March 15, 2016 alleges the Town of Long Beach Advisory Plan Commission violated the Open Door Law by holding a meeting behind closed doors. Mr. Dehner has also submitted public records requests for several past meetings.

On or about February 29, 2016, the Comprehensive Plan Subcommittee of the Advisory Plan Commission was scheduled to meet in the Town Hall Council Chambers. A transcript of the beginning of the meeting was provided to this Office. Mr. Dehner appeared prior to the meeting to observe -pursuant to a notice posted on the Town's website. The APC President did not allow the meeting to commence due to Mr. Dehner's presence. The meeting was reconvened elsewhere and the public was not allowed to attend.

According to prior meeting minutes of the Advisory Plan Commission, several subcommittees were formally established by the APC. You contend the meetings of the subcommittees should be subject to the Open Door Law.

ANALYSIS

Open Door Law Violation

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)*.

Subcommittees are not a way to subvert Open Door Law provisions and the ODL expressly addresses situations where delegations are formed to conduct official action on public business. Pursuant to the statutes below, the Town of Long Beach is a public agency and the APC is one of its governing bodies.

The ODL defines a public agency in Ind. Code § 5-14-1.5-2(a) as:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, School Corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

The ODL defines a governing body as two (2) 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.
- (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.**

See Ind. Code § 5-14-1.5-2 (b). Emphasis added.

The minutes of the January 18, 2016 APC meeting clearly indicate the Comprehensive Plan Steering subcommittee was directly appointed by the APC. Any discussion regarding public business by the “subcommittee” is subject to the Open Door Law.

“Public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e). “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. Ind. Code § 5-14-1.5-2(d).

A majority of a governing body which gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Town of Long Beach Advisory Plan Commission has violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor