

May 31, 2002

Mr. Richard E. Frost
507 Stonehedge Drive
Carmel, IN 46032-7400

Re: *Advisory Opinion 02-FC-19*;

Alleged Violation of the Open Door Law by the Hamilton County Board of Commissioners.

Dear Mr. Frost:

This is in response to your formal complaint, which was received on May 17, 2002. You have alleged that the Hamilton County Board of Commissioners ("Commissioners") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Commissioners are violating the ODL by not properly conducting its executive sessions, and in particular the one held on May 13, 2002. Mr. Michael Howard, attorney for the Commissioners, provided a written response to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Commissioners did not violate the ODL by conducting an executive session prior to their May 13, 2002 public meeting.

BACKGROUND

According to your complaint, the Commissioners are violating the Open Door Law by holding their executive sessions at the beginning rather than at the end of their agenda¹ for their meetings. In particular, you claim that such a violation occurred with respect to the Commissioners' May 13, 2002 executive session and, as a result, you filed your formal complaint with this Office.

In response to your complaint, Mr. Howard stated that it is your contention that the Commissioners are required to open their public meeting prior to conducting their executive sessions. He states that the Commissioners held their executive session beginning at 1:00 pm on May 13, 2002 as advertised and in compliance with the ODL. It is Mr. Howard's opinion that there is no need for the Commissioners to meet publicly, then go into executive session. He points out that under Indiana Code section 5-14-1.5-6.1 (e), a governing body may not conduct an executive session during a public meeting, so the Commissioners could not open their public meeting only to convene their executive session. It is Mr. Howard's position, therefore, that the Commissioners did not violate the ODL with respect to their May 13th executive session.

ANALYSIS

The intent and purpose of the ODL is 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." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Commissioners are a public agency and a governing body subject to the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b).

Notice of the date, time and place for a meeting or executive session of a governing body must be provided at least forty-eight (48) hours in advance, not including Saturdays, Sundays or legal holidays. Ind. Code §5-14-1.5-5(a). In addition, for executive session notices, the governing body must indicate the purpose or purposes for which the meeting will be held under Indiana Code section 5-14-1.5-6.1(b).

The ODL does not mandate that an executive session be held before or after a public meeting, only that the public is informed of the date, time and place of the executive session. In addition, the ODL provides that

notice [of a meeting] has not been given in accordance with [the ODL] if a governing body . . . convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe and record.

Indiana Code §5-14-1.5-5(h).

Under the facts presented, it appears that your complaint is directed at the fact that the Commissioners held their executive session before convening their public meeting. Mr. Howard is correct in that the ODL does not prohibit a governing body from holding an executive session prior to a public meeting so long as proper notice of the executive session and the public meeting are provided. It is my opinion that it was not a violation of the ODL for the Commissioners to hold their executive session prior to the scheduled public meeting on May 13, 2002.

As noted above, however, the ODL does require that a public meeting convene at a time not is not so "unreasonably" different from the scheduled time of the meeting. Ind. Code §5-14-1.5-5(h). In this case, the executive session ran long by approximately thirty-five (35) minutes², indicating that the public meeting did not begin on time. While it was not part of your formal complaint, I caution the Commissioners to be aware that if their public meetings start at a time that is unreasonably different from the advertised meeting time, it may deprive the public of the opportunity to attend, observe and record the meeting. If additional time is needed for an executive session held immediately prior to a public meeting, I suggest that the Commissioners take this into account in order to ensure that their public meetings are convened at or near the time scheduled.

CONCLUSION

It is my opinion that the Hamilton County Board of Commissioners did not violate the ODL by holding an executive session before their May 13, 2002 public meeting.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Michael Howard, Attorney for the HCBC w/o enclosure

¹ Although it is not clear from your complaint, you appear to be referencing the agenda for the Commissioners' public meeting held after the executive session.

² This is according to the handwritten notes you made on your copy of the agenda, which was attached to your formal complaint.