



# STATE OF INDIANA

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June 17, 2008

Theodore Reese  
2306 Lake Shore Drive  
Long Beach, Indiana 46360

*Re: Formal Complaint 08-FC-136; Alleged Violation of the Open Door Law  
by the LaPorte County Board of Commissioners and the LaPorte County  
Assessor*

Dear Mr. Reese:

This advisory opinion is in response to your formal complaint alleging the LaPorte County Board of Commissioners ("Commissioners") and LaPorte County Assessor ("Assessor") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by initiating legal action without conducting a public meeting. I have enclosed a copy of the Commissioners' and Assessor's response to the complaint. In my opinion, neither the Commissioners nor the Assessor violated the Open Door Law.

## BACKGROUND

You allege that on May 7, 2008 the Commissioners and Assessor initiated legal action in violation of the ODL because the Commissioners did not provide notice of an executive session and did not discuss the legal action at a public meeting. You filed this complaint on May 22.

The Commissioners and Assessor responded to the complaint by letter dated June 9 from attorney Shaw Friedman. The Commissioners and Assessor contend the verified petition filed did not constitute an initiation of legal action. The Commissioners and Assessor contend the strategy related to the initiation of litigation was discussed at an executive session but no final action was taken.

## 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. I.C. § 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. I.C. § 5-14-1.5-3(a). The Commissioners constitute a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2. The Assessor does not constitute a governing body for the purposes of the ODL, so the remainder of my opinion will address the actions of the Commissioners. *See* I.C. § 5-14-1.5-2.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

You have alleged the Commissioners initiated legal action in violation of the ODL. I do not agree. While the ODL *allows* a governing body to conduct an executive session to discuss strategy with respect to initiation of litigation (See I.C. § 5-14-1.5-6.1(2)(B)), nothing in the ODL *requires* either an executive session or a public meeting before litigation may be initiated. The ODL is generally triggered when a governing body decides to conduct a meeting, but it is not instructive as to what actions of a governing body require a meeting or a vote.

You are correct in your assertion that any final action must be taken at a meeting open to the public and may not be taken in executive session. I.C. § 5-14-1.5-6.1(c). Final action, though, means a vote. I.C. § 5-14-1.5-2(g). Any other official action, including making decisions, can be made in executive session. *See Baker v. The Town of Middlebury*, 753 N.E.2d 67 (Ind. Ct. App. 2001), holding a governing body may make decisions in an executive session.

The Commissioners contend an executive session was conducted for a discussion of strategy with respect to the initiation of litigation. So long as appropriate notice was provided pursuant to I.C. § 5-14-1.5-5 and other requirements of the ODL were followed (e.g. the memoranda requirement found in I.C. § 5-14-1.5-4), the Commissioners acted in accordance with the Open Door Law.

#### CONCLUSION

For the foregoing reasons, it is my opinion that neither the Commissioners nor the Assessor violated the Open Door Law.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Shaw Friedman, Friedman & Associates P.C.