



# STATE OF INDIANA

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July 22, 2008

Linda Karn  
2953 North Lawndale Avenue  
Speedway, Indiana 46224

*Re: Formal Complaint 08-FC-164; Alleged Violation of the Open Door Law  
by the Indiana Department of Labor, Town of Speedway, and Speedway  
Redevelopment Commission*

Dear Ms. Karn:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Labor ("Department"), Town of Speedway ("Town"), and Speedway Redevelopment Commission ("Commission") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a meeting without proper notice to the news media. I have enclosed a copy of the Department's response and Town's response to the complaint for your reference. It is my opinion the Town, as the awarding public agency responsible for setting up the committee, is responsible for assuring compliance with the requirements of the Open Door Law.

## BACKGROUND

You filed a complaint on July 3, 2008, alleging that on June 24, 2008 you learned of a common construction wage committee hearing held earlier that day. You allege that your newspaper, The Speedway Navigator, did not receive notice of the meeting. You allege that neither the Town nor the Department will "claim responsibility" for providing notice. You submitted an addendum to your complaint, alleging that the Commission may be the entity responsible for the notice.

The Department responded to the complaint by electronic mail message dated July 21 from Deputy Commissioner and General Counsel Rick Ruble. The Department contends that I.C. § 5-16-7-5 requires the "awarding agency" to set up a committee in compliance with the Common Construction Wage Act for the purpose of ascertaining what is the common construction wage in the county. Mr. Ruble contends the term "awarding governmental agency" has generally been interpreted and applied to mean the governmental agency that is awarding the contract for a public work construction project. Mr. Ruble contends that in this matter the awarding agency would be either the Town or the Commission. Mr. Ruble provided a copy of an electronic mail message he provided

the Department's public information officer; the officer then sent the information contained in the message to you.

The Town responded to the complaint by letter dated July 21 from attorney Kimberly Blanchet. The Town indicates it is the awarding agency and appointed the committee members as required by I.C. § 5-16-7-1(b) and then notified the Department of the need for a common construction wage hearing as well as the appointment of the remainder of the members pursuant to I.C. § 5-16-7-1(b)(1), (3) and (5). The Department then notified the Town that the hearing would be held on June 24 at 8:00am at the Indiana Government Center. The Town contends the Department posted the meeting notice on the Department's website and provided notice to news media. The Town also indicates the Department took minutes of the meeting. The Town contends that I.C. § 5-16-7-1(c) provides that the ODL applies to a meeting of the committee but does not indicate which agency is responsible for the meeting notice.

### 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 meetings of the common construction wage committee are subject to the requirements of the ODL. See I.C. § 5-16-7-1(b) and I.C. § 5-14-1.5-2.

(a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where 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.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice.

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

I.C. § 5-14-1.5-5(a).

Here, you allege that you are a member of the news media and by January 1 of this year you requested from a number of public agencies the notices of all meetings for the year. Neither agency argues that you represent the news media, which is defined in I.C. § 5-14-1.5-2(j). You allege that you did not receive notice of the June 24 common construction wage hearing.

The common construction wage hearing is subject to the Open Door Law, pursuant to I.C. § 5-16-7-1(b). It is my opinion that in addition to this provision, the committee is subject to the ODL pursuant to I.C. § 5-14-1.5-2(b)(2), since it is “the board, commission, council, or other body of a public agency which takes official action upon public business.” Further, it is my opinion that because the Town is the awarding agency and was required to set up the committee pursuant to I.C. § 5-16-7-1(b), the committee is a committee of the Town for the purposes of I.C. § 5-14-1.5-2(b)(2).

The notice required by the ODL is required to be provided by the governing body, which is the committee. *See* I.C. § 5-14-1.5-5. Since the Town is the public agency under which the committee operates, it is my opinion the Town is responsible for providing notice of a meeting of the committee. This is similar to a committee established by a town council, school board, or board of county commissioners. If one of those agencies establishes a committee which is a governing body for the purposes of the ODL, the public agency which is responsible for establishing the committee is generally responsible for assuring compliance with the ODL.

Further, I.C. § 5-16-7-1(b) provides that “[f]or the purpose of ascertaining what the common construction wage is in the county, the awarding governmental agency, *before advertising for the contract*, shall set up a committee of five (5) persons as follows. . .” *Emphasis added*. This statute contemplates the Town’s role in advertising the contract. It does not contemplate the committee itself advertising the contract. This provision, along with a number of other provisions in I.C. § 5-16-7-1 which refer to the responsibilities of the awarding agency lead me to conclude that in absence of explicit instructions as to the agency responsible for assuring compliance with the ODL, that duty falls on the Town as the awarding agency.

It is my understanding the Department has generally offered to awarding agencies a number of services including scheduling the hearing at the Indiana Government Center, posting notice at the Indiana Government Center, posting notice on the Department’s website, and other services. I find no provision in Indiana law requiring the Department

to provide these services. The Department has published via its website a handbook entitled *Guide to Establishing Indiana's Common Construction Wage*, available at [http://www.in.gov/dol/files/Guide\\_to\\_CCW\\_5-30-08.pdf](http://www.in.gov/dol/files/Guide_to_CCW_5-30-08.pdf). The following appears in the guide:

In an effort to facilitate these hearings, the IDOL has reserved meeting dates, times and public locations in each of Indiana's ninety-two counties. Upon an Awarding Agency's request, the IDOL will schedule a Common Construction Wage committee hearing. The department will also provide committee notices, publications and supplemental materials necessary to facilitate these hearings.

*Id.* at 2.

While I find no statutory provision requiring the Department to provide notice to the news media of common construction wage committee hearings, it is understandable this provision in the Department's guide might lead an awarding agency to believe the Department will provide all notices required under the ODL. But this confusion does not relieve the awarding agency of the responsibility to assure the committee's compliance with the ODL. As such, it is my opinion the Town was responsible for providing appropriate notice of the June 24 meeting.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Town, as the awarding agency responsible for setting up the committee, is responsible for assuring compliance with the requirements of the Open Door Law.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Rick Ruble, Indiana Department of Labor  
Kimberly Blanchet, Barnes & Thornburg LLP  
Sharon Zishka, Town of Speedway