



STATE OF INDIANA

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June 17, 2009

Gerhard Weber
PO Box 959
Nashville, Indiana 47448

*Re: Formal Complaint 09-FC-132; Alleged Violation of the Open Door Law
by the Brown County Board of Commissioners*

Dear Mr. Weber:

This advisory opinion is in response to your formal complaint alleging the Brown County Board of Commissioners ("Board") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by taking official action outside of a public meeting. A copy of the Board's response to the complaint is enclosed for your reference. It is my opinion the Board did not violate the ODL.

BACKGROUND

You filed the present complaint on May 26, 2009, alleging that the Board has violated the ODL. You allege that two of the three members of the Board took part in a May 18 meeting of the Brown County Council. You allege the two members of the Board made recommendations and established policy.

The Board responded to the complaint by letter dated June 16 from Brown County Attorney Kurt Young. The Board contends that while two members of the Board attended the May 18 Council meeting, their attendance did not constitute a meeting for the purposes of the ODL. The Board contends that Commissioner Austin engaged in conversation with the President of the Council regarding the pay of the Assistant Emergency Management Director and membership of the EMA Advisory Board. Commissioner Austin is a member of the EMA Advisory Board and made his remarks in his individual capacity. The Board further contends that Commissioner Kent made no comments to the Council regarding the EMA.

The Board cites opinions issued by one of my predecessors (*Opinion of the Public Access Counselor 04-FC-72 and 04-FC-77*) and contends that neither commissioner was conducting the public business of the Board at the May 18 meeting.

ANALYSIS

It is the intent of the ODL 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).

A “meeting,” for the purposes of the ODL, is a “gathering of a 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). The Board of Commissioners is a governing body of a public agency. I.C. § 5-14-1.5-2(a) and (b).

The Board consists of three members. Two of the three attended the May 18 Council meeting. As such, the May 18 Council meeting was the site of a gathering of a majority of the governing body. The question, then, is whether the two members gathered for the purpose of taking official action on public business.

For the purposes of the ODL, “official action” can be taken in a number of ways: by receiving information, deliberating, making recommendations, establishing policy, making decisions, or by taking final action (i.e. voting). I.C. § 5-14-1.5-2(d). The Board indicates that Commissioner Austin engaged in a conversation with the President of the Council, making suggestions regarding the EMA Advisory Board. But the action Commissioner Austin took was not a matter of public business of the Board. Instead, the commissioner was addressing the public business of another governing body, namely the Council. As the Board contends, this office has addressed similar issues in the past and has opined that a gathering does not constitute a meeting when the matter at issue is not the business of the governing body.

In *Opinion of the Public Access Counselor 04-FC-77*, Counselor Hurst opined, in a matter similar to the present one, that “[b]ecause the Council meeting did not involve the Commissioners’ public business, the Commissioners were not in a ‘meeting’ of their own for purposes of the Open Door Law, and they were not therefore required to give notice that they were gathering together as a majority at that time.”

For the reasons I addressed in *Opinion of the Public Access Counselor 07-FC-318 and 07-FC-319* (two complaints were consolidated and addressed in one opinion), I cannot issue a blanket statement that the Board could never violate the ODL by attending a Council meeting on the basis that the business of the Council is not the business of the Board. I could envision scenarios where the public business of the two bodies might overlap or where the Board decides, as a matter of public business, that the Board members need to attend the Council meeting together to carry out the Board’s public business. Here, though, it is my opinion the May 18 meeting did not constitute a meeting of the Board. Based on the description of the events, it is my opinion that the public business addressed at the May 18 meeting was not the public business of the Board or

was not so tangentially related to the business of the Board that the Board members acted together to take official action on public business.

CONCLUSION

For the foregoing reasons, it is my opinion the Board did not violate the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Kurt A. Young, Brown County Attorney
Bill Austin, Brown County Board of Commissioners