



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 16, 2008

Environmental Management Corporation  
1001 Boardwalk Springs Place  
O'Fallon, Missouri 63366

*Re: Formal Complaint 09-FC-4; Alleged Violation of the Open Door Law by  
the City of Jeffersonville and the City of Jeffersonville Sanitary Sewer  
Board*

Dear Mr. Kuhlenschmidt:

This advisory opinion is in response to your formal complaint alleging the City of Jeffersonville and City of Jeffersonville Sanitary Sewer Board (hereinafter collectively referred to as "City") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting an executive session without proper statutory authority. A copy of the City's response to the complaint is enclosed for your reference. In my opinion I am precluded from issuing an advisory opinion in response to this complaint because it concerns a specific matter with respect to which a lawsuit has been filed under I.C. 5-14-1.5.

You filed a previous complaint on October 9, 2008, alleging that two letters sent to Environmental Management Corporation ("EMC") by the City were authorized at two separate executive sessions. In that matter, I declined to issue an opinion on the following grounds:

Because this complaint concerns a specific matter with respect to which a lawsuit has been filed, it is my opinion I am precluded by I.C. 5-14-1.5 from issuing an advisory opinion on the substantive issue presented by this complaint.

*Opinion of the Public Access Counselor 07-FC-217*

You have now filed a subsequent complaint against the City. You allege the City conducted an executive session in November at which the City decided to take over control of the City's sanitary sewer treatment and collection system on December 1. You do not provide further detail regarding the date, time or location of the meeting. As evidence, you provide a newspaper article dated December 2 wherein a reference to a "closed-door executive session in November" is attributed to Mayor Galligan. You requested priority status for the complaint, pursuant to 62 IAC 1-1-3, alleging you intend

to file action in circuit or superior court to declare void the decision allegedly made by the City at the meeting. Priority status has been granted.

The City responded to the complaint by letter dated December 15 from attorney R. Scott Lewis. The City contends that I am precluded from issuing an advisory opinion in response to this complaint because it concerns a specific matter with respect to which a lawsuit has been filed under I.C. 5-14-1.5. Namely, the City argues that this issue is a matter pertaining to the litigation referenced in my October 15 opinion. The City contends the takeover was conducted pursuant to the August 7 letter of termination. Further, the City indicates the Agreed Entry which you contend the City violated is the subject of a pending court hearing scheduled for December 17.

It is my opinion the issue you present is directly related to pending litigation referenced in my October 15 opinion. Because this complaint concerns a specific matter with respect to which a lawsuit has been filed, it is my opinion I am precluded by I.C. 5-14-1.5 from issuing an advisory opinion on the issue presented in this complaint.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: R. Scott Lewis