



# STATE OF INDIANA

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March 23, 2009

Jeffery Hughes  
1702 Yodel Odel Lane  
Lawrenceburg, Indiana 47025

*Re: Formal Complaint 09-FC-61; Alleged Violation of the Open Door Law by  
the Dearborn County Board of Commissioners*

Dear Mr. Hughes:

This advisory opinion is in response to your formal complaint alleging the Dearborn County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a meeting without appropriate notice and from which the public was excluded. A copy of the Commissioners' response to the complaint is enclosed for your reference. In my opinion the Commissioners violated the ODL.

## BACKGROUND

You filed the present complaint on February 19, 2009, alleging the Commissioners violated the ODL. You are a member of the Board of Commissioners, and you allege that you were asked to attend a meeting on January 21. The meeting was attended by the other two commissioners as well as the county auditor and two representatives of a consulting firm. The topic of the discussion was a jail and justice conceptual master plan. You declined to attend the meeting on the basis that you thought it should be open to the public. You complain that the Commissioners violated the ODL by conducting this meeting.

Ralph Thompson, Jr., President of the Board of Commissioners, responded to the complaint by letter dated March 5. Mr. Thompson contends that at the January 21 meeting there were "no decisions or actions by the Commissioners." He further contends the meeting occurred in an "open venue" in the Commissioners' meeting room. Further, Mr. Thompson contends the gathering did not fall under the definition of "meeting," based on I.C. § 5-14-1.5-2(c)(2) and (5). As justification for the reliance on I.C. § 5-14-1.5-2(c)(5), he contends the concepts presented may have lead to insights that could bear on the purchase of property. Finally, Mr. Thompson contends that the Board of Commissioners has held numerous similar meetings to receive information and where

“no action was planned or undertaken.” Mr. Thompson contends you have been in attendance at such meetings.

## 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).

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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a).

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). “Public business” means any function upon which the public agency is empowered or authorized to take official action. I.C. § 5-14.1.5-2(e). “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).

Here, two of the three commissioners attended the January 21 gathering. The Commissioners took official action since they received information from the consultants. As described, the subject matter of the meeting was “public business” since the Commissioners are empowered to take action on the topics addressed. While Mr. Thompson argues that “there were no decisions or actions by the Commissioners,” the ODL indicates otherwise. If the Commissioners received information, they took official action. See I.C. § 5-14-1.5-2(d). I urge the Commissioners to review the definition of “official action” and keep in mind that official action consists of much more than making decisions. In fact, making decisions is only one of the six activities that constitute official action for purposes of the ODL.

The Commissioners argue that the January 21 gathering was not a meeting because it falls under an exception to the definition of meeting. The Commissioners argue that both I.C. § 5-14-1.5-2(c)(2) and (5) apply.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

- (1) any social or chance gathering not intended to avoid this chapter;
- (2) any on-site inspection of any:

- (A) project;
  - (B) program; or
  - (C) facilities of applicants for incentives or assistance from the governing body;
  - (3) traveling to and attending meetings of organizations devoted to betterment of government;
  - (4) a caucus;
  - (5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;
  - (6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action; or
  - (7) a gathering for the sole purpose of administering an oath of office to an individual.
- I.C. § 5-14-1.5-2(c).

It is my opinion the Commissioners cannot rely on I.C. § 5-14-1.5-2(c)(2) in this instance. This exception applies to on-site inspections. The Commissioners did not go on-site anywhere to inspect a program. Instead, they met in the Commissioners meeting room to review plans developed by a contractor. An example of an appropriate application of this exception would be a school board convening at a school to see firsthand an after school program implemented at the school. In my opinion, the Commissioners cannot rely on this exception.

Further, it is my opinion the Commissioners cannot rely on I.C. § 5-14-1.5-2(c)(5). This exception is to discuss an industrial or commercial prospect. An example of the appropriate application of this exception would be a meeting of a county council and/or commissioners to discuss what a county might do to lure a business to locate its new headquarters in the county. Here, the Commissioners contend that because the result of the discussion might lead to the purchase of property, the discussion was of an industrial or commercial prospect. I do not agree. This exception is to be applied to the discussion at hand and not a decision or discussion which might result from the present topic.

The Commissioners ask for “clear guidelines as to which meetings constitute a violation.” In my opinion, the ODL offers clear guidelines:

It is the intent of this chapter that the official action of public agencies be conducted and taken openly, *unless otherwise expressly provided by statute, . . .*  
I.C. § 5-14-1.5-1, emphasis added.

I would advise the Commissioners to consider all meetings to be meetings open to the public and requiring appropriate notice unless they find a specific exception in the statute. For instance, if the Commissioners are gathering for the “sole purpose of

administering an oath of office to an individual,” that would not be a meeting. I.C. § 5-14-1.5-2(c)(7). Or if the Commissioners are meeting for one of the specific instances listed in I.C. § 5-14-1.5-6.1, the meeting may be an executive session from which they may exclude members of the public. For further guidance, the Commissioners might find helpful my office’s *Handbook on Indiana’s Public Access Laws*, which can be found at [www.in.gov/pac](http://www.in.gov/pac).

#### CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners violated the ODL.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Ralph Thompson, Jr., Dearborn County Board of Commissioners