



# STATE OF INDIANA

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March 23, 2009

Nickolas Werner  
*The Star Press*  
PO Box 2408  
Muncie, Indiana 47307

*Re: Formal Complaint 09-FC-62; Alleged Violation of the Open Door Law by  
the Delaware County Board of Commissioners*

Dear Mr. Werner:

This advisory opinion is in response to your formal complaint alleging the Delaware County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a meeting without proper notice and from which the public was excluded. I have enclosed a copy of the Commissioners' response to the complaint for your reference. It is my opinion the Commissioners violated the Open Door Law by conducting an administrative function meeting from which they excluded members of the public.

## BACKGROUND

You filed the present complaint on February 19, 2009, alleging that after the Commissioners' meeting on February 17, the Commissioners met in their office behind closed doors for ten to fifteen minutes. You allege you were told the Commissioners discussed comments made during the public meeting. You contend the closed door meeting violated the ODL.

The Commissioners responded to the complaint by letter dated March 9 from attorney Michael Quirk. In addition to the response is a statement from each of the three commissioners. The Commissioners contend they did not violate the ODL. The Commissioners explain that they share an office and gather there between meetings to sign documents which need to be signed right away. The Commissioners contend that during this time, a brief argument broke out between two of the commissioners regarding a comment one made about the other during the regular meeting. The Commissioners classify the discussion as a personal issue.

## 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.

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).

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).

The requirements for providing notice do not apply when the executive of a county meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. Administrative functions do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. I.C. § 5-14-1.5-5(f)(2). Even though notice is not required, the “administrative function” meeting must be held in the public, since the notice provision of the ODL is *the only provision* that does not apply to an “administrative function” meeting. I.C. § 5-14-1.5-5(f)(2), emphasis added.

Here, the Commissioners met in their office after the regular meeting to sign documents which they needed to sign right away. All three members were present, and certainly the signing of these documents constitutes public business. In my opinion, signing such documents is an appropriate use of the “administrative function” meeting. As such, notice was not required, but the meeting should have been open to the public. If the public was excluded, the Commissioners violated the ODL.

Regarding the conversation, it is arguable the matter was not public business since it was not a function upon which the public agency is empowered or authorized to take official action. See I.C. § 5-14-1.5-2(e). That conversation alone probably would not make the gathering a meeting for the purposes of the ODL. This point is moot, thought,

because it is my opinion the meeting was an administrative function meeting and should have been open to the public.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners violated the Open Door Law by conducting an administrative function meeting from which they excluded members of the public.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Michael P. Quirk, Quirk, Rivers & Hunter  
Todd Donati, Delaware County Board of Commissioners