



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

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Frankie Niedhammer  
2931 East Boonville-New Harmony Road  
Evansville, Indiana 47725

*Re: Formal Complaint 09-FC-40; Alleged Violation of the Open Door Law by  
the Vanderburgh County Board of Commissioners*

Dear Mr. Mullendore:

This advisory opinion is in response to your formal complaint alleging the Vanderburgh County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by voting to adopt a resolution which did not appear on the meeting agenda. A copy of the Commissioners' response to the complaint is enclosed for your reference. It is my opinion the Commissioners have not violated the Open Door Law.

## BACKGROUND

You filed the present complaint on February 6, 2009, alleging an ODL violation at the February 3 meeting of the Commissioners. You allege that the Commissioners approved a resolution in support of a bill currently being considered by the Indiana General Assembly. You allege the agenda for the February 3 meeting made no mention of the resolution. You further allege members of the public should have been able to state their positions on the matter before the Commissioners voted.

The Commissioners responded to the complaint by letter dated February 10 from attorney Ted C. Ziemer, Jr. The Commissioners acknowledge that on February 3 they adopted Resolution CO.R-02-09-002, showing support for a financing plan for a new events center to be constructed in downtown Evansville. The Commissioners contend they received the proposed resolution from the mayor on February 2. The Commissioners explain that they have no power to authorize or adopt the financing plan but indicate the mayor was simply asking the Commissioners for support for the plan. The Commissioners contend that shortly before the scheduled meeting on February 3, the President of the Commissioners decided to add the resolution to the agenda. The Commissioners contend the agenda for the meeting had already been prepared, posted, and distributed.

The Commissioners contend that the ODL does not require a governing body to utilize an agenda. Further, the ODL provides that if the governing body utilizes an agenda, the ODL does not prohibit the governing body from changing or adding to its agenda during the meeting. The Commissioners indicate the resolution was introduced, discussed, and voted upon during the February 3 meeting.

## 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).

Regarding a meeting agenda, the ODL provides the following:

A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

I.C. § 5-14-1.5-4(a).

The ODL does not specifically address a public agency changing or adding to its agenda during a meeting. It has long been held by this office, though, that “[b]ecause the ODL does not require an agenda, it is not a violation of the ODL to add or omit discussion items during the meeting or otherwise deviate from the agenda.” *See Opinion of the Public Access Counselor 04-FC-166*, available via my office’s website at <http://www.in.gov/pac/advisory/files/04-FC-166.pdf>. The premise that a governing body may deviate from its agenda is also provided on page 9 of my office’s *Handbook on Indiana’s Public Access Laws, Updated April 2008*, available at [www.in.gov/pac](http://www.in.gov/pac).

Here, the Commissioners utilized an agenda for the February 3 meeting. According to the Commissioners, the agenda was posted and distributed in accordance with I.C. § 5-14-1.5-4(a). After the agenda was created and distributed but before the meeting started, the President of the Commissioners decided to address the resolution at the meeting. It is my opinion this does not constitute a violation of the ODL.

You contend that since the resolution did not appear on the agenda, members of the public did not have the chance to provide testimony on the subject. Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745 (Ind. Ct. App. 2003), *trans. denied*, 2003. Even if the resolution had appeared on the agenda, nothing in the ODL guarantees that the members of the public in attendance would have been able to testify on the matter.

CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners did not violate the ODL.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Ted C. Ziemer, Jr., Ziemer, Stayman, Weitzel & Shoulders, LLP