



# STATE OF INDIANA

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*Via email transmission*

June 24, 2016

Mr. David Lewis

*Re: Informal Inquiry 16-INF-17; River Ridge Development Authority*

Dear Mr. Lewis:

This is in response to your informal inquiry regarding whether the River Ridge Development Authority may conduct its official duties using telephone communications during meetings, as authorized under Indiana Code § 5-14-1.5-3.5.

You note the Authority is a public agency subject to the Open Door Law. The Authority was created under Indiana Code § 36-7-30 as serves as a military reuse authority. According to Indiana Code § 36-7-30-2 gives a governing body the authority to develop initiatives for the planning, replanning, rehabilitation, development, redevelopment, and other preparation for reuse of military bases and military base property.

The military base reuse authority shall do the following:

- (1) Investigate, study, and survey the area surrounding and the real property and structures that are part of a military base within the corporate boundaries of the unit.
- (2) Investigate, study, and determine the means by which military base property may be reused by private enterprise to promote economic development within the unit or by state and local government to otherwise benefit the welfare of the citizens of the unit.
- (3) Promote the reuse of military base property in the manner that best serves the interests of the unit and its inhabitants.
- (4) Cooperate with the departments and agencies of the unit and of other governmental entities, including the state and the federal government, in the manner that best serves the purposes of this chapter.
- (5) Make findings and reports on their activities under this section, and keep the reports available for inspection by the public.
- (6) Select and acquire military base property to be reused by private enterprise or state or local government under this chapter.

(7) Transfer acquired military base property and other real and personal property to private enterprise or state or local government in the manner that best serves the social and economic interests of the unit and the unit's inhabitants.

The five (5) members of a Board of Directors are appointed by the participating jurisdictions in the Authority depending on whether the military base is located within a city or county. The statute is clear the members are appointed by local public officials within a political subdivision.

Your question is whether the Authority may hold meetings electronically. The Open Door Law distinguishes between state agencies and local governments. While state agencies (and charter schools) may adopt policies allowing members to participate, vote and be counted present electronically, local governmental units may only allow members appearing electronically to participate in discussion. They are not considered to be present for establishing a quorum and they may not vote.

The prohibition against electronic meetings in Indiana Code § 5-14-1.5-3.5 only applies to the governing body of a political subdivision whereas Indiana Code § 5-14-1.5-3.6 only applies to charter schools or the "body corporate and politic established as an instrumentality of the state."

Under Indiana Code § 5-14-3-2(n)(2)(B), political subdivision has the meaning set in Indiana Code § 36-1-2-13, which states, " 'Political subdivision' means municipal corporation or special taxing district."

Indiana Code § 36-7-30-3 dealing with military reuse authorities states:

"All of the territory within the corporate boundaries of a municipality [of a reuse authority] constitutes a taxing district for the purpose of levying and collecting special benefit taxes for reuse purposes as provided in this chapter. All of the territory in a county constitutes a taxing district for a county."

It is clear from the entirety of Section 36-7-30 that reuse authorities were intended to be local. To the best of my knowledge, the General Assembly has not defined body corporate and politic established by instrumentality of the state, however, historically this has been interpreted to apply only to State of Indiana executive branch agencies and its governing bodies.

The rationale behind distinguishing between local and State-wide governing bodies for the purposes of electronic meetings is State governing bodies often are made up of sitting members from opposite ends of the State of Indiana and everywhere in between. For example, a State committee may have members from Gary, Evansville, Indianapolis and Fort Wayne. It stands to reason geographical practicalities would have played into the General Assembly's intent when allowing those State agencies to participate, vote and be considered present by electronic means.

Such is not the case on the local level. Local governing boards, councils and commissions are made up of members from the town, city, county or, in some cases, region over which the board has authority. Any geographic limitations are much less cumbersome when a board plans to meet and discuss public business.

Based upon the statutory framework of reuse authorities, it becomes clear these entities were intended to be local in nature and not instrumentalities of the state. Therefore, it is my opinion members may participate in discussion electronically, but may not adopt a policy for members to be counted present or vote by electronic means.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the main part of the signature.

Luke H. Britt  
Public Access Counselor