



STATE OF INDIANA

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September 27, 2019

Joseph C. Svetanoff
Via email

Re: Informal Opinion; 19-INF-14; Exclusion of Board Members from Executive Sessions

Dear Mr. Svetanoff:

This memorandum is in response to your request for an informal opinion on the issue of exclusion of board members from executive sessions.

BACKGROUND

On August 15, 2019, the Lake County Convention and Visitors Bureau ("Bureau") held an executive session for the purpose of discussing strategy related to litigation. The litigation in question involves the City of Hammond ("City") as the Plaintiff whereas the Bureau is the defendant. Out of an abundance of caution, the Bureau excluded two board members from the executive session as they were appointees of the City.

In *Opinion of the Public Access Counselor 16-FC-146*, this Office held that a municipal clerk-treasurer could be excluded from an executive session related to litigation strategy if the clerk-treasurer was a party in the lawsuit. You seek guidance as to whether that would be this Office's stance in relation to Board members.

OPEN DOOR LAW

It is the intent of the Open Door Law ("ODL") 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. See Ind. Code § 5-14-1.5- 1. Except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14- 1.5-3(a).

Despite the ODL's general rule of open meetings, the public may be excluded from certain meetings known as executive sessions. A governing body may only hold an executive session in the specific instances set forth under section 6.1 of the ODL. See Ind. Code § 5-14-1.5-6.1(b).

While the public may be excluded from these session, the law is silent as to whether other public officials – those whom would normally be invited – can be excluded. In *16-FC-146*, this Office concluded that while a clerk-treasurer has a statutory duty to be the secretary of a council, a compelling argument could be made for exclusion when the clerk-treasurer was suing or being sued by the municipality.

This issue is quite different in that there is no statutory mandate for a board member to attend each and every gathering of the governing body upon which they sit. While some municipal governing bodies may have attendance rules in its by-laws, it is largely a matter of local governance. Therefore this Office is limited in the advice it can give as the issue is not so much one of *public* access as it is of *individual* access.

One consideration of note is found in the Access to Public Records Act. Indiana code section 5-14-3-10 prohibits a public official from knowingly or intentionally disclosing sensitive information. This includes both confidential information and that which would be otherwise considered “discretionary” release. Matters discussed in executive session would be inarguably either confidential or deliberative. Such disclosure of those executive session details would be a Class A infraction. This should be deterrent enough to prevent leaks, however, should a presiding officer choose to preclude a member of a board from attending an executive session regarding litigation, that is a decision left to the body politic.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor