



STATE OF INDIANA

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August 4, 2011

Ms. Rhonda A Greene
10130 West Suder Lane
Campbellsburg, Indiana 47108

*Re: Formal Complaints 11-FC-169; Alleged Violation of the Open Door Law
by the Washington County Council*

Dear Ms. Greene:

This advisory opinion is in response to your formal complaints alleging the Washington County Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Council's response is enclosed for your reference.

BACKGROUND

In your complaint you allege that the Council has an executive meeting prior to each regularly scheduled monthly meeting and continually fails to provide a statement as to why the executive meetings are being held and what is being discussed during the executive meetings.

In response to your formal complaint, Attorney Mark D. Clark responded on behalf of the Council. Mr. Clark provided that the Council holds its regularly monthly public meeting on the first Monday of the month. The Council meets in Executive Session prior to each monthly public meeting to discuss litigation and personnel issues. Mr. Clark has provided copies of the Council's agenda that have been utilized over the last 18 months, which are posted outside the meeting room and delivered to the local media. It would appear that the Council's Agenda and the notice provided to the public are used interchangeably. Relative to the executive sessions, the agenda provides notice of the time of the executive session, and notes "Personnel and Litigation, 5-14-1.5-6.1(b)(2)(b) and (9)." Mr. Clark advised that the Council does not maintain detailed minutes of the executive sessions, nor are the contents of the executive session discussed in open meetings of the Council. Further, the Council does not make decisions during the executive session as such action is prohibited by the ODL.

ANALYSIS

It is the intent of the 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* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). In addition, certain things may be done in executive session when considering the appointment of a public official. *See* I.C. § 5-14-1.5-6.1(b)(10).

Notice of an executive session must be given 48 hours in advance of every session and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2)

This office has addressed this issue in the past. *See Op. of the Public Access Counselor 07-FC-64; 08-FC-196; 11-FC-39.* In *Op. of the Public Access Counselor 05-FC-233*, Counselor Davis wrote the following:

This office has stated on many occasions that “personnel issues” is wholly inadequate under the Open Door Law. First, there are several enumerated instances involving personnel-related matters that are permissible for an executive session. Accordingly, “personnel issues” lacks the required specificity, because the Open Door Law states that notice of an executive session must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. IC 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to IC 5-14-1.5-6.1(b)(9),” for example, would satisfy the notice requirements.

I agree with the opinion of Counselor Davis and would also note that there are a number of personnel matters which may not be discussed in executive session. To the extent the Council conducts executive sessions to discuss personnel matters allowable under the ODL; the Council must cite the specific statutory instance allowing the executive session and the language of the statute. Currently, the Council is only providing the statutory citation and “personnel”. Further, if the “personnel” discussions being held by the Council in executive session go beyond discussing the job performance evaluation of an individual employee, a recognized exception under I.C. § 5-14-1.5(b)(2)(9), a separate statutory exception and the language of the exception needs to be provided. To the extent the Council intends to address personnel matters not specifically enumerated in I.C. § 5-14-1.5-6.1, the Council should address those matters at a meeting open to the public.

In regards to litigation matters addressed during the Council’s executive sessions, notation to the specific statutory exception and the language of the exception needs to be provided. Currently, the Council is only providing the statutory citation and “litigation”.

CONCLUSION

For the foregoing reasons, it is my opinion that the Council violated the ODL by providing insufficient notice of an executive session.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Mark D. Clark