



STATE OF INDIANA

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August 17, 2011

Mr. David Milhouse
2823 Griffa Avenue
Columbus, Indiana 47203

*Re: Formal Complaint 11-FC-180; Alleged Violation of the Open Door Law
by the Bartholomew County Drainage Board*

Dear Mr. Milhouse:

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

BACKGROUND

In your complaint you provide that on May 13, 2011, a petition from the Bartholomew County Highway Department was filed with the Board for removal of an obstruction of the natural flow of water from County Road 650 South. You allege that on July 18, 2011, the Board met for the purpose of an on-site inspection at the site of the alleged obstruction. You also state that present at the meeting was an adjoining landowner, the party that made the initial complaint to the County Highway Department. You allege the meeting was held to gather information and that no notice or agenda was provided, including notice to the parties involved with the petition, all in violation of various provisions of the ODL.

In response to your formal complaint, Attorney J. Grant Tucker responded on behalf of the Board. Mr. Tucker advised that the Board did assemble at the location of an alleged obstruction on County Road 650 South on July 18, 2011, solely to allow the Board to visually inspect the area. The Board further denied that an adjoining land owner who initiated the complaint was present during the inspection.

The Board does concede that at a minimum, the actions of the Board were a technical violation of the ODL. As such in an effort to cure the defect, the Board announced at its August 8, 2011 meeting that the hearing on the alleged obstruction would be continued and that Board again would meet at the site of the alleged obstruction for the purposes of gathering visual information only. All those in attendance at the

August 8, 2011 meeting were informed of the new date of the visual inspection and that they were welcome to attend.

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).

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. *See* I.C. § 5-14-1.5-5(a). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. *See* I.C. § 5-14-1.5-5(b). Notice has not been given in accordance with Section 5 of the ODL if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. *See* I.C. § 5-14-1.5-5(h).

There is no dispute that the Board is a governing body of a public agency. The issue presented is whether the Board held a meeting for the purposes of the ODL when it assembled to inspect the alleged obstruction on County Road 650 South on July 18, 2011. The ODL defines a “meeting” as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5(d).

Here, the Board concedes that the July 18, 2011 inspection by the Board of the alleged obstruction was considered a meeting pursuant to the ODL. As such, notice was required to be provided pursuant to I.C. § 5-14-1.5-5. As notice was not provided, the Board violated the ODL.

The Board has provided that in an attempt to cure the defect the Board announced at its August 8, 2011 meeting that the hearing on the alleged obstruction would be continued and that Board would again meet at the site of the alleged obstruction for the purposes of gathering visual information only. All those in attendance at the August 8, 2011 meeting were informed of the new date of the visual inspection and that they were welcome to attend. I would note to the Board that in order to fully comply with the ODL in regards to the future visit, public notice of the date, time, and place of the inspection should be posted at the Board’s principal office. From the Board response, it only

indicated that an announcement was made at the August 8, 2011 meeting. While the Board 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)

CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the ODL by failing to provide notice of the July 18, 2011 inspection. As the Board has attempted to cure the defect, I find no other violation of the ODL.

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: J. Grant Tucker