



STATE OF INDIANA

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February 3, 2015

Mr. Gary A. Robinson
595 Sugar St.
Marengo, IN 47140

Re: Formal Complaint 15-FC-06; Alleged Violation of the Open Door Law by the Crawford County Council

Dear Mr. Robinson,

This advisory opinion is in response to your formal complaint alleging the Crawford County Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded via attorney Mr. Marcus M. Burgher IV, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 8, 2014.

BACKGROUND

Your complaint dated January 8, 2015, alleges the Crawford County Council violated the Open Door Law by failing to post notice of a public meeting and for failing to post appropriate notice of an executive session.

On January 5, 2015, you attempted to attend a public meeting of the Council which was advertised in the local newspaper as a meeting following an executive session. When you arrived at the meeting location, no notice was posted. When you inquired at the Auditor's office, she posted an impromptu sign. However, the new notice did not contain the statutory language necessary for an executive session.

The Council responded to your formal complaint by arguing the executive session never took place and there was only a public meeting. The newspaper misreported the notice and no one from the County Government submitted the notice. However, the public meeting was advertised in the paper.

As for the missing notice of the regular meeting, the Council cites a change in administration for the failure to have a notice posted at the Courthouse. January 5, 2015 was the first business day of the year for public employees. It appears as if the County

Auditor has the responsibility for posting notices. As the new Auditor took office at the beginning of the new year, the Council cannot confirm the previous Auditor ever posted notice.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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. 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 Ind. Code § 5-14-1.5-3(a).

As for the executive session issue, it appears as if the Council never held (or intended to hold) the closed-door session. Therefore, no violation can exist for failure to post appropriate notice. For future reference, notice requirements for executive sessions can be found at Ind. Code § 5-14-1.5-6.1(d) and must state the specific statutory authorization allowing the executive session.

In regard to the missing notice, it stands to reason a change in administration would cause confusion as to whose responsibility it was to post. That, conversely, is not justification for lack of proper notice. While published notice of a regular meeting goes above and beyond the necessary requirements for notice, it does not obviate the necessity for traditional notice required by the Open Door Law.

For a regular public meeting, *Public notice of the date, time, and place shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. The failure to do so places interested members of the public at a disadvantage who want to attend the meeting. See Ind. Code § 5-14-1.5-5(a) and (b).* Change in administration notwithstanding, the ultimate responsibility to post notice lies with the Council.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Crawford County Council has violated the Open Door Law in regard to posting notice, but not for failing to post appropriate notice of an executive session which was never held.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Marcus M. Burgher IV, Esq.