



STATE OF INDIANA

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April 27, 2015

Mr. James R. Hancock
916 Vega Drive
Flora, Indiana 46929

Re: Formal Complaint 15-FC-100; Alleged Violation of the Open Door Law by the Carroll County Board of Commissioners

Dear Mr. Hancock,

This advisory opinion is in response to your formal complaint alleging the Carroll County Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded via Mr. William R. Brown, Commissioner and County Coordinator Ms. Vicky Snipes. Their response is enclosed for your review. 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 March 18, 2015.

BACKGROUND

Your complaint dated March 18, 2015 alleges a violation of the Open Door Law by the Carroll County Board of Commissioners.

On March 16, 2015, after a regularly scheduled meeting of the Board of Commissioners had adjourned, you witnessed a conversation between two (2) of the Board members, the county attorney and the county coordinator. You do not identify the subject matter of this conversation.

The county coordinator responded to your complaint explaining one (1) of the two (2) Board members was not involved in the conversation you witnessed and therefore a majority of the Board was not involved in the discussion. Commissioner Brown also confirmed the other present Commissioner was not involved in the conversation.

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).

A chance gathering of a majority of a governing body does not constitute a meeting for the purposes of the Open Door Law. This Office is well aware that after the adjournment of meetings, public officials often make themselves available for public input. Usually this occurs one-on-one. This is a perfectly acceptable practice. There are instances, especially with three-member councils, however, when two (2) members (constituting a majority) will find themselves in a conversation with a constituent. Whether this is an Open Door Law violation depends on whether it was the intent of the members to discuss public business privately. More often than not, it is merely a chance gathering. Even though public business may be discussed, it was not the intent of the members to have a private discussion.

In this case, however, you allege the conversation was not initiated by a constituent, but by the county attorney and county coordinator. This changes the nature of the conversation from a chance gathering to an intentional conversation about public business. This scenario would be a violation of the Open Door Law.

But first, it should be noted you do not indicate you were aware of the subject matter of the conversation. The county coordinator affirms it was public business, but a conversation between a majority of members is not a de facto meeting. There are several exceptions in the Open Door Law of when a majority gathering is not considered a meeting. It depends on whether the matter being discussed was public business.

However, because the Board concedes public business was being discussed, it becomes a question of fact whether both Commissioners were immediately present during the conversation. I cannot conclusively make that particular determination. I have recently had the opportunity to address the County Commissioners both in person and in writing. I have made very clear my expectations as to the technical requirements of the Open Door Law. The present case has not necessarily indicated to me my message was lost on the Commissioners, however, I encourage them to continue to be mindful of the perception it gives when conversations regarding public business are taking place within close proximity of a potential majority gathering of a governing body.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. William Brown; Ms. Vicky Snipes