



STATE OF INDIANA

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January 27, 2015

Mr. Rodney McCormick
C/o Trent McCain, Esq.
McCain Law Offices, P.C.
5655 Broadway
Merrillville, IN 46410

Re: Formal Complaint 15-FC-14 (Priority); Alleged Violation of the Open Door Law by the Michigan City Area Schools

Dear Mr. McCormick,

This advisory opinion is in response to your formal complaint alleging the Michigan City Area Schools ("MCAS") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et seq.* The MCAS has not responded despite an invitation to do so on January 16, 2015. 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 16, 2014. Your complaint has been given priority status.

BACKGROUND

Your complaint dated January 16, 2015, alleges the Michigan City Area Schools violated the Open Door Law by failing to draft proper minutes of an executive session.

On November 13, 2014, the MCAS Board of Trustees held an executive session to discuss the purchase of or lease of real property pursuant to Ind. Code 5-14-1.5-6.1(b)(2)(D). The Board then held another public meeting on November 18, 2014. You were provided with the minutes of that particular meeting; however, you allege the MCAS failed to produce proper minutes of the executive session according to section 6.1 of the Open Door Law. The MCAS has not responded to your complaint. A letter soliciting a response was sent by this Office on January 16, 2015 addressed to the Board President.

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).

According to Ind. Code § 5-14-1.5-6.1(b)(4):

The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public are modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

Although the notice contained the language for an appropriate executive session, there is no evidence that minutes or memorandum were prepared consistent with the above statute. Executive sessions, as the only instance when a majority of a governing body may meet behind closed doors, are met with heightened scrutiny from this Office when a complaint is made. Technical compliance with the executive session section is essential to maintain integrity to the public. The certification portion of the section is further affirmation that no other subject matter was discussed besides what is allowed by law.

Pursuant to Ind. Code § 5-14-5-5, a public agency must cooperate with the Public Access Counselor in his investigation of a complaint. The MCAS failed to do so upon request. In the absence of an argument or evidence by the MCAS to the contrary, I must affirm the presumption that no certification exists as is required by the Open Door Law.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Michigan City Area Schools has violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor