



# STATE OF INDIANA

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August 3, 2015

Ms. Stephanie Hess  
632 East Main Street  
Hartford City, Indiana 47348

*Re: Formal Complaint 15-FC-196; Alleged Violation of the Open Door Law by the Hartford City Library*

Dear Ms. Hess,

This advisory opinion is in response to your formal complaint alleging the Hartford City Public Library ("Library") violated the Open Door Law (ODL), Ind. Code § 5-14-1.5-1 *et. seq.* The Library has responded to your complaint via Ms. Michele Ogle, Library Director and Ms. Ann Ludwig, President of the Board of Trustees for the Library. 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 June 23, 2015.

## BACKGROUND

Your complaint dated June 23, 2015, alleges the Hartford City Public Library violated Open Door Law by holding executive sessions without proper notice and by making a final decision during all or some of those sessions.

You cite several occasions when the Library did not post appropriate statutory notice of its executive sessions. You also believe circumstantial evidence exists demonstrating the Library took final action during one or more of those sessions. Specifically, you allege the hiring of a library director was decided upon in a March 25, 2015 executive meeting and then ratified officially at an open meeting on April 15, 2015. Nevertheless, you allege final action had taken place to approve the hiring during the executive session.

The Library responded to your formal complaint by denial these allegations.

## 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



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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).

Ind. Code § 5-14-1.5-6.1(d) states public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, 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 Ind. Code § 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 Ind. Code § 5-14-1.5-6.1(b)(9)" would satisfy the requirements of an executive session notice.

As evidence of non-compliance, you submitted several newspaper publications which do not have the degree of specificity required by law. Please note, however, newspaper publication is not required for executive sessions. I was not provided with the actual notice which must be posted pursuant to Ind. Code § 5-14-1.5-6.1(d). To the extent the notices did not in fact contain the specific language of the executive session provision, a violation may have occurred.

The hiring of the library director was voted on in the April 15, 2015 public meeting. You speculate, however, the decision was already made in the March 25, 2015 executive session. Based upon my review of the emails and the minutes of the April 15, 2015 meeting identifying the candidate as the "new director", it appears to be the case.

Ind. Code § 5-14-1.5-6.1(b)(5) allows a governing body to receive information about and interview prospective employees in an executive session, however, final action is not to be taken in an executive session. A final action must be taken at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. Ind. Code § 5-14-1.5-2(g). Any binding decision can be considered to be a 'vote' for the purposes of the Open Door Law. An inference can be made the decision to narrow down any list of candidates to one person is a final action. See *Baker v. Town of Middlebury*, 753 N.E.2d 67 (Ind. App. 2001) ("the Council's "final action" on the issue of which employees would be rehired consisted of its vote at the public meeting").



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Governing bodies must be mindful the purpose of executive sessions is to receive information and to discuss sensitive matters in very narrow circumstances – not to make decisions based upon the information presented. All decisions would need to be made in public. In this circumstance, a decision to hire personnel was improperly made at an executive session.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Hartford City Library violated the Open Door Law due to the fact final action was taken in an executive session.

Regards,

A handwritten signature in black ink, appearing to read "LHB", written in a cursive style.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Michele Ogle  
Ms. Ann Ludwig