



STATE OF INDIANA

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February 24, 2015

Nicole E. James
213 E. Cherry Street
Advance, IN 46102

Re: Formal Complaint 15-FC-20; Alleged Violation of the Open Door Law by the Advance Town Council

Dear Ms. James,

This advisory opinion is in response to your formal complaint alleging certain members of the Advance Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The council members have issued a response which 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 January 23, 2015.

BACKGROUND

Your complaint dated January 22, 2015 alleges several violations of the Open Door Law by the Advance Town Council members. The complaint alleges a failure to provide access to an executive session, dated January 19, 2014, in violation of Ind. Code § 5-14-1.5-6.1. In the complaint you contend the council members asked you to leave an executive session wherein the council members allegedly discussed issues not advertised for discussion and also allegedly discussed unethical matters.

The executive meeting in question was advertised as a meeting to discuss the open Clerk/Treasurer position pursuant to Ind. Code § 5-14-1.5-6.1(b)(10). As you waited in your office after being excluded from the session, you also allegedly overheard council members discussing unethical hiring practices with regard to the open position. You also allege council members discussed a contract with the fire department.

On February 6, 2015, the council members responded to your complaint. The members do not feel the complainant was improperly excluded because, "Ms. James' presence was not necessary to carry out the purpose of the meeting." The Council also cited *Opinion of the Public Access Counselor 11-INF-13*, which held that exclusion of a clerk-treasurer from executive meetings would not be a violation of the ODL.

The Council describes the conversation which took place after you exited the meeting and denies any conversations in violation of the law.

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).

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 forty-eight hours in advance of the meeting. With this comes the obligation that only the enumerated subject matter may be discussed. To verify that this happened, Ind. Code § 5-14-1.5-6.1(b)(4) states:

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.

I have not been provided with a copy of the meeting minutes or the certification of the subject matter discussed. You suggest you recorded the session through the walls from your office, however, you have not provided this Office with the recording. Therefore, I have no way of determining exactly which discussions took place. If the conversation deviated from the matters described in Ind. Code § 5-14-1.5-6.1(b)(10), a violation would have occurred.

Furthermore, you allege discussion of “unethical” hiring practices, yet you do not identify any issues the Office of the Public Access Counselor may address. From the information provided, it appears that all of the conversation was germane to Ind. Code § 5-14-1.5-6.1(b)(10).

You were excluded from the executive session; however the purpose of an executive session is to allow the governing body to discuss certain subject matter behind closed doors. As you are not a member of the Council, your presence is at the discretion of the Council. Your exclusion was not a violation of the Open Door Law.

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. Randal Hill; Mr. Kevin Hoskins; Mr. Darrell McKinney