



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 12, 2015

Ron Funkhouser
3185 N. County Rd. 800 E
Brownsburg, IN 46112

Kurt Disser
7210 E. County Rd. 700 N.
Brownsburg, IN 46112

Re: Formal Complaint 15-FC-263; Alleged Violation of the Open Door Law by the Town of Brownsburg; Grant Kleinheinz, Town Manager (Priority)

Dear Mr. Funkhouser and Mr. Disser,

This advisory opinion is in response to your formal complaint alleging the Town of Brownsburg ("Town") and Town Manager Grant Kleinheinz violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Town has responded via counsel, Ms. Abigail Rom. Her 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 September 29, 2015.

BACKGROUND

Your complaint dated September 28, 2015, alleges the Town of Brownsburg violated the Open Door Law by taking official action without a public meeting.

You contend that the Town approved a change in legal representation from one firm to another on or before September 16, 2015 without a properly noticed meeting. You note that on September 24, the Town made a motion to approve the new legal representation.

The new firm, Frost Brown Todd, replied to your formal complaint on behalf of the Town on October 9, 2015. The Town argues that the Town Manager had the authority to authorize a change in legal representation from one firm to another. The switch was due to the Town's attorney accepting employment with the new firm and taking the Town's files with her. The Town merely ratified the change in the September 24, 2015. The

Town does concede that the attorney notified the members of the Town Council on an individual basis but not as a collective. Adding to the confusion are minutes from prior meetings where it appears as if the Town Council had been unilaterally instrumental in approving legal representation.

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).

You are correct that a discussion of a majority of the Council about the legal representation would have triggered the Open Door Law. Therefore if any such meeting occurred, the Town has violated the ODL. If the situation happened as the Town states – individuals were notified and there was no majority gathering – a violation has not occurred.

In this instance I do not have sufficient evidence to render a conclusive determination, only that the Town should be mindful of the perception it gives constituents when voting is done summarily without much discussion. Citizens are left to wonder if the governing body did indeed come to a consensus behind closed doors. Mere speculation, however, is not enough for me to issue a violation.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Abigail Rom, Esq.