



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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November 18, 2015

Mr. Elmon Bays
8872 South 425 West
Silver Lake, Indiana 46982

Re: Formal Complaint 15-FC-277; Alleged Violation of the Open Door Law by the Town of Mentone Town Board

Dear Mr. Bays:

This advisory opinion is in response to your formal complaint alleging the Town of Mentone Town Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Town has responded via counsel, Mr. Larry D. Beeson, Esq. His 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 October 19, 2015.

BACKGROUND

Your complaint dated October 18, 2015, alleges the Town of Mentone Town Board violated the Open Door Law by taking official action outside of a public meeting.

You contend the Town approved the hiring of a lawyer sometime between public meetings in September and October, 2015. You note \$1,000 was spent by the Board in retaining the attorney.

On November 16, 2015 the Board replied via Mr. Beeson. The Board notes the purpose of hiring Attorney Charles Braun was so Mr. Braun could review a new policy for the Mentone Police Department. The Board contends no official action by a majority of the Board has taken place at any time outside public meetings. The Board notes the article you copied stated the discussion [at the meeting] ended with council members confirming they were moving forward with hiring Mr. Braun.

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).

Counsel contends there was no violation of the Open Door Law, because the action taken was the use of appropriated money in the Town's legal budget and was ratified at a town meeting.

The decision to hire attorney Braun appeared to be unresolved as of the conclusion of the August Board meeting. It then seems as if a lone councilperson acted unilaterally in retaining the legal services of an attorney for a policy review. He then directed the Town Clerk to pay the attorney from the Board's legal budget. Whether the councilperson had the authority to do this is beyond the scope of this office. Nonetheless, it appears as if the Board did not act as a collective in coming to the decision of retaining the attorney, but was the act of the one council person. If there is money in a line item (the legal budget) to pay for the expenditure, it is up to the Board's procedure as to how that expense is paid. The Open Door Law would not be triggered by the mere act of retaining counsel by one councilperson.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Town of Mentone Town Board has not violated the Open Door Law.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Larry Beeson, Esq.