



# STATE OF INDIANA

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December 1, 2015

Mr. Eric M. Cox  
The Knightstown Banner  
24 North Washington Street  
Knightstown, Indiana 46148

*Re: Formal Complaint 15-FC-285; Alleged Violation of the Open Door Law by the Kennard Town Council*

Dear Mr. Cox:

This advisory opinion is in response to your formal complaint alleging the Kennard Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Council has responded via counsel, Mr. David L. Copenhaver, 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 23, 2015.

## BACKGROUND

Your complaint dated October 21, 2015, alleges the Kennard Town Council violated the Open Door Law by taking official action at a public meeting without notifying you pursuant to Ind. Code § 5-14-1.5-5(b)(2).

On October 1, 2015, the Council held its regularly scheduled meeting. As news media, you had submitted a written request in 2014 to be given individualized notice of all Council meetings for the 2015 calendar year in accordance with Ind. Code § 5-14-1.5-5(b)(2). You received notice of the October 1, 2015 meeting; however, this meeting was reconvened at an October 19, 2015 session of which you did not receive notice. You contend this is a violation of the Open Door Law.

The Council responded to your formal complaint on November 13, 2015. It argues that notice was properly submitted to the State Department of Local Government Finance ("DLGF") "Gateway" and therefore any Open Door Law requirements were satisfied. In reliance upon a memo sent out from the DLGF on July 20, 2015, the Council interpreted

guidance from the State to suggest only Gateway notice was required of the reconvened meeting.

Upon learning of the formal complaint filed with this Office, the Council called for another special meeting to clear up any confusion and remediate the issue. The Council feels as if this was above and beyond what was required by both the DLGF and the Open Door Law, however, for the sake of transparency, the Council felt as if it was the correct way to alleviate any confusion. This final meeting took place on October 28, 2015.

## **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).

Your complaint raises a number of issues ripe to be addressed. The first is whether a reconvened meeting would be subject to the notice requirements of Ind. Code § 5-14-1.5-5(b)(2). That section states:

Public notice shall be given by the governing body of a public agency as follows:

- (1) The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.
- (2) The governing body of a public agency shall give public notice by delivering notice to all news media which deliver an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods, which shall be determined by the governing body:
  - (A) Depositing the notice in the United States mail with postage prepaid.
  - (B) Transmitting the notice by electronic mail, if the public agency has the capacity to transmit electronic mail.
  - (C) Transmitting the notice by facsimile (fax).

The Council concedes the Banner properly requested notices in 2014 and it was required to provide particularized notice to the newspaper of its meetings in 2015. However, it notes, the October 19, 2015 meeting was announced as a reconvened meeting at the October 1, 2015 public hearing. While public notice must provide the date, time and location of any originally schedule meeting, those requirements do not apply to reconvened meetings where “announcement of the date, time, and place of the

reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.” See Ind. Code § 5-14-1.5-5(a). Assuming all those requirements were met, it appears as if this announcement was properly effectuated. By giving proper notice of the original October 1, 2015 meeting, the Council would not have needed to give additional notice of the October 19, 2015 meeting because the Banner had the opportunity to observe the announcement.

Regardless of this legalistic reading of the Open Door Law, my recommendation is that local government units supplement the announcement with a courtesy notice to the local news media if they have requested it. This is especially true on matters as important as the adoption of budgets. While it may not be legally required, it is best practice and consistent with the spirit of the ODL.

However, it appears as if the issue is moot, because the reconvened budget adoption meeting was remediated by a subsequent meeting where all appropriate notice was given. I believe this is an expression of good faith by the Town and displays a commitment to public and customer service.

The second issue, however, is the question of which authority guides the publication and posting of notice for budget adoption. The Council cites a July 30, 2015 memo from the DLGF which sets for Gateway Submission Requirements for the adoption of budgets. This is pursuant to House Enrolled Act 1266 taking effect in 2015. Please be advised the Council has submitted for consideration a memo for County guidelines, however, this is substantially similar to the memo for local governmental units and political subdivisions. I’ve attached the relevant memo for reference and it is hereby incorporated.

All guidelines issued by DLGF defer to the Open Door Law as an additional requirement to any Gateway submission. Any meeting of a majority governing body to discuss public business, regardless of subject matter, is subject to the Open Door Law. DLGF access laws and the Open Door Law are not mutually exclusive, but are to be read together to ensure the greatest possible notice to all interested constituents and media. I have confirmed this with DLGF. Publication to Gateway is to be supplemented with traditional ODL posting requirements. As stated above, the Open Door Law would be the controlling procedural authority for a reconvened or continued budget adoption meeting; however, DLGF also mandates the submission of minutes to the Gateway upon that occurrence. Going forward, the statutes are to be read concurrently.

In sum, individualized media notice is not required by either the ODL or DLGF for appropriately reconvened meetings, however, it is recommended. Both authorities are to be given consideration when conducting originally scheduled meetings.

## **CONCLUSION**

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

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline that extends to the left and then curves back under the initials.

Luke H. Britt  
Public Access Counselor

Cc: Mr. David L. Copenhaver, Esq.; Mr. Mike Duffy, Esq. (DLGF)