



STATE OF INDIANA

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January 4, 2016

Ms. Mildred Simmermeyer
17074 Pumphouse Road
Brookville, Indiana 47012

Re: Formal Complaint 15-FC-317; Alleged Violation of the Open Door Law by the Franklin County Commissioners

Dear Ms. Simmermeyer:

This advisory opinion is in response to your formal complaint alleging the Franklin County Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The Commissioners have responded via Counsel, Mr. John Worth, 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 November 29, 2015.

BACKGROUND

Your complaint dated October 27, 2015 alleges the Franklin County Commissioners violated the Open Door Law by taking final action outside of a public meeting.

At a September 22, 2015 meeting of the County Council, Commissioners Tom Wilson and Tom Linkel stated they discussed official matters in relation to their desire to file suit against the Franklin County Council. The third Commissioner, Mr. Eric Roberts was unaware of the discussion between Wilson and Linkel or of the planned lawsuit. You contend this reaching of consensus constituted an official action outside of a public meeting.

On December 15, 2015 counsel responded. The commissioners state any violation was inadvertent and the consensus was a conversation with county counsel and was merely an attempt by the commissioners to ensure they stayed within their legal duties.

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).

It is well settled and recognized a public governing body meeting behind closed doors to avoid Open Door Law requirements is not permitted. The Open Door Law is triggered when a majority of a gathering body meets to discuss public business. See *Ind. Code § 5-14-1.5-2(c)*. This occurs even when two (2) members of a three (3) member panel board or panel has a discussion related to public business.

The county counsel acknowledges there was communication between Wilson, Linkel and counsel related to a possible lawsuit. This triggers the Open Door Law regardless of the purpose or intent of the discussion. While the planned suit did not go forward, the commissioners' actions still raise the perception of government officials concealing their actions to avoid public scrutiny. I would advise the commissioners to be more mindful of their actions going forward and how mere discussions behind closed doors may be interpreted by members of the public.

Admittedly, three (3) member boards are often placed in a bit of a difficult situation and do need to be more vigilant than other larger governing bodies due to the fact discussion between two (2) of them regarding public business would be considered a 'meeting'. This inconvenience, however, does not relieve them of their duties to be attentive of their obligations under the law.

Furthermore, because two (2) of the three (3) commissioners were present in the audience of the County Council meeting and discussed official matters, a meeting occurred within the scope of the ODL ("the meeting within a meeting scenario" – see generally *Opinion of the Public Access Counselor 15-FC-94*. This meeting was not advertised by the Board of Commissioners. Note the definition of 'official action' is quite broad pursuant to Ind. Code § 5-14-1.5-2(d). Therefore, when a majority of one public governing body attends the meeting of another agency, dual notice should be posted for the council holding the meeting and the board in the audience.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Franklin County Commissioners have violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Worth, Esq.