



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)234-0906  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

January 5, 2016

Ms. Brenda Weaver  
297 South 500 West  
Peru, Indiana 46970

*Re: Formal Complaint 15-FC-319; Alleged Violation of the Open Door Law by the Miami County Board of Commissioners*

Dear Ms. Weaver:

This advisory opinion is in response to your formal complaint alleging the Miami County Board of Commissioners ("Board") violated Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded to your complaint. Its 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 24, 2015.

## **BACKGROUND**

Your complaint dated November 30, 2015 alleges the Board violated the Open Door Law by taking official action outside of a public meeting.

On November 30, 2015, you questioned a commissioner in relation to a letter sent by the Board which recommended a candidate to replace you as county recorder. This recommendation was made pursuant to a request by the Miami County Republican Party which is the entity responsible for filling a vacancy under Indiana election law.

The commissioner informed you the Board had not voted on the letter, but ratified it individually. You contend that since all members of the Board signed the letter, this constituted an official action to declare a vote of confidence in a new recorder.

The Board contends that while there is only one letter of recommendation, the Board members were acting as individuals when they each affixed their signatures. The Board notes the members were in separate locations and did not discuss the matter as a collective.

## 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).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code § 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code § 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d). A majority of a governing body which gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

Clearly a public meeting is a condition precedent to a vote or final action. The question is whether affixing signatures to the letter you describe constitutes a vote. The letter was prepared by a supporter of one of the candidates to fill the vacancy and does not appear to have been prepared at the request of the Board of Commissioners itself. The content of the letter does not explicitly state it is from the Board but from individual members. The Miami County Board of Commissioners is not mentioned as a collective sender in the letter of recommendation – only that the endorsement was from the three (3) members, who happen to be commissioners.

The Indiana election laws do not require a county board of commissioners to ratify a recommendation to the party caucus before a vacancy is filled. If this requirement existed, then it would be proof positive of an official action of the Miami County Board of Commissioners. As the letter reads and how it was signed -indicates the Board members individually and separately made the decision to endorse the candidate. The letter was not germane to the Board's official responsibilities and appears to be written from a mutually exclusive basis apart from official Board business.

That being said, I encourage the Board to be mindful of the guidance issued in *Opinion of the Public Access Counselor 13-FC-324*:

In this instance, the [signing of the letter] could be interpreted as a ratification of a final decision by vote. I do not think it rises to that level, but the perception of the public is of significant importance. [F]inal decisions are meant to be open and transparent. In the future, the Board should be aware of these considerations. This is not meant to chill the exchange of ideas amongst public agencies [or the First Amendment rights of public officials], but to be dutiful to the ongoing pursuit of governmental accountability and accessibility.

I encourage all public agencies to be especially attentive to the purpose of public access laws to avoid ambiguous situations and arousing suspicions of prohibited activities. Regardless of intent, the *appearance* of action taken which is hidden from public view is particularly damaging to the integrity of a public agency and contrary to the purposes of transparency and open access.

## CONCLUSION

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

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. John Francis  
Mr. Larry West  
Mr. Jerry Hamman  
Mr. Patrick J. Roberts, Esq.  
Mr. Dustin Bond, the Office of the Indiana Attorney General