



# STATE OF INDIANA

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October 18, 2016

Mr. Kenneth Risch  
East Connersville Street  
Milton, Indiana 47357  
kirsch@frontier.com

*Re: Formal Complaint 16-FC-228; Alleged Violation of Open Door Law by Milton Town Council*

Dear Mr. Risch:

This advisory opinion is in response to your formal complaint alleging the Milton Town Council ("Council") violated the Open Door Law ("ODL"), Indiana Code §5-14-1.5, Mr. Andrew Sickmann, Esq., legal counsel to the Town of Milton gave an informal response past due date on October 11, 2016. The response is attached for your review. Pursuant to Indiana 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 20, 2016.

## BACKGROUND

Your complaint dated September 20, 2016, alleges the Milton Town Council failed to give notice of a meeting in violation of the Open Door Law.

You allege that on or about August 8, 2016, the Town Council made a decision to post an opening for a water operator position. The position was posted on the Alliance Indiana Rural Water Job Board. The posting date for the position is listed as August 8, 2016. You did not learn of this posting until a public meeting was held on August 9, 2016.

The Town responded to your complaint by simply denying the allegation outright.

## 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 Indiana 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 Indiana Code § 5-14-1.5-3(a).*

Indiana Code § 5-14-1.5-5(a) states “[p]ublic notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. A meeting is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See Indiana Code § 5-14-1.5-2(c)*.

A decision to post a position pursuant to a vacancy is taking official action on public business. The Town has not argued the decision would be an administrative task, which would not require notice in the case of a Town Council, although that may be a meritorious claim. *See Indiana Code § 5-14-1.5-5(f)(2)*. There are five (5) members of the Milton Town Council. Therefore, if three (3) of the five (5) members met to discuss and decide to post the job advertisement, the Open Door Law would have been triggered.

You have not indicated whether you believe a majority of the Council met to discuss the vacancy, only that the job was posted. It is unclear whether this was done by a majority of the Council or by a lone actor, -i.e. the Council president.

In any case, there was discussion of the matter in a public meeting on both August 8 and August 11, 2016, wherein a candidate was eventually hired. Based on the information provided, I do not have sufficient information to determine whether the Council was not in compliance with the Open Door Law. Similarly, I do not have any information to indicate whether the public was unduly prejudiced by any secret meeting. At most, if the Council did meet behind closed doors, because the decision to post a job pursuant to a vacancy is likely an administrative function of the Council (which would necessitate minutes -but not notice), I would consider it a technical violation of the law rather than a substantive one.

Please do not hesitate to contact me with any questions.

Regards,

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

Luke H. Britt  
Public Access Counselor

Cc: Mr. Andrew J. Sickmann, Esq.