



# STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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## OPINION OF THE PUBLIC ACCESS COUNSELOR

TIMOTHY ROSE )

Complainant, )

v. )

HARRISON TOWNSHIP TRUSTEE )

Respondent. )

17-FC-123

### ADVISORY OPINION

July 13, 2017

This advisory opinion is in response to the formal complaint alleging the Harrison Township Trustee (“Trustee”) violated the Open Door Law (“ODL”), Indiana Code § 5-14-1.5-1 et. seq. The Trustee responded on June 13, 2017 via attorney Stephen R. Buschmann, Esq. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 1, 2017.

### BACKGROUND

The formal complaint alleges the Harrison Township Trustee violated the Open Door Law by calling a meeting of other Township Trustees without notice.

Periodically, the Trustee will set meetings with other Fayette County trustees to discuss pending matters relevant to townships and the trustee’s roles and responsibilities. While the trustees attend, the Township Advisory Board do not. Complainant alleges this is a violation of the Open Door Law because notice is not provided to the public. The Trustee argues the gatherings are not subject to the Open Door Law because it is not a meeting at all, but rather a collective of officials who are not a governing body.



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## ANALYSIS

It is the intent of the Open Door Law (“ODL”) that 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*. Section 6.1 provides an exception, allowing public agencies to conduct executive sessions which are closed to the public in order to discuss strategies with respect to certain specified topics.

To trigger the Open Door Law, a majority of a governing body must gather to take official action on public business. A gathering of this kind necessitates notice and it must be open to the public. *See Ind. Code §§ 5-14-1.5-2(c) & 5*. A governing body is defined as two or more individuals who are a board of a public agency or a committee thereof. *See Ind. Code § 5-14-1.5-2(b)*.

A township trustee or association of trustees does not meet the definition of a governing body subject to the Open Door Law. A township trustee is an individual, separately elected executive branch official tasked with carrying out the duties prescribed in *Ind. Code § 36-6-4 et. seq.* Like town managers, mayors and governors, an individual cannot be a governing body. Therefore a township trustee cannot be subject to the Open Door Law alone. Moreover, a township is a distinct political subdivision within the boundaries of a county pursuant of *Ind. Code § 36-6-1 et. seq.*

And just like town managers, mayors and governors can with meet their own, trustees may associate with other similarly situated elected trustees from time to time, without notice, in order to discuss issues affecting their positions or anything else they deem appropriate. Such gatherings are not necessarily open to the public because they are not a majority of a governing body of a distinct unit but rather individual representatives of multiple political subdivisions. Individual public officials meeting as a collective are not subject to the ODL if they are not from the same political subdivision or public agency.

Contract this with a three-member township advisory board meeting. Because it is the legislative governing body of a township, their meetings are subject to the Open Door Law if they take official action on public business.



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## CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor that the Harrison Township Trustee has not violated the Access to Public Records Act.

Please do not hesitate to contact me with any questions.

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "LH Britt", written over a white background.

Public Access Counselor

Cc: Stephen R. Buschmann, Esq.