



STATE OF INDIANA

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August 29, 2011

Kelly L. Khuri
4819 Salem Noble Road
Jeffersonville, Indiana 47130

*Re: Formal Complaints 11-FC-179; Alleged Violation of the Open Door Law
by the Clark County Commissioners*

Dear Ms. Khuri:

This advisory opinion is in response to your formal complaint alleging the Clark County Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* A copy of your complaint was forwarded to the Commissioners. As of today, we have not received a response.

BACKGROUND

In your complaint you allege that the Commissioners failed to provide proper notice for a July 27, 2011 special meeting concerning Ordinance 18-2011. On July 26, 2011, you visited the Commissioners' Office at the County Government Building. At that time, you were unable to locate the public notice of the July 27, 2011 special meeting. You inquired with Margie Jenkins, a Commissioner employee, regarding the issue. You state that Ms. Jenkins provided that she was not aware of a notice being posted for the special meeting and would make an inquiry regarding the issue. Ms. Jenkins directed you to speak with Attorney Greg Fifer about the issue and you thereafter informed Mr. Fifer about the lack of public notice. You then proceeded to check the other areas of the County Government Building for a notice regarding the special meeting and were unsuccessful in your search.

On July 27, 2011, upon entering the County Government Building you observed that notice of the July 27, 2011 special meeting had now been posted. You inquired with Kristi James, an administrative assistant for the Commissioners, who informed you that notice had not been posted until July 27, 2011.

ANALYSIS

It is the intent of the ODL that 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* I.C. § 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* I.C. § 5-14-1.5-3(a).

Public 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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. *See* I.C. § 5-14-1.5-5(b). Notice has not been given in accordance with Section 5 of the ODL if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. *See* I.C. § 5-14-1.5-5(h).

Without the benefit of a response from the Commissioners, it is unclear to me why the notice was not posted at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) prior to the July 27, 2011 special meeting. Because the Commissioners have not provided justification for not providing proper notice, it is my opinion that the Commissioners violated the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Commissioners failed to post notice of its July 27, 2011 special meeting at least 48 hours in advance (excluding Saturdays, Sundays, and legal holidays), it violated the ODL.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Clark County Commissioners