



STATE OF INDIANA

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April 30, 2014

Mr. Brent A. Snow
6159 West 100 South
Tipton, IN 46072

Re: Formal Complaint 14-FC-68 Alleged Violation of the Open Door Law by the Tipton County Board of Commissioners

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Board of Commissioners ("Board") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Board has responded via Mr. John H. Brooke, Attorney for the Board. 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 March 31, 2014.

BACKGROUND

Your complaint dated March 28, 2014, alleges the Tipton County Board of Commissioners violated the Open Door Law by providing improper notice of a public meeting.

The operative facts are not in dispute. On March 25, 2014, three members of the Tipton County Board of Commissioners gathered at a meeting called by the Tipton County Economic Development Organization. The gathering has been identified by the Board as an assembly of a committee of the Tipton County Economic Development Organization, Inc., of which the three members are a part. The subject matter of the meeting was to discuss the development of the State Road 31 and State Road 28 initiative. Notice was not posted and the meeting was not open to the public.

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 that 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).

A "governing body" includes any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. Ind. Code § 5-14-1.5-2(c). In this case, however, it does not appear the committee was directly appointed by the governing body as a whole or its presiding officer. A non-presiding-officer solicited attendance. The Executive Director of the Tipton County Economic Development Organization, Inc., is not a presiding officer with authority over the Tipton County Board of Commissioners. The Board contends the members of the Board were gathering in their capacity as committee members and not as County Commissioners.

There is an inherent danger in this as the development of two state roads traversing Tipton County is public business. If any responsibility or function of the County Commissioners relates to the development project, they are taking official action on public business by receiving information and presumably deliberating and discussing. If any part of the project turns on County Commissioner approval, including but not limited to, funding, soliciting bids, authorizing or directing other governing bodies to take action, or any other official action on public business, then the three Commissioners were attending the meeting in a dual capacity. It is my understanding from recent meeting minutes the Board of Commissioners has at least a minimal amount of authority over the direction of the project, in not a direct involvement.

The Commissioners were not only attending in individual committee member capacity, but also as Tipton County Commissioners. It matters not if the Board called the meeting; this is not a case of happenstance or a casual social gathering – the Economic Development Organization was discussing items of public business. The Board is correct that gatherings unrelated to any public business – rotary club s, church congregations, social gatherings – are not meetings subject to the Open Door Law. See Ind. Code § 5-14-1.5-2(a)(c). But this was not one of those instances. The gathering clearly had a nexus to County business as a public works project.

The perception the Board has given is that they are attempting to avoid the Open Door Law by taking off their Commissioner hat and putting on their Tipton County Economic Development Organization committee hat. Both involve a project over which the governing body on which they sit has dominion. Even if the meeting was not intended to be public

because it was called by a non-Board member, it became so as soon as they arrived and public business was discussed.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Tipton County Board of Commissioners 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 H. Brooke, Esq.