

July 12, 2007

Jonathan Hiskes  
Brown County Democrat  
147 East Main Street  
Nashville, Indiana 47448

*Re: Formal Complaint 07-FC-154; Alleged Violation of the Open Door Law by the  
Brown County Economic Development Commission*

Dear Mr. Hiskes:

This is in response to your formal complaint alleging the Brown County Economic Development Commission (“Commission”), violated the Open Door Law (Ind. Code 5-14-1.5) by taking official action with no open meeting or public notice. I find that the Commission did violate the Open Door Law.

#### BACKGROUND

Your complaint, filed on June 12, 2007, alleges that on June 12 you learned from Commission President Howard Hughes the Commission had approximately two weeks prior awarded a consulting contract to a local businessman without an open meeting to discuss awarding the contract. You indicate Mr. Hughes told you the other two members of the Commission told him they supported the contract. You complain this is a violation of the Open Door Law.

The Commission did not provide a response to your complaint.

#### ANALYSIS

It is the intent of the Open Door Law 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. IC 5-14-1.5-1. Except as provided in section 6.1 of the Open

Door Law, 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. IC 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. IC 5-14-1.5-5(a).

A “public agency” is . . . “any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.” IC 5-14-1.5-2(a)(2). It is also any entity which is subject to budget review by the governing body of a county. IC 5-14-1.5(a)(3). Two of the three members of the Commission are appointed by the county commissioners, which comprise the county executive body, and the county council, which is the county fiscal body. Further, the Commission is appropriated a budget subject to review by the county governing body. Therefore, the Commission is a public agency for the purposes of the Open Door Law.

The question presented here is whether entering the contract at issue was an official action required to be conducted at an open meeting under IC 5-14-1.5-1. “An ‘official action’ means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.” IC 5-14-1.5-2(d). An exception does apply to the public notice provision of the Open Door Law for meeting to carry out administrative functions. But “administrative functions do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.” IC 5-14-1.5-5(f)(2).

Here the Commission did enter into a contract without making the decision at an open meeting conducted after the requisite forty-eight hour notice to the public. In your complaint you do not allege whether the Commission gathered to make the decision to award the contract or spoke with the President individually, but regardless of this particular fact, the action should have taken place at an open meeting with public notice.

## CONCLUSION

For the foregoing reasons, I find that the Brown County Economic Development Commission did violate the Open Door Law.

Best regards,

Heather Willis Neal  
Public Access Counselor

cc: Jonathan Hiskes, Brown County Democrat