

January 16, 2008

Gary Moody  
778 Walnut Street #1  
Franklin, Indiana 46131

*Re: Formal Complaint 08-FC-21; Alleged Violation of the Open Door Law by the  
Johnson County Board of Commissioners*

Dear Mr. Moody:

This advisory opinion is in response to your formal complaint alleging the Johnson County Board of Commissioners (“Commissioners”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by failing to make meetings of a committee open to the public. I am enclosing a copy of the Commissioners’ response to your complaint for your reference. It is my opinion the Commissioners did not violate the Open Door Law unless the members of the committee were appointed directly by the Commissioners or the presiding officer and the committee was delegated the authority to take official action on public business.

#### BACKGROUND

In your complaint you allege the Commissioners created a committee to address planning and zoning issues in the county. You allege the committee was asked to be formed by R.J. McConnell, a former Commissioner, to make recommendations to the Commissioners regarding planning and zoning issues. At the November 19, 2007 meeting of the Commissioners, the committee provided a report. It is my understanding this is when you learned about the committee. You filed this complaint on December 18. You initially alleged a violation of the Access to Public Records Act (Ind. Code 5-14-3), but you withdrew that complaint by letter dated December 21.

The Commissioners responded to your complaint by letter dated January 10 from Johnson County Coordinator Kathleen Hash. Ms. Hash indicates that in mid-2006 then-Commissioner McConnell asked an attorney to form a group to review certain planning and zoning matters. The attorney formed the group, which met in private meetings to address the matters. Ms. Hash contends that the committee was not formed by statute, ordinance, or executive order and as such was not a public agency and therefore was not subject to the requirements of the Open Door Law or the Access to Public Records Act.

## 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. I.C. §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. I.C. §5-14-1.5-3(a).

The issue here is whether the committee constitutes a public agency, the governing body of which would be subject to the meeting requirements of the ODL. A public agency means, among other things, “[a]ny advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency. . .” I.C. §5-14-1.5-2(a).

A governing body is, among other things, two or more individuals who are 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. I.C. §5-14-1.5-2(b)(3). “‘Official action’ means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.” I.C. §5-14-1.5-2(d).

Here I cannot ascertain from the facts whether the committee was appointed directly by the Commissioners or the presiding officer or whether it was a less formally assembled group. Since the committee was not created by statute, ordinance or executive order, it is not a public agency under I.C. §5-14-1.5-2(a). If the committee was appointed directly by the Commissioners (presumably by a vote or other directive of the Commissioners) or directly by the presiding officer and was delegated the authority to take official action on public business, the committee would be a governing body under I.C. §5-14-1.5-2(b)(3). If that is the case, the meetings of the committee would be subject to the requirements of the ODL.

## CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners did not violate the Open Door Law unless the committee members were appointed directly by the Commissioners or the presiding officer and the committee was delegated the authority to take official action on public business.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Kathleen Hash, Johnson County Coordinator