



STATE OF INDIANA

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February 8, 2013

Ms. Mari H. Miller
P.O. Box 70
Nashville, Indiana 47448

*Re: Formal Complaint 13-FC-41; Alleged Violation of the Open Door Law by the
Brown County Economic Development Commission*

Dear Ms. Miller:

This advisory opinion is in response to your formal complaint alleging the Brown County Economic Development Commission ("Commission") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Dr. Michael Thompson responded on behalf of the Commission. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that the notice posted for the Commission's February 12, 2013 executive session provided that the Commission was meeting pursuant to I.C. § 5-14-1.5-6.1(b)(5) in order to receive information about and interview prospective employees. You maintain that the Commission has not placed any postings in the county courthouse for employment opportunities nor has the Commission advertised for any potential openings in the local newspaper.

In response to your formal complaint, Dr. Thompson advised that a clerical mistake was made in posting the notice. The notice referred to in your complaint was intended to be for the County Commissioners, not the Commission. A corrected notice has now been posted for the County Commissioners' executive session that is to occur on February 12, 2013.

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).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). Notice of an executive session must be given 48 hours in advance of every session, excluding holidays and weekends, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to I.C. § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice. *See Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39.*

Here, Dr. Thompson advised that a clerical error occurred in the notice that was posted for the executive session. The notice was intended to be for the County Commissioners, not the Commission. Upon being notified of the error, Dr. Thompson amended the executive session notice to provide that it was a meeting of the Commissioners. The new notice was posted within the forty-eight hour time limit as required under section 5 of the ODL. Accordingly, it is my opinion that the Commission did not violate the ODL.

CONCLUSION

Based on the foregoing, it is my opinion that the Commission did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read 'Joe Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Mari H. Miller