



# STATE OF INDIANA

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January 14, 2011

Mr. Stephen H. Downs  
Tiede, Metz & Downs, P.C.  
99 W. Canal St.  
Wabash, IN 46992

*Re: Informal Inquiry 10-INF-49; Whitley County Council*

Dear Mr. Downs:

This is in response to your informal inquiry submitted regarding the Whitley County Council ("Council"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion. My opinion is based on applicable provisions of the Indiana Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*

In your inquiry, you state that on July 28, 2010, the Council conducted a special meeting to vote on a referendum tax levy. That meeting was properly advertised and open to the public. During the meeting, the Council voted down a motion to adopt the Resolution to Certify Referendum to County Election Board (the "Resolution"). The vote tally was three votes against, one vote in favor, and one abstention. The meeting was later adjourned without intent to reconvene and without any announcement of the date, time, and place of reconvening. However, approximately one hour after the adjournment, the Council decided to reconvene and reconsider the Resolution. At the second meeting, the Resolution passed with three votes in favor, one against, and one abstention. You argue that the Council held the second meeting in violation of the ODL.

Attorney Daniel J. Sigler responded to your inquiry on behalf of the Council. Mr. Sigler argues that the second Council meeting was permissible under Ind. Code § 5-14-1.5-5(f)(2), which permits the executive of a county to perform an administrative function. In this case, the administrative function was the certification of the referendum question, which is required by Ind. Code § 20-46-1-12. Mr. Sigler argues that because that statute does not grant the Council discretion in whether or not to certify the referendum to the county election board, the Council could certify the Resolution during an administrative function meeting. Mr. Sigler also notes the 30-day time limit under subsection 7(b)(2) of the ODL and argues that your allegations regarding the July 28, 2010, meeting, which you submitted to this office on October 23, 2010, are untimely.

Initially, I note that Mr. Sigler's citation to the time limits found in subsection 7(b)(2) of the ODL pertain to court actions rather than inquiries to this office. However, the statutory provisions governing submission of formal complaints to this office, found at Ind. Code. § 5-14-5-1 *et seq.*, require that any formal complaint alleging a violation of either the ODL or the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, be submitted "not later than thirty days after: (1) the denial; or (2) the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice." I.C. § 5-14-5-7. Because complaints alleging violations of the ODL must be submitted within thirty days of the allegedly illegal meeting, it is inappropriate for me to address the merits of allegations that occurred beyond that timeframe. However, I offer the following analysis for purposes of clarification and future guidance.

The General Assembly enacted the ODL intending that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so that the people may be fully informed. I.C. § 5-14-1.5-1. Accordingly, the ODL requires that, except for those situations where an executive session is authorized, "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).

A "meeting" means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). "Public business" means any function upon which the public agency is empowered or authorized to take official action. I.C. § 5-14-1.5-2(e). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

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. I.C. § 5-14-1.5-5(a).

The requirements for posting notice do not apply to a meeting of "the executive of a county or the legislative body of a town" if such meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. I.C. § 5-14-1.5-5(f)(2). "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. *Id.* Even though notice is not required, the "administrative function" meeting must be held in the public, since the notice provision of the ODL is *the only provision* that does not apply to an "administrative function" meeting. I.C. § 5-14-1.5-5(f)(2), *emphasis added*.

It is important to note, however, that the ODL does not permit county councils to conduct administrative function meetings; the only entities authorized by the ODL to hold such meetings are “the *executive* of a county or the legislative body of a town.” *Id.* (emphasis added). In Indiana, the executive branch of a county government is the county commissioners. The Council’s own web page states, “The [Whitley] County Council is the *legislative* branch of the county government that controls all the spending and revenue collections in the county.” See Whitley County Council website at <http://whitleygov.com/departments/fDD=5-0>, last accessed January 14, 2011 (emphasis added). Because the ODL does not permit the Council to conduct administrative function meetings, all meetings of the Council should be held in the public and after notice is published in accordance with section 5 of the ODL.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Daniel J. Sigler