



STATE OF INDIANA

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January 28, 2013

Ms. Sylvia Watson
Legal Consultant and Counsel to the Indiana State Library
140 N. Senate Avenue
Indianapolis, Indiana 46204-2296

Re: Informal Inquiry 13-INF-05; Committees

Dear Ms. Watson:

This is in response to your informal inquiry regarding committees that are appointed by a governing body and their compliance with the Open Door Law ("ODL"). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on the applicable provisions of the ODL, I.C. § 5-14-1.5 *et seq.*

BACKGROUND

In your informal inquiry you provide that Indiana public libraries are municipal corporations and political subdivisions, and thus are considered to be public agencies under the ODL. The Board of a public library ("Board") is its "governing body", whose meetings are required to be open to the public pursuant to the provisions in the ODL. One particular Board has established one or more committees ("Committee") which consist of a few members of the Board, but not a quorum of the Board itself. The Board believes that since less than a quorum of the Board participates in the Committee, the Committee is not subject to the ODL.

Based on prior advice from the Public Access Counselor, you advised the Board that all Board appointed committees are subject to the ODL pursuant to I.C. § 5-14-1.5-2(b)(3). You have received notice that the Board in question does not believe that Committees appointed by the Board are subject to the ODL. However, even assuming that they are incorrect, the Board is considering amending its bylaws to provide that "committees are without power and have no authority to take official action on public business." The Board believes that this type of limiting language absolves the Committee of having to comply with the ODL. You believe that unless the Committee would be completely social in nature, amending the Board's bylaws would not keep the Committee from being subject to the ODL. The reason for that being is due to the broad definition of

the term “official action” under the ODL, in that simply by receiving information a governing body would be taking official action.

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).

A “meeting” is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c).

In order for the ODL to apply, the meeting must be held by a governing body of a public agency. A governing body is defined as:

- (b) "Governing body" means two (2) or more individuals who are:
 - (1) a public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business;
 - (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
 - (3) 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. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter. *See* I.C. § 5-14-1.5-2(b)

Here, we are specifically dealing with a governing body that would qualify pursuant to I.C. § 5-14-1.5-2(b)(3). A committee that is not appointed directly by a governing body or its presiding officer does not constitute a governing body, under the plain language of the ODL. *See Opinions of the Public Access Counselor 05-FC-219 &*

09-INF-29. The Indiana Court of Appeals addressed this issue in *Robinson v. Indiana University*, 638 N.E.2d. 435 (Ind. Ct. App. 1994). *Robinson* was decided after the General Assembly amended the definition of “governing body” to add the word “directly” after “any committee appointed.” In *Robinson*, the Indiana University’s Board of Trustees (a governing body for ODL purposes) delegated the authority to appoint a committee and subcommittee to the university president who, in turn, passed the duty on to an associate vice president for research. *Id.* at 437. The Court held that “the Committee and Subcommittee did not derive their authority *directly* from the governing body” because the board delegated its appointment authority to the university administration. *Id.* at 438. Consequently, the committee and subcommittee were not governing bodies under the ODL. *Id.* at 437-38; *See also Frye v. Vigo County*, 769 N.E. 2d 188, 196-196 (Ind. Ct. App. 2002). The Court in *Robinson* held:

“It is apparent to us that the legislature’s enactment of the amendment [adding the word “directly”] effectively limits the types of committees that are subject to the Open Door Law...The legislature has clearly narrowed the scope of the Open Door Law’s effect as it applies to various committees.” *Id.* at 438.

You have provided that the Board maintains that since less than a quorum of the actual Board participates on the Committee, the Committee would not be subject to the ODL. I do not agree with the Board’s position. I would initially note that a public agency may have more than one governing body. Second, there is no dispute that the Committee in question is appointed directly by the Board. The Board only has authority over matters related to the library and as such, the committee would only have the authority to deal with those library related matters that the Board has delegated to it. For example, a committee might be appointed to conduct hearings concerning the selection of a new employee health insurance plan or to discuss the construction of a new facility. The committee would not have authority to discuss and/or make decisions regarding issues unrelated to the library, as the Board itself would not have authority to take action on such matters. Further, regardless of the composition of the Committee, whether it consists of Board members, library employees, or members of the public, if the Committee is directly appointed by the Board or the Board’s presiding office, the Committee would qualify as a governing body under the ODL.

The Board is considering amending its bylaws to provide that “committees are without power and have no authority to take official action on public business.” I will assume that “official action” and “public business” as defined by the ODL applies equally to the bylaws of the Board. If the Board were to pass such a bylaw, by the plain definition of “official action” and “public business”, the Committee would be prohibited from receiving information, deliberating, making recommendations, establishing policy, making decisions, or taking final action (i.e. voting) on any issue that had been delegated to it. Although the Board would still have the authority to delegate an issue to the Committee, the Committee could literally take no action regarding the issue due to the broad definition of “official action.” Even if it could be argued that the Committee could

take action, the Board by passing such a bylaw would expose itself to allegations that it was intentionally attempting to evade the requirements of the ODL by enacting such a provision. I am not aware of any committee considered to be a governing body pursuant to the ODL that has even attempted to pass a similar rule or bylaw in order to not be compelled to comply with the requirements of the ODL. Nor is it evident if the Board even retains the statutory authority to except itself from the requirements of the ODL by passing the described bylaw.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a stylized "Hoage".

Joseph B. Hoage
Public Access Counselor