



# STATE OF INDIANA

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February 22, 2013

Mr. Keith Benman  
*The Times Media Co.*  
601 45<sup>th</sup> Street  
Munster, Indiana 46321

*Re: Informal Opinion 13-INF-08; Alleged Violation of the Open Door Law by the Gary/Chicago Airport Authority*

Dear Mr. Benman:

This informal opinion is in response to your inquiry regarding the Gary/Chicago Airport Authority ("Authority") and its compliance with the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Steven L. Landry, Interim Airport Director, responded on behalf of the Authority. His response is enclosed for your reference. Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry.

## BACKGROUND

You provide that the Authority held an executive session on February 4, 2013. You inquire whether the Authority complied with the ODL in discussing pending legislation before the General Assembly during the executive session, specifically Senate Bill 585. The Mayor of the City of Gary acknowledged discussing the pending legislation with the Authority during its executive session.

In response to your inquiry, Mr. Landry advised that notice of the Authority's executive session held on February 4, 2013 was timely issued. However, the appropriate boxes on the notice were not checked. Normally, the Authority's attorney receives a copy of any executive session notice prior to the meeting. Because this was a special meeting, an advance copy of the notice was not reviewed by the attorney. An Authority staff member used a prior form to create the notice. Although that form referenced "real estate acquisition" and "litigation", neither item was the primary focus of the Authority's discussion.

As to the topics discussed at the February 4, 2013 executive session, Mr. Landry was asked by the Authority's Chairman to schedule an executive session. Mr. Landry thereafter received an email indicating that the subject matter to be discussed would be "Legislative" and "FAA Compliance" issues. In speaking with the Authority's attorney,

it is Mr. Landry's understanding that such matters do not fall under the items allowed to be discussed in executive session.

As to the Mayor's presence at the Authority's executive session, the Authority's attorney has advised only those individuals deemed necessary to carry out the matters to be discussed in executive session should be in attendance. Mr. Landry advised that although the Mayor's presence was beneficial, the subject matter discussed did stray from the narrow discussion points allowed in executive session. In hindsight, Mr. Landry provided that discussions concerning the Authority securing a legislative consultant should not have taken place in an executive session and to date, a legislative consultant has not been retained by the Authority nor has a decision been made to retain an legislative consultant.

### 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 range from 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). A governing holding an executive session may admit those persons necessary to carry out its purpose. *See* I.C. § 5-14-1.5-2(f). Thus, it is my opinion that the Authority did not violate the ODL by inviting the Mayor to attend February 4, 2013 executive session if the Mayor's presence was necessary to carry Authority's purpose for having the executive session. The only official action that cannot take place in executive session is a final action, which must take place at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c). "Final action" is defined as 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). Mr. Landry has advised that no final action was taken by the Authority during the February 4, 2013 executive session.

Notice of an executive session must be given 48 hours in advance, minus weekends and holidays, 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.* Mr. Landry advised that the items listed in the notice for the February 4, 2013 executive session provided that the Authority would be discussing real estate acquisition, pursuant to I.C. § 5-14-1.5-6.1(b)(2)(D), and litigation, pursuant to I.C. § 5-14-1.5-6.1(b)(2)(B). Mr. Landry admitted that neither item was the primary focus of the discussions that occurred. As such, it is my opinion that the Authority violated section 6.1(d) of the ODL by failing to provide proper notice for the executive session on February 4, 2013 in not citing in the notice to all matters discussed by the Authority during the executive session.

As noted *supra*, executive sessions may only be held to discuss certain issues. See I.C. § 5-14-1.5-6.1(b). Section 6.1(b) provides the specific instances that would allow a governing body to meet in executive session. If the topic desired to be discussed by the governing body is not found in the list of instances found in section 6.1(b), it may not hold an executive session. In such instances, if the governing body still desired to hold a meeting, it would be required to conduct an open, public meeting. Here, Mr. Landry has advised that the subject matter discussed at the February 4, 2013 executive session included legislative and FAA compliance issues, which he has been advised by the Authority's attorney would not fall under the items allowed to be discussed at an executive session. As such, it is my opinion that the Authority violated the ODL by conducting an executive session to discuss issues not allowable under section 6.1(b).

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, somewhat stylized font.

Joseph B. Hoage  
Public Access Counselor

cc: Steven L. Landry