



STATE OF INDIANA

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June 3, 2013

Ms. Mary Anne Butters
401 East Main Street
Richmond, Indiana 47374

Ms. Monica Burns
242 Southwest Fourth Street
Richmond, Indiana 47374

Doug Williamson
9303 West Brooks Road
Williamsburg, Indiana 47393

Re: Informal Inquiry 13-INF-23; Wayne County Council and Board of Commissioners

Dear Sir or Madam:

This is in response to your informal inquiries regarding issues related to the Open Door Law ("ODL"), Ind. Code 5-14-1.5 *et. seq.* involving the Wayne County Council ("Council") and the Wayne County Board of Commissioners ("Board"). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiries. Ron Cross, Attorney, responded on behalf of the respective governing bodies. His responses are enclosed for your reference.

BACKGROUND

In Ms. Butters' informal inquiry she provides that she currently serves as a member of the Board. On March 20, 2013, while driving home from a joint workshop ("Workshop") of the Board and Council, Ms. Butters noticed a collection of vehicles belonging to elected officials that were in the Pizza King parking lot on West Main Street in Richmond, Indiana. Ms. Butters had heard rumors of "after workshop" meetings being routinely conducted by the Council and Board, but has never been invited. Ms. Butters had previously been informed by former members of the Board and Council that these gatherings were "vote counting events" in order to determine future public policy. On March 20, 2013, Ms. Butters entered the restaurant and spoke with both the Board and Council President. Ms. Butters stated that it appeared that a "meeting" as defined under the ODL was being conducted and asked everyone in attendance to not discuss county

business. Ms. Butters disagrees with the Mr. Cross's interpretation of the ODL and believes that these types of gatherings are being done in violation of the ODL. Mr. Cross in March provided written correspondence to all Council and Board members regarding the ODL. Topics covered included fines that could be levied by the trial court for intentional violations of the ODL, caucuses, and social and chance gatherings. Mr. Cross also warned in his correspondence that the appearance of impropriety can sometimes be just as damaging as the actual impropriety itself.

Ms. Butters further provided that at the joint Workshop of the Council and Board on April 17, 2013, it was announced that a Request for Proposals ("RFP") was being issued on April 19, 2013 for the purchase of a new electronic personnel management systems. Ms. Butters advised that never at any time had this matter been discussed in a public meeting of the Board and that it was obvious that the other two members of the Board had discussed the matter with the County's Human Resource Director. When asked who authorized the preparation and issuance of the RPF, the Director advised that Denny Burns, President of the Board. The matter was called for a vote, which passed 2-1. Ms. Butters objected on the grounds that there had been no deliberation on the matter prior to final action being taken.

Ms. Burns is a former member of the Council. She advised in her informal inquiry that she is of the belief that a majority of the Council and Board continue to discuss county business at social gatherings held following Workshops. Ms. Burns has never participated in such gatherings in fear of violating the ODL. Ms. Burns is unsure if said gathering could be considered a caucus. The first time that Ms. Burns observed this practice was after the joint workshop where Commissioner Paust proceeded to hand out job descriptions for a Wayne County Administrator ("Administrator"). It was obvious to Ms. Burns that the other members of the Board and Council were already aware that the Administrator was a position that the Board wanted to create. Ms. Burns informed the present members at that time that she didn't feel like the discussions should be occurring.

Mr. Williamson advised that he is a former member of the Board and had served until December 31, 2012. During his tenure, he became increasingly uncomfortable about attending lunch and dinner meetings following public meetings of the Board and joint meetings of the Board and Council. Later in his term, Mr. Williamson stopped attending the after dinner meetings as he became more aware of the ODL. Mr. Williamson advised that other members of the Board sought lunch meetings every Wednesday after the morning public meeting and the lunches were described as "working sessions." During the lunches, discussion focused on matters that were before the Board, with opinions exchanged and straw pools being conducted. Mr. Williamson had the same concerns as Ms. Burns regarding the creation of the Administrator position and the process in which the matter was handled by the Board and Council. Mr. Williamson advised that Mr. Paust presented a draft of a lengthy job description that Mr. Paust and Mr. Burns had discussed and agreed upon outside of the public meeting. As to the after meeting dinners, Mr. Williamson believes said gatherings were not called for social purposes and the members present routinely asked their positions on a wide variety of public policy issues at the gatherings.

In response to the inquires, Mr. Cross provided as to the gathering that occurred on March 20, 2103, Ms. Butters makes no allegation that there were any discussions regarding county business that were made in her presence, or to her knowledge, that had occurred prior to her arrival, or occurred upon what appears to have been a relatively quick appearance at the restaurant. No substantive evidence has been presented except relying on unnamed former county officials' hearsay statements. It has been the frequent practice for members of the Council and Board to gather for dinner following the monthly Workshop. Mr. Cross is unable to provide any information regarding the discussions that occurred, because like Ms. Butters and Ms. Burns, he was not in attendance. Ms. Butters contention that a per se violation occurs in the context of the gatherings that occurred after the monthly workshop is a misunderstanding of the ODL. The seminal point of analysis is whether the social gatherings are convened for purposes of evading the operation of the ODL. Such inquiry is completely fact-sensitive and no party to the inquiry has first-hand knowledge of the discussions that occurred on March 20, 2013.

As to Ms. Burns' inquiry, she admits in her inquiry that she has never participated in such gatherings. Mr. Cross did make an inquiry of the current and former county Republican Party chairpersons and, while caucuses were held during Ms. Burns' tenure on the Council, no one recalls that any of the post-workshop gatherings were convened as a political party caucus. Contrary to Ms. Burns' assertion that the issues were discussed post-Workshop, the minutes of the September 5, 2012 provide that the Board voted to recommend the hiring of the Administrator to the Council. On the same date, the issue was discussed in the Council's Personnel Committee, which Ms. Burns was present and an active participant in the debate. Further, as of April 25, 2013, the Council had yet to vote on the creation of the Administrator position and has indefinitely tabled the issue.

As to the issue regarding the RFP that was discussed at the April 17, 2013 meeting, Mr. Cross advised that Ms. Butters was generally aware that procurement of such a system had been discussed months ago, by both the Council and the Board. Minutes from the January 16, 2013 Workshop, which Ms. Butters was in attendance, provide that the information regarding the software was presented by the county Human Resource Director. Ms. Butters was also of the opinion that such an RFP must be approved by the Board prior to issuance. The Board did not take final action on the issue until the April 17, 2013 meeting, to which Ms. Butters voted against and asked that the RFP be delayed. Her motion to delay failed for lack of a second. There is absolutely no evidence that such private meetings have occurred by the remaining two members of the Board and Mr. Cross maintains the reason for that being is no such gatherings have occurred.

While neither inquiry submitted by Ms. Butters and Ms. Burns pointed to any concrete evidence of an ODL violation, Mr. Cross does not minimize the potential for concerns whenever a majority of the members of a public body gather together outside the realm of their officialdom. All members of the Council and Board should be sensitive to the fact that a gathering of a majority of either or both bodies in any setting, public or

private, is fraught with concerns of the appearances of impropriety. However, social gatherings not intended to evade the requirements of the ODL are not considered to be “meetings” under the ODL. At these social gatherings, discussions of county matters should be carefully scrutinized, particularly as to any subject that might be a point of future consideration and official action by either of the bodies. If the body has no direct authority to act on an issue, such topic would not be considered “public business” of the body. Further, casual and light hearted bantering that has taken place at such gatherings that related to prior actions of county government would not be in violation of the ODL. Further, invitations are not required for such gatherings and Ms. Butters’ insistence that she has never been invited is untrue. Further, members of the media have been present at the described social gatherings that have occurred after the Workshops.

As to Mr. Williamson’s inquiry, Mr. Williamson never sought the advice of Mr. Cross relative to the matters addressed while serving as a member of the Board. As to his allegation of “continuous sessions”, such conduct was not advised which is set forth in Mr. Cross’s letter to the Board and Council on October 4, 4012. Mr. Cross was not present at the luncheon gatherings. Mr. Williamson only makes reference to one specific occurrence that occurred during the summer of 2012 that related to the proposal suggested by a Blue Ribbon Citizens Committee (“Committee”) relative to the creation of the Administrator position. Mr. Williamson stated that at the luncheon with the other two Commissioners, the recommendation of the Committee was discussed and that he expressed his opposition to the idea. The issue was never addressed again to Mr. Williamson’s knowledge until September 4, 2012, when Commission Paust informed him by phone that he and Commissioner Burns had decided to “establish the Administrator’s position and had chose a current county employee for the promotion.” Commission Paust then asked that the matter be put on the next day’s agenda. Based on this conversation, Mr. Cross argues that Mr. Williamson makes the invalid assumption that the two other members of the Board met privately and voted on the issue. The issue was widely discussed, including at two public meetings of the Committee. Commissioners Burns and Paust deny that a vote was taken in private or that they met privately to discuss the issue.

Lastly, on May 19, 2013, Commissioner Burns, who also serves as County’s GOP Chairman, circulated a memo to all republican precinct chairs and vice chairs pledging to stop the tradition of gathering socially after meetings of the Board and/or Council.

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).

As an initial matter I note that the Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute,

the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. I was not in attendance at any of the meetings or gatherings that are referenced in the inquiry and response. Many of the allegations discussed assume or make only general reference to violations that have occurred or alternatively, the specific allegation is denied by the current and/or former members of the Board and Council.

A meeting is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon 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 to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-3-2(e).

However, the ODL provides an exception to the “meeting” definition in that social gatherings not intended to avoid the requirements of the ODL would not be considered a meeting. *See* I.C. § 5-14-1.5-2(c)(1). The intent of the parties in gathering on such an occasion would be a question of fact, and as noted *supra*, the Public Access Counselor is not a finder of fact. However, “To say that a governing body’s intent in gathering, however innocent, absolves it of any violation for whatever discussions and events occur after it gathers would defeat the purpose of the statute and the clear intent of the General Assembly that ‘the official action of public agencies be conducted openly.’” *See Opinion of the Public Access Counselor 04-FC-72*. A governing body may not call a meeting a “social gathering” in an effort to avoid the requirements of the ODL. *See Opinion of the Public Access Counselor 01-FC-55*.

In previous opinions of the Public Access Counselor addressing this issue, the focus of the inquiry has been whether a majority of the members of the governing body took official action on public business at the social gathering. *See Opinions of the Public Access Counselor 02-FC-02; 08-FC-102; 09-FC-30; and 10-FC-98*. If official action did occur, a violation of the ODL was found. *Id.* In a 2008 opinion addressing the Chandler Town Council, which consisted of three members, Counselor Neal provided:

“Both Mr. Hess and Ms. Lance affirm that they discussed Mr. Weisheit’s hiring, if only briefly, at church. While the ODL provides that a social or chance gathering is not a meeting (*See* I.C. § 5-14-1.5-2(c)), such a social or chance gathering cannot be intended to avoid the ODL. Further, once a social or chance gathering, which is certainly what I consider attendance at church or church events to be, turns into a gathering of a majority of the governing body of a public agency for the purposes of taking official action on public business, it becomes a meeting. I.C. § 5-14-1.5-2(c).”

It is clear the hiring of a new police chief is public business. And it is clear the in-person discussion at church between Mr. Hess and Ms. Lance was a gathering of the majority of a governing body, since they are two members of a three member body. The question is whether the gathering was for the

purpose of taking official action on public business. While the two may not have intended to take official action on public business, even inadvertently doing so can turn a social or chance gathering into a meeting.

Here, Mr. Hess has indicated that he spoke to Ms. Lance in person, probably at church, when he asked her if she was still of a mind to hire a chief outside the department and when she told him she had spoken with Mr. Weisheit and thought he would be a good choice for chief. Ms. Lance indicates she recalls speaking with Mr. Hess at church and mentioning to Mr. Hess that she had been visited by Mr. Weisheit and thought he would be a good man for the job of chief. She further says that Mr. Hess indicated he agreed with her assessment of Mr. Weisheit.

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). Here, Mr. Hess and Ms. Lance exchanged remarks regarding the hiring of the police chief. During the discussion, it is my opinion each received information from the other, Mr. Hess received information that Ms. Lance had met with Mr. Weisheit and thought he was a good candidate for the job, and Ms. Lance received information that Mr. Hess agreed with her assessment.

The issue of the exception to the definition of meeting for a social or chance gathering has been addressed by this office in several advisory opinions. This office has found that when official action is taken at a social or chance gathering, that gathering violates the ODL.” See *Opinion of the Public Access Counselor 08-FC-102*.

Counselor O’Connor provided the following analysis regarding the social and change gathering exception:

It is not a violation of the ODL for the Board of Commissioner to have lunch together and discuss matters not related to the public business of the Board of Commissioners. However, based on the information I have been provided it is my opinion that the Board of Commissioners did discuss public business during the January 8th gathering. According to Ms. Robertson's article in the Linton Daily Citizen, Mr. Fowerbaugh stated that “[w]e didn't discuss any types of projects, with the exception of the bridge inventory, which we're under contract for. We kind of reviewed the bridge inventory and areas that needed improvement, it was really a general conversation. No decisions were made." It is clear, based on Mr. Fowerbaugh's statement that the Board of Commissioners did receive information about the bridge inventory. Therefore, the only question remaining is whether the bridge inventory constitutes public business of the Board of Commissioners. In a telephone conversation I had with Dr.

Tom Bailey on February 6, 2002, a member of the Board of Commissioners, he stated that the bridge inventory updates the Board of Commissioners concerning the condition of the various bridges in Greene County. Dr. Bailey further stated that any decisions concerning the various bridges in Greene County are within the jurisdiction of the Board of Commissioners. Therefore, it is clear that the bridge inventory is the public business of the Board of Commissioners. *See Opinion of the Public Access Counselor 02-FC-02.*

The ODL further provides that a “caucus” would not be considered a meeting. *See* I.C. § 5-14-1.5-2(c)(4). A “caucus” is defined as a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action. *See* I.C. § 5-14-1.5-2(h). The Indiana Supreme Court has provided the following analysis regarding caucuses:

Under the Indiana Open Door Law, "caucus" is defined as "a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action." I.C. § 5-14-1.5-2(h). The nature of such political meetings will often necessarily involve receiving information, deliberating expected issues, and holding discussions concerning anticipated official action and public business. If the persons attending such meetings happen to constitute a majority of a governing body, such a caucus is not thereby transformed into a meeting subject to full public scrutiny under the Open Door Law. It is the taking of official action which changes the character of a majority political party strategy meeting from a private caucus to a public meeting. *Evansville Courier v. Willner*, 563 N.E.2d 1269, 1271 (Ind. 1990).

In *Willner*, the Court found the caucus exemption inapplicable where a majority of the governing body met in caucus prior to the official meeting, deliberated and decided on the selection of a new superintendent at the caucus, held a subsequent press conference prior to the official meeting of the governing body, and had all of the appointment paperwork prepared for signatures prior to the official meeting. *Willner*, 563 N.E.2d at 1270; *see also Evansville Courier v. Willner*, 553 N.E.2d 1386 (Ind. Ct. App. 1990).

In a previous informal opinion regarding caucuses, I opined that:

“Official action may not take place at a caucus. Members of a governing body in a caucus can hold discussions preparing them to take official action, but may not actually take official action. Undoubtedly, there is a fine line between taking “official action”, which can be as little as receiving information, and holding discussions designed to prepare members for taking official action. I would caution those members of a

governing body planning to hold a caucus to keep in mind that transparency and accessibility are the hallmarks of the ODL, and to be mindful of the definition of “official action” when holding a caucus. . .

The ODL is silent as to the frequency of which a caucus may be held. As long as the political party or coalition was not taking official action in the caucus, it would not be violating the ODL.” *See Informal Opinion of the Public Access Counselor 12-INF-03*

Although only briefly addressed here but important to mention, the requirements for posting notice do not apply when the executive of a county meets, if the 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. *See* 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.* Although notice is not required, all other requirements of the ODL would apply, including keeping memoranda. *See* I.C. § 5-14-1.5-5(f)(2).

Using this as a background, I will address separately each inquiry that has been submitted.

March 20, 2013 Gathering

On March 20, 2103, Ms. Butters noticed a collection of vehicles belonging to elected officials that were in the Pizza King parking lot on West Main Street in Richmond, Indiana. Ms. Butters entered the restaurant and spoke with both the Board and Council President. Ms. Butters stated that it appeared that a meeting was being conducted and asked everyone in attendance to not discuss county business. There does not appear to be any dispute that a majority of both the Board and Council were present, however Ms. Butters was not present at the gathering and can only make general assumptions as to what was being discussed.

In response, Mr. Cross noted that it has been the frequent practice for members of the Council and Board to gather for dinner following the monthly Workshop. Mr. Cross is unable to provide any information regarding the discussions that occurred, because like Ms. Butters and Ms. Burns, he was not in attendance that evening. Mr. Cross maintains that no substantive evidence has been presented except relying on unnamed former county officials’ hearsay statements.

It is not a violation of the ODL for a majority of a governing body to gather socially, so long as the gathering is not intended to avoid the requirements of the ODL. *See* I.C. § 5-14-1.5-(c)(1). However, if the governing body takes official action on public business at the social gathering, then it has acted in violation of the ODL. *See Opinions of the Public Access Counselor 02-FC-02; 08-FC-102; 09-FC-30; and 10-FC-98.* A majority of the Board and Council gathered on March 20, 2013 for a social gathering

after the public meeting. It is important to note how broadly the ODL defines “official action.” Accordingly, conducting a straw vote on issues or deliberating matters of public business of the Board and Council would be considered to be “taking official action.” Here, no specific allegation as to what public business the Council and/or Board took official action on during the social gathering on March 20, 2013 has been noted. Thus, if the Board and Council took no official action on public business at the social gathering held on March 20, 2013, a violation of the ODL would not have occurred.

Issuance of the RFP

Ms. Butters provided that at the joint meeting of the Council and Board on April 17, 2013, it was announced that RFP was being issued on April 19, 2013 for the purchase of a new electronic personnel management systems. Ms. Butters advised that never at any time had this matter been discussed in a public meeting of the Board and that it was obvious that the other two members of the Board had discussed the matter with the County’s Human Resource Director. The matter was then called for a vote, which past 2-1. Ms. Butters objected on the grounds that there had been no deliberation on the matter prior to final action being taken.

In response, Mr. Cross advised that Ms. Butters was generally aware of the fact that procurement of such a system had been discussed months ago, by both the Council and the Board. Minutes from the January 2013 Workshop reflect that a discussion of the issue did occur. Ms. Butters believes that such an RFP must be approved by the Board prior to issuance. The Board did not take final action on the issue until the April 17, 2013 meeting, to which Ms. Butters voted against and asked that the RFP be delayed. Her motion to delay failed for lack of a second. Mr. Cross maintains there were no private meetings conducted by the remaining two members of the Board regarding the RFP. Even further, the two members of the Board had yet to see a draft of the RFP in question.

Ms. Butters generally alleges that the Board met in private to discuss the RFP prior to the April 17, 2013 public meeting. No specifics have been provided as to when or where the alleged meetings occurred of the other two members of the Board. A sole member of the Board would not violate the ODL by meeting with a county employee, in this case the Human Resource Director. Further, the ODL does not provide that a governing body must deliberate in a public meeting on a matter prior to taking final action. *See Opinions of the Public Access Counselor 13-FC-92.* In response, Mr. Cross denied the allegations relative to the issuance of the RFP, providing that no private meeting occurred by the other two members of the Board to discuss the RFP and said members have yet to have even reviewed a copy of the RFP. As such, if the members of the Board did not meet privately to discuss the RFP, no violation of the ODL has occurred.

Appointment of the County Administrator

Ms. Burns is a former member of the Council. She advised that she is of the belief that a majority of the Council and Board continue to discuss county business in the

after meeting workshops. Ms. Burns had never participated in such gatherings in fear of violating the ODL. Ms. Burns is unsure if said gathering could be considered a caucus. The first time that Ms. Burns observed this practice was after the joint workshop where Commissioner Paust proceeded to hand out job descriptions for a Wayne County Administrator. It was obvious to Ms. Burns that the other members of the Board and Council were already aware that the Administrator was a position that the Board wanted to create. Ms. Burns informed the present members at that time that she didn't feel like the discussions should be occurring.

Mr. Williamson had the same concerns as Ms. Burns regarding the creation of a County Administrator position and the process in which the matter was handled by the Board and Council. Mr. Williamson advised that Mr. Paust presented a draft of a lengthy job description that Mr. Paust and Mr. Burns had discussed and agreed upon outside of the public meeting.

In response, Mr. Cross advised that Ms. Burns admits that she has never participated in any such gatherings. Mr. Cross did make an inquiry of the current and former county Republican Party chairpersons and, while caucuses were held during Ms. Burns' tenure on the Council, no one recalls that any of the post-workshop gatherings were convened as a political party caucus. Mr. Cross advised that minutes of the Board suggest that issues were discussed regarding the Administrator by the Board and in the Council's Personnel Committee, which Ms. Burns was a present and active participant. Further, as of April 25, 2013, the Council had yet to vote on the creation of a new position and has indefinitely tabled the issue.

As to Mr. Williamson inquiry regarding the Administrator, Mr. Cross notes that Mr. Williamson never sought legal advice relative to these issues while he was a member of the Board. Mr. Cross was not present at the alleged luncheon gatherings. Mr. Williamson only makes reference to one specific occurrence that occurred during the summer of 2012 that related to the proposal suggested by the Committee relative to the creation of the Administrator position. Mr. Williamson stated that at the luncheon with the other two Commissioners, the recommendation of the Committee was discussed and that he expressed his opposition to the idea. The issue was never addressed again to Mr. Williamson's knowledge until September 4, 2012, when Commissioner Paust informed him by phone that he and Commissioner Burns had decided to "establish the Administrator's position and had chose a current county employee for the promotion." Commissioner Paust then asked that the matter be put on the next day's agenda. Commissioners Burns and Paust deny that a vote was taken in private or met outside Mr. Williamson's presence and discussed the issue.

Again, the parties' version of the events that transpired varies greatly and Commissioners Burns and Paust deny the allegations that have been alleged. Outside of a public meeting, if Mr. Williamson, as a member of the Board, discussed and deliberated issues relative to the hiring of the Administrator with another member of the Board, such actions would be in violation of the ODL. If the issues were discussed at a "luncheon meeting" presumably held under the social gathering exception, the Board would have

taken official action on public business, contrary to the ODL. The issue of hiring an Administrator has never been voted on and has been indefinitely tabled. Individual members of the Board would not violate the ODL by meeting individually with the county's Director of Human Resources to discuss issues related to the proposed hiring. Nothing would prohibit a caucus to be held to discuss the issue as long as the caucus complied with the requirements of the ODL and the Supreme Court's ruling in *Willner*.

Social gatherings attended by Mr. Williamson

Mr. Williamson stated during his tenure he became increasingly uncomfortable about attending lunch and dinner meetings following public meetings of the Board and joint meetings of the Board and Council. Later in his term, Mr. Williamson stopped attending the after dinner meetings as he became aware of the ODL. Mr. Williamson advised that other members of the Board sought lunch meetings every Wednesday after the morning public meeting and the lunches were described as "working sessions." During the lunches, discussion focused on matters that were before the Board, with opinions and straw polls being conducted. As to the after meeting dinners, said gatherings were not called for social purposes and the members present routinely asked their positions on a wide variety of public policy issues at the gatherings.

It is not a violation of the ODL for a majority of a governing body to gather socially, so long as the gathering is not intended to avoid the requirements of the ODL. *See* I.C. § 5-14-1.5-(c)(1). However, if the governing body takes official action on public business at the social gathering, then it has acted in violation of the ODL. *See Opinions of the Public Access Counselor 02-FC-02; 08-FC-102; 09-FC-30; and 10-FC-98.* "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 to any functions upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-3-2(e). If official action was conducted by members of the Board during a social gathering as described by Mr. Williamson, then such action would be in violation of the ODL.

Relative to all of the issues that have been presented, as noted by Mr. Cross, it is important to all of those involved that the perception of an impropriety can sometimes be more damaging than the impropriety itself. There can in many cases be a very fine line between taking official action on public business and social discussions amongst members of a governing body at a social or change gathering. I would caution all involved to keep in mind that transparency and accessibility are the hallmarks of the ODL. In this vein, Commissioner Burns, who also serves as the Wayne County GOP Chairman, has circulated a memorandum that the tradition of gathering socially amongst members of the Board and Council after meetings will cease. I believe that this is an excellent step in alleviating the concerns that have been addressed in the inquiry.

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 stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Ronald L. Cross