



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 19, 2013

Mr. Aaron Pratt
608 N Norton St
Marion, Indiana 46952

Re: Informal Inquiry 13-INF-47; Meetings conducted by the Marion Common Council Budget Committee

Dear Mr. Pratt:

You have submitted an inquiry regarding the Marion Common Council Budget Committee ("Committee") and its compliance with the Open Door Law ("ODL"), Ind. Code. § 5-14-1.5 *et seq.* Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on the applicable provisions of the Open Door Law ("ODL") I.C. § 5-14-1.5 *et seq.* Don Gallaway, Corporate Counsel, responded to your inquiry. His response is enclosed for your reference.

BACKGROUND

The Marion Common Council ("Council") consists of nine members; the Committee is comprised of four members. You propose the following hypothetical:

- The Committee Chairman meets with each Committee member individually;
- All meetings are held within one week's time;
- In the meetings between the Chairman and individual members of the Committee, they discuss "official business" as defined under I.C. § 5-14-1.5-2(d);
- The Council rules do not define a quorum for the Committee; and
- The Committee does not have any written rules defining a quorum.

Under said hypothetical, you inquire whether the Committee would have violated the Serial Meeting prohibition found under I.C. § 5-14-1.5-3.1.

Your next inquiry deals with the actions of the Committee members after a public meeting of the body had adjourned. Upon adjournment of the public meeting, three of the four members sat together and discussed the proceedings and the next actions that the Committee was planning to take. You note that members of the media and public who

attended the public meeting had left the meeting room upon adjournment. You inquire whether the Committee members' actions violated the ODL.

In response to your inquiry, Mr. Gallaway declined to comment on the hypothetical which you have raised, as it does not involve an actual issue that involves the Council. As to your second inquiry, the Committee Chairman, Henry Smith, acknowledged that three of the four members of the Committee did remain after the Committee's public meeting had been adjourned and discussed city business. Mr. Gallaway notes that you had previously informed him that once you brought this issue to the Committee members' attention that evening, one of the members immediately left the gathering. Mr. Gallaway has since taken steps to ensure that the Committee members are aware of the specific requirements of the ODL and to govern their actions accordingly. A long term plan is being put into place by the City Legal Department to educate members of the Council on the requirements of the ODL. It is Mr. Gallaway's hope that the plan will prevent any future confusion regarding the issue.

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).

The ODL prohibits governing bodies from conducting serial meetings. *See* I.C. § 5-14-1.5-3.1. By definition, the serial meeting law can only be violated by governing bodies of six or more individuals. The serial meeting prohibition provides:

Sec. 3.1. (a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.

(2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business. For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic

means, excluding electronic mail.

(b) This subsection applies only to the city-county council of a consolidated city or county having a consolidated city. The city-county council violates this chapter if its members participate in a series of at least two (2) gatherings of members of the city-county council and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least five (5) members of the city-county council and the other gatherings include at least three (3) members of the city-county council.

(2) The sum of the number of different members of the city-county council attending any of the gatherings at least equals a quorum of the city-county council.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business. For purposes of this subsection, a member of the city-county council attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(c) A gathering under subsection (a) or (b) does not include:

(1) a social or chance gathering not intended by any member of the governing body to avoid the requirements of this chapter;

(2) an onsite inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body;

(3) traveling to and attending meetings of organizations devoted to the betterment of government;

(4) a caucus;

(5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources;

(6) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action;

(7) a gathering for the sole purpose of administering an oath of office to an individual; or

(8) a gathering between less than a quorum of the members of the governing body intended solely for members to receive information and deliberate on whether a member or members may be inclined to support a member's proposal or a particular piece of legislation and at which no other official action will occur.

(d) A violation described in subsection (a) or (b) is subject to section 7 of this chapter.

As applicable to your hypothetical, the Committee would not violate the serial meeting prohibition as the Committee is only comprised of four members. Even if the Committee was comprised of six or more members, a series of one-on-one meetings described in your hypothetical would not violate the prohibition, as the law requires that one of the meetings be attended by at least three members of the governing body.

As to your next inquiry, 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.

The ODL would require that public notice of the date, time, and place of any meeting, executive session, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper unless specifically directed pursuant to a separate statute. *See* I.C. § 5-14-1.5-5(b)(2).

As applicable here, the Committee acted contrary to the requirements of the ODL when three of its four members continued to discuss and address matters of public business after the public meeting had been adjourned. As noted by Mr. Gallaway, once you informed the members of the possible violation that evening, one of the members immediately left the gathering. Mr. Gallaway has spoken the Committee Chairman regarding the issue and the City Legal Department has put into place a plan to educate all Council members on the ODL’s requirements.

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

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Don Gallaway