



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

October 27, 2016

Kristen Brown
Kristen@brownforcolumbus.com

Re: Informal Inquiry 16-INF-28; Subcommittees

Dear Ms. Brown:

This advisory opinion is in response to your informal inquiry alleging the City of Columbus Redevelopment Commission ("Commission") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Commission has responded to your inquiry via counsel, Mr. Stanley Gamso, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your informal inquiry received by the Office of the Public Access Counselor on September 16, 2016.

BACKGROUND

Your inquiry dated September 16, 2016, seeks to determine whether the City of Columbus Redevelopment Commission ("CRDC") violated the Open Door Law by failing to make public the meetings of three (3) committees created by and appointed by the presidents of CRDC.

You allege the City of Columbus Redevelopment Commission has created subcommittees to review proposals for infrastructure projects. These committees are responsible for receiving information, deliberating and making recommendations to the full commission regarding three (3) infrastructure projects; Riverfront Revitalization Project Committee, the Railroad Project Committee and the State Street Implementation Project Committee.

You have also provided emails from Sarah Cannon, President of the Redevelopment Commission which illustrate the appointments of members and recommendations from other commissioners.

On October 05, 2016 the Commission responded via counsel. The President of the Redevelopment Commission, Sarah Cannon, appointed commissioners to the Railroad and Riverfront Project Committees; however, neither the CRDC nor the President appointed the non-redevelopment member to these project committees. There has been no official action by the Redevelopment Commission to appoint any of its own Commission.

The Commission believes it is the absence of any specific delegation of authority to a sub-committee to take official action or act upon public business and cannot meet the definition of a “public agency” or governing body sufficient to give rise to mandatory compliance with the Open Door Law.

This matter was previously considered by this Office on May 23, 2016 in *Opinion of the Public Access Counselor 16-FC-82 and 95 (consolidated)*. In it, I wrote:

A review of the March 21, 2016 minutes of the Redevelopment Commission references the subcommittee in question. It appears as if the committee is comprised of only one (1) member of the Commission and was formed by the director of redevelopment, who is not a member of the Redevelopment Commission. Based upon the information provided, the committee was not directly appointed by the Commission or its presiding officer to take official action upon public business.

Additional information has been provided to give me a better picture of how the committees were created.

ANALYSIS

It is the intent of the Open Door Law (“ODL”) 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 Indiana Code § 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 Indiana Code § 5-14-1.5-3(a)*.

“Public business” means “any function upon which the public agency is empowered or authorized to take official action.” Indiana Code § 5-14-1.5-2(e). “Official action” is very broadly defined by our state legislature to include everything from merely “receiving information” and “deliberating” (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Indiana Code § 5-14-1.5-2(d).

The ODL defines a public agency in Indiana Code § 5-14-1.5-2(a) as:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, School Corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

For the purposes of this discussion, the Redevelopment Committee, exercising the executive function of the City of Columbus, is the public agency.

Furthermore, the ODL defines a governing body as 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.

(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.

Emphasis added. See Indiana Code § 5-14-1.5-2 (b).

The question was in the previous opinion, and continues to be, whether the governing body or its presiding officer directly appointed – a matter of fact. In *Informal Opinion of the Public Access Counselor 15-INF-09*, I opined:

“Appointed directly” is not defined by the Open Door Law. Ind. Code § 5-14-1.5-1 requires a liberal reading of the ODL and a narrow construction of its exceptions. Appointed directly could be reasonably interpreted as “designated” or “assigned”. In fact, I would argue that a direct appointment could be implied or inferred based upon the factual circumstances.

If the Committee was formally created by some declaration or mandate from the Council, it would be a new governing body - a board within a board. If it was an organically formed ad hoc meeting of a volunteer non-majority gathering of Council members, it would not be a new governing body.

The Committees are made up of Commission members, interested members of the public and other governing body members and city employees. As you are aware, the Committees were appointed by you during the previous administration when you served as both mayor and Redevelopment Commissioner President. The Committees were not dissolved under the new administration and continued their original purpose.

In an email dated January 25, 2015 from Sarah Cannon, President of the Redevelopment Commission confirms this. Her communication laid the framework for the continued operation of the sub-committees, solicited volunteers from within the Commission, and authorized them to take official action on public business: “Each project’s work will include definition, determination of resources needed, request for resources, recommendations.” The Redevelopment Commission clearly has purview of its subcommittees’ official action.

The Commission argues that the Committees are not authorized to take official action on public business, however, the emails provided contradict this position. "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. Indiana Code § 5-14-1.5-2(d). It is broad enough to include the activities of the subcommittee as described in the emails.

In light of the new information, I do consider the Committees to be standing governing bodies to be subject to the Open Door Law. Even though they are not necessarily created to take final action or make binding action, they do appear to be taking official action on public business. Additionally, it matters not that the Committees were formed and directly appointed by a prior administration. When the Committees were authorized to continue in (mostly) the same make-up as when they were created, and the nature of their existence was not altered by a change in administration, they remain subject to the Open Door Law. Short of dissolving the Committees and re-forming with a truly volunteer ad hoc membership, they will remain subject to the Open Door Law.

Please do not hesitate to contact me with any further questions.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Stanley A. Gamsso, Esq.