

## MEMORANDUM

**Date:** May 23, 2014

**To:** Members of the VCU Fluoride Commission – Dave Bengs (Chair), Mark Thiros (Co-Chair), Tim Daly, Judith Harrington, Jon Schoer, Kevin Steele, Jennifer Waldo

**From:** Stu Walesh, Facilitator

**CC:** Steve Poulos; John Hardwick; Stu Walesh; Mike Langer; Shihua Chen; Times; Post Tribune; Gary Foreman; William Hirzy; Ed Charbonneau; Mary Woodworth; Peggy Busse; Schechner MD; James R. Miller, MD; Douglas M. Bush; Terry G. Schechner, DDS

**Re:** Summary of Meeting 1 on Wednesday, May 21, 2014

**Participants:** All members of the Commission; Mayor Jon Costas; Steve Poulos, Utilities Director; Stu Walesh, Facilitator; John Hardwick, Coordinator; VCU staff; press; and citizens.

**1. Welcome** – The meeting started at about 4:00 PM with Chair Dave Bengs welcoming everyone and thanking Commission members for serving. Mayor Costas noted the importance of the water system, reflected on its successful history, cited the need to maintain quantity and quality, urged the Commission to recognize potential emotional issues but make its recommendations based on facts, and asked the Commission to define its standard of review.

**2. Self introductions** – Each Commission member briefly introduced themselves which indicated the diversity of the group.

**3. Charge to the Commission** – Chair Bengs reviewed the charge to the Commission which is in the first part of the Action Plan, Attachment A to the agenda. The Commission's work is to be transparent and inclusive. If a Commission member receives a written communication from someone regarding the Commission's work and wants to share it with other Commission members, please send the item to Stu Walesh for distribution. Similarly, if VCU personnel receive such communications, they will be shared with Commission members.

**4. Overall approach** – As explained in the Action Plan, the Commission will conduct a series of meetings each having a specific purpose such as visiting the treatment plant, receiving comments supporting fluoridation of the water supply, and receiving comments opposing fluoridation.

**5. Protocol** – Chair Bengs mentioned the Commission's protocol which is described in Attachment B to the agenda. Indiana's Open Door Law was noted. As indicated by the memorandum from VCU attorney Mike Langer, which was distributed at the meeting and is include as Attachment A to this summary, Commission members and VCU personnel can exchange email messages. However, Commission decisions will be made only at its face-to-face public meetings.

**6. Resources and References available to Commission members** -- John Hardwick noted the initial list of resources and references provided as Attachment C to the agenda. This list will evolve as additional items are discovered by VCU personnel, Commission members, and others.

**7. Miscellaneous --**

- Concern was expressed about the meeting starting time of 4:00 PM being too early. Therefore, the Commission will try to start its meetings at 5:00 PM. See Item 9.
- The need for a larger more flexible meeting room was noted, especially when presentations are made. Accordingly, the Commission will try to meet at the City Hall especially when presentations are scheduled. See Item 9. The Commission will attempt to accommodate the schedules of speakers subject to availability of Commission members.
- Steve Poulos noted that Commission information will be posted on the utility's website. Examples of materials to be posted are the action plan, meeting agendas, and meeting summaries. Go to [www.valparaisoutilities.org](http://www.valparaisoutilities.org) and look for "Fluoride Commission."

**8. Meeting summaries** – Stu Walesh indicated that meeting summaries will be sent within with three business days of each meeting to Commission members and to others who provide email addresses.

**9. Next scheduled meetings --**

- **Meeting 2 -- Wednesday, June 4, 4:00 PM, VCU Flint Lake Treatment Plant:** Commission members, selected VCU personnel, and members of the press will meet at the plant for the sole purpose of touring the plant and learning how fluoride is added to the water. Space and security considerations require this arrangement. No formal discussions or decisions will be made. If others want to tour the plant at some other time, they should contact Steve Poulos. More information to follow for Commission members and the press.
- **Meeting 3 – Thursday, June 19, 5:00 PM, City Hall:** Receiving comments, with written summaries, from those who favor continuing the fluoridation of the Valparaiso water supply.
- **Meeting 4 – Wednesday, June 25, 5:00 PM, City Hall:** Receiving comments, with written summaries, from those who oppose continuing the fluoridation of the Valparaiso water supply.

**10: Adjourn** -- Chair Bengs adjourned the meeting at about 4:45 PM.

MEMORANDUM

TO: MAL  
FROM: JPK  
RE: Indiana Open Door Law  
DATE: 05/16/14

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**1. Does the ODL apply to commissions or subcommittees appointed by a municipality?**

Yes. The ODL applies to the “governing body” of a “public agency.” The term “public agency” includes “any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, judicial, or legislative power of the state or a delegated local governmental power.” *See* Ind. Code § 5-14-1.5-2(a)(2). It also includes any “advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency...” *See* Ind. Code. § 5-14-1.5-2(a)(5). Therefore, since the municipality, a public agency, created the commission, presumably either by ordinance or executive order, the commission is a “public agency” under the ODL.

A “governing body” means two or more people who are a “public agency” that “is a board, a commission, an authority, a council, a committee, a body, or other entity” and “takes official action on public business.” *See* Ind. Code § 5-14-1.5-2(b)(1). The term also includes

“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.” *See* Ind. Code § 5-14-1.5-2(b)(3). Since “official action” can include “receiv[ing] information” or “mak[ing] recommendations, *see* Ind. Code § 5-14-1.5-2(d), the commission, even if purely acting in an advisory role, would still be a governing body.

## **2. Under what circumstances must the press be notified?**

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* Ind. Code § 5-14-1.5-3(a). Additionally, public notice must be given at least 48 hours in advance of “any meetings, executive sessions, or of any rescheduled or reconvened meeting...” *See* Ind. Code § 5-14-1.5-5.5(a). Basically, the ODL applies to the “meetings” of governing bodies of public agencies.

## **3. Can members e-mail each other without triggering the requirements of the ODL?**

Yes. A “meeting” is a “gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business.” *See* Ind. Code § 5-14-1.5-2(c). Although it has not been expressly said, a “gathering” involves the physical presence of the members together in one place; for example, Indiana courts have held that back-to-back gatherings in which less than a majority of members are physically together at any one given time is not a “meeting” under the ODL. *See Dillman v. Trs. of Ind. Univ.*, 848 N.E.2d 348, 352 (Ind. Ct. App. 2006). A “meeting” must involve physical presence together, or “gathering”, because official actions require a quorum to be present. *Id.* A string of e-mail messages is not a “meeting” under the ODL because a majority of the members are never gathered together.

This interpretation also makes sense in light of recent amendments to the ODL in 2013 to allow participation in meetings via electronic communication. *See* Ind. Code § 5-14-1.5-3.5. The amendment provides that

a member of the governing body of a public agency who is *not physically present at a meeting* of the governing body but who communicates with members of the governing body during the meeting by telephone, computer, video conferencing, or any other electronic means of communication...*may not be considered to be present at the meeting* unless considering the member to be present at the meeting is expressly authorized by statute.

*See* Ind. Code § 5-14-1.5-3.5(b). The amendment treats a member who is not physically gathered together with other members as not a part of the meeting unless specifically authorized to do so by statute. Thus, if an individual member generally cannot be present at a physical gathering of members electronically, than a purely e-mail based discussion is not a “meeting” because a quorum of members have not physically gathered together in one place for official business.