

## MEMORANDUM

To: Members, Hancock County Tourism Commission

From: Kevin Harvey

Date: February 12, 2018

Re: Suggested Changes and Questions Regarding New Member Orientation  
from George Langston

Mr. Langston's questions and comments are reprinted in **bold** below, with my responses following.

**1. I. Authority of Tourism Commission:**

**2 A (5) Oath of office should read exactly as stated in I.C. 6-9-18-5, (g).  
"Before Entering His/Her Duties.**

**Note: We can add to or strengthen a statute, but we cannot lessen the  
requirement of I.C. 6-9-18-5, (g). Changing the State Statute is reserved to the  
State Assembly.**

*Response:* The orientation summary consists of introductory comments designed for ease of reading as part of a presentation by counsel for the prepared by counsel for the commission. It is designed for presentation format. Copies of the statutes are also provided with the orientation materials so that Commission members may also read the statutes. Because the orientation summary is only a presentation from counsel and not an action document adopted by the Commission, it does not constitute an attempt to "change" the statute; the statute is provided with orientation materials and speaks for itself.

**2. II. The Responsibility of the Commission:**

**2: The Commission may not;**

**Note: "This provision does not apply to the award of grants"?????  
Where and how is this established within the State Statutes?**

*Response:* The restrictions on funding of corporations and transfers of funds to corporations are set forth in I.C. 6-9-18-6. However, a different code section, I.C. 6-9-18-4(c), provides that a tourism commission may expend its funds:

. . . [T]o promote and encourage conventions, visitors, and tourism within the county. Expenditures under this subsection may include, but are not limited to, expenditures for advertising, promotional activities, trade shows, special events, and recreation."

The Hancock County Tourism Commission has chosen the awarding of grants as a procedural tool for promoting and encouraging conventions, visitors, and tourism within the county. It is an appropriate tool, but not a required tool nor, as shown in the statute above, not the only means by which it may expend funds. The authority to spend funds is broadly given, and can be done in such

manner as the Commission sees fit – so long as the standard to promoting and encouraging “conventions, visitors, and tourism within the county” has been met. There is no requirement in I.C. 6-9-18-4(c) that only Indiana nonprofit corporations can receive funds from the Tourism Commission for the promotion and encouragement of conventions, visitors, and tourism within the county.

On the other hand, the restrictions on transfer to corporations set forth in I.C. 6-9-18-6 governs the use of convention, visitor, and tourism promotion funds in counties where the tourism commission does not actually exercise its authority in the direct award of funds, but instead transfers those funds to a nonprofit corporation. The nonprofit corporation then decides how to spend the dollars to promote and encourage “conventions, visitors, and tourism within the county.” If a tourism commission doesn’t decide how to spend its money to promote and encourage “conventions, visitors, and tourism within the county”, but instead wants to give the money to a third party to spend it for those purposes, this code section says that third party must be an Indiana nonprofit corporation.

Because the Hancock County Tourism Commission is make direct decisions – itself – on how the convention, visitor, and tourism promotion funds in Hancock County will be spent to promote tourism, etc., it is making those expenditures under I.C. 6-9-18-4, and not I.C. 6-9-18-6.

### **3. III. Indiana Open Door Law**

#### **6. What about Committees?**

##### **Does a 3-member budget committee have to advertise their meeting?**

*Response:* A three-member committee does not need to advertise its gatherings because its gatherings do not constitute a “meeting”. Per the Open Door Law, only “meetings” as defined by the Code must be advertised (I.C. 5-14-1.5-5). Per I.C. 5-14-1.5-2(c), a “Meeting” means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon business.” Because the Hancock County Tourism Commission has seven (7) members, a majority of the Commission would mean that a gathering of four (4) members would be required for the gathering to constitute a “meeting”. Therefore, a committee of three can meet without that gathering constituting a meeting. Further, because a committee of three does not constitute a quorum, a committee of three does not have the capacity to take official action binding upon the Commission. (Note: even if there is one vacancy on the Commission, leaving it with six (6) members, a committee of three (3) would not constitute a majority, and could therefore still meet to conduct its work. A committee of three (3) would only be a problem if there is five (5) or less members of the Commission).

#### **4. 7. What are Serial Meetings and are they Prohibited**

*Response:* Serial meetings are prohibited, as is noted in the Handbook on Indiana’s Public Access Laws (which is provided to new members are part of the orientation packet).

**5. Is a 3-member budget meeting a serial meeting?**

*Response:* No. Please see page 8 of the Handbook on Indiana's Public Access Laws:

A serial meeting occurs when members of a governing body participate in a series of at least two meetings and all of the following conditions are met:

- One gathering is attended by at least three members but less than a quorum;
- The other gatherings include at least two members of the governing body;
- The sum of different members participating at least equals a quorum;
- The gatherings concern the same subject matter and are held within a period of seven days; and
- The gatherings are held to take official action on public business.

A three-member committee does not constitute a quorum, as noted above. For a three-member committee to violate the serial meeting prohibition, a fourth member of the Commission would need to participate in a second meeting with a member of the committee within seven (7) days of the committee meeting and for the purpose of taking official action on behalf of the Commission.

**6. 13. What is a public record:**

**I record our meetings, is this recording a public record?**

*Response:* Yes. A Commission member's recording of a meeting is a public record, because the recording was made by the Commission member while acting in his/her official capacity as a member.

**7. 16. Exemptions to Disclose:**

**"Fees may not be charged to search or inspect records, but a copy fee as determine by the Commission may be required."**

**County Fiscal Body, ie County Council determines copies fees through Ordinance. See County Council minutes October 2016. John and I forced the creation of this ordinance.**

*Response:* This comment does not seem to require a response.