

October 10, 2003

Ms. Donna K. Innis  
8304 Indian Caves Court  
Charlestown, IN 47111

*Re: Formal Complaint 03-FC-82: Alleged Violation of the Indiana Open Door Law by  
the City of Charlestown, Indiana*

Dear Ms. Innis,

This is in response to your formal complaint, received in this office on September 10, 2003. In it, you allege that the City of Charlestown (the "City") violated the Indiana Open Door Law, Indiana Code chapter 5-14-1.5 (the "Open Door Law"). Specifically, you allege that the City failed to give proper notice of a meeting of the Charlestown City Council (the "Council") which took place on September 8, 2003 at 10:00 A.M. Ms. Donna S. Coomer, Clerk Treasurer of the City, has responded in writing to your complaint. A copy of her response, as well as a copy of the notice allegedly posted September 4, 2003, is enclosed for your reference.

#### BACKGROUND

You allege that on September 2, 2003, you attended a Council meeting and were informed upon request that budget meetings were to be held on September 8, 2003 at 7:00 P.M. and on September 18, 2003 at 1:00 P.M. You allege that on Friday, September 5, 2003, Councilman Bruce Buttorf informed you that Ms. Coomer had distributed to the Council a letter stating that she was holding a budget workshop on Monday, September 8, 2003 at 10:00 A.M. You allege that there was no notice in the paper. You further allege that you inspected the postings at City Hall and the Post Office on September 5 and 7, and that there were no postings about the morning meeting. You allege that on September 8, you entered the Council meeting and observed the full council, along with Ms. Coomer and Mayor G. Robert Hall. You further allege that Mayor Hall called the meeting to order, and that for the next hour and a half, a discussion ensued about the budget. Along with your complaint, you enclosed what you allege to be the only notice published by the newspaper for a Council meeting on September 8. You also enclosed what you allege to be a copy of Ms. Coomer's letter to Councilman Bottorff, dated September 4, 2003 and bearing Ms. Coomer's signature.

In her response, Ms. Coomer initially stated that the morning meeting was not a public meeting. However, in a letter to this Office dated October 7, 2003, Ms. Coomer stated that she made an error in her original statement. She advises that her original statement should have indicated that the meeting was public. She alleges that the City was not required to run an

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advertisement, but only to post the meeting forty-eight (48) hours in advance. Ms. Coomer further alleges that the City posted the meeting at City Hall and the Charlestown Library on Wednesday, September 3, 2003 at 4:00 P.M. Ms. Coomer acknowledges that the meeting was held on Monday, September 8, 2003 at 10:00 A.M. Ms. Coomer later supplement her response, upon this office's request, by the notice of the meeting allegedly posted. The notice is dated September 4, 2003, and is addressed to The Citizens of Charlestown. The notice states:

The Charlestown City Council will be having a budget workshop meeting on September 8, 2003. The special meeting will be held in City Hall at 10:00 A.M. This notice is posted in accordance with Indiana Code 5-14-1.5.5.

The notice bears Mayor Hall's signature and is copied to local news media.

### ANALYSIS

The intent and purpose of the ODL is 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." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-2. The City Council is a governing body of a public agency subject to the ODL. Ind. Code § 5-14-1.5-2(b)(2).

The general rule is that meetings of public agencies are to be held openly, so that the public may "observe and record them." Ind. Code § 5-14-1.5-3(a). The Open Door Law requires public agencies to provide notice of public meetings and executive sessions. Specifically, Indiana Code section 5-14-1.5-5(a) provides that:

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

Public notice of the date, time and place of a public meeting, therefore, must be provided at least forty-eight (48) hours in advance of the meeting.

This requirement is satisfied by "posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held," and by delivering notice to all media outlets that have requested it. *Id.* Here it is unclear whether notice was properly posted. Ms. Coomer provided a copy of the notice she stated was posted at the City hall and the Public Library. You advised that you never saw the notice Ms. Coomer allegedly posted. It is impossible for me to determine whether notice was posted at City Hall. If notice was posted, then there has been no violation of the Open Door Law. If notice was not posted, then there has been a violation of the Open Door Law. I advise the City that if notices are being removed after being posted, the City may need to consider purchasing a product to guard against the removal of notices.

Additionally, you contend that there was no notice in the paper. However, Ms. Coomer asserts in her response to your complaint that the Council “was not required to run an ad[,] only to post the meeting 48 hours in advance.” It is my opinion that the Open Door Law does not require governing bodies to publish notice. The Open Door Law only requires governing bodies to deliver notice to any news media that have requested prior to January 1 of the current year that notice be provided to them. Ind. Code § 5-14-1.5-5.

#### CONCLUSION

It is my opinion that the City must post notice forty-eight (48) hours in advance of a public meeting. Here, it is unclear whether the City did so; therefore, I cannot determine whether there has been a violation of the Open Door Law. It is also my opinion that the Open Door Law does not require the City to publish notice of its meetings in news media, but merely to provide notice to the media outlets that have properly requested such notice.

Sincerely,

Sandra K. Bowman  
Acting Public Access Counselor

Cc: Ms. Donna Coomer, Clerk Treasurer  
City of Charlestown