

November 6, 2003

Judy L. Jones  
13343 N. Miller Drive  
Camby, Indiana 46113

*Re: Advisory Opinion 03-FC-95:  
Alleged Violation of the Open Door Law by Rodger Birchfield*

Dear Ms. Jones:

This is in response to your formal complaint, which was received October 7, 2003. In it, you allege that Rodger Birchfield of the Civil Township of Madison (the "Township") violated the Indiana Open Door Law (the "Open Door Law"). Specifically, you allege that the meeting minutes read during the September 2003 meeting of the Township Board established that two of the three board members met in private to discuss budget decisions as well as other township issues. Mr. Stephen R. Buschmann, attorney for the Township, responded to your complaint and has provided a copy of the July 26, 2003, meeting minutes that were read during the September 2003 meeting. A copy of his response is attached for your reference. For the reasons set forth below, it is my opinion that neither Mr. Birchfield nor the Township violated the Open Door Law.

#### BACKGROUND

In your complaint you allege that two of the three board members of the Township openly admitted that they met in private to discuss 2004 budget decisions as well as other township issues. In its response, the Township acknowledges, and the meeting minutes reflect, that board members Virginia Perry and Tom Whitley did meet to discuss and work on the budget, and did so without posting notice of their meeting. However, it is the Township's position that the meeting was a caucus, and as such was excluded from the notice requirements of the Open Door Law. The Township further notes, and it is not disputed, that the budget was thereafter fully discussed and voted upon at a properly noticed public meeting.

#### ANALYSIS

The intent and purpose of the Indiana Open Door Law 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 Township Board<sup>1</sup> is a public agency and a governing body for the purposes of the Open Door Law. IC 5-14-1.5-2(a) and 2(b). Pursuant to the Open Door Law, “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.” IC 5-14-1.5-3(a).

A meeting is defined as “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” IC 5-14-1.5-2(c). However, a meeting subject to the notice requirements of the Open Door Law does not include a caucus. IC 5-14-1.5-3(a)(4). A caucus is defined as “a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.” IC 5-14-1.5-2(h).

The Township asserts in part that the meeting at issue was a caucus because it dealt with “political issues in Madison Township.” Such an interpretation of the caucus exemption from the Open Door Law would consume the rule that public business must be conducted openly, since every decision of an elected or public official has political ramifications. *Evansville Courier v. Willner*, 553 N.E.2d, 1386, 1388-89 (Ind. Ct. App. 1990), *rev’d on other grounds*, 563 N.E.2d 1269 (Ind. 1990). However, a caucus does not transform into a public meeting subject to full public scrutiny under the Open Door Law merely because a majority of the members of a governing body are in attendance at that meeting, or because the members of that meeting receive information, deliberate on the expected issues, or hold discussions regarding their anticipated official action on public business. *Willner*, 563 N.E.2d at 1271. Rather, it is the taking of official action, that being the deliberation and decision on an issue by those in attendance, which changes the character of the private caucus to a public meeting. 563 N.E.2d at 1270-71. In *Willner*, the court found the caucus exemption inapplicable where a majority of the governing body met prior to the official meeting of that body, deliberated on the selection of a new superintendent of public buildings, decided at that meeting to appoint a specific person to that position, held a subsequent press conference in advance of the official meeting of the full governing body at which such appointment was scheduled to be considered in which they announced the appointment, and had all of the appointment paperwork prepared and ready for signatures prior to the appointment at the subsequent meeting of the full governing body. 563 N.E.2d at 1270; *see also Willner*, 553 N.E.2d at 1387.

Here, while the Township agrees that two members of the governing body met to discuss the budget and further opines that they may have “pre-determined their *positions* in that caucus” (emphasis added), there is no evidence that they made a decision on the budget or any issues related to the budget during that meeting. Indeed, the minutes anticipate and reflect that the budget would thereafter be subject to the review of the full board, and it was thereafter discussed and voted upon at a properly noticed meeting.

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<sup>1</sup> Your complaint names Rodger Birchfield as the elected official responsible for the violation of the Civil Township of Madison. Mr. Birchfield is a separately elected official and not a governing body subject to the provisions of the Open Door Law.

## CONCLUSION

It is my opinion that because the meeting between Ms. Perry and Mr. Whitley satisfied the Open Door Law's definition of a caucus, their meeting was not subject to the Open Door Law. Based on the facts presented, I do not find any violation of the Open Door Law.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Stephen R. Buschmann