

December 23, 2003

Ms. LaDonna L. Snyder
Post Office Box 236
Dayton, Indiana 47941

Ms. Betty J. Winstead
Post Office Box 194
Dayton, Indiana 47941

Mr. Max Brown
Post Office Box 7
Dayton, Indiana 47941

*Re: Formal Complaints 03-FC-129, 03-FC-131, and 03-FC-132:
Alleged Violation of the Open Door Law by the Town of Dayton*

Dear Ms. Snyder, Ms. Winstead, and Mr. Brown:

This is in response to your formal complaints wherein you allege that three members of the Dayton Town Council (Town) violated the Indiana Open Door Law (Open Door Law) by meeting without providing public notice. The Town has submitted a response to each complaint, and those responses are enclosed for your reference.¹ I find that the Town did not violate the Open Door Law.

BACKGROUND

The complaints at issue arise from a letter, signed by three members of the Town Council, addressing various details about the position and office of the Clerk-Treasurer and endorsing a candidate for Clerk-Treasurer for the November election. The letter is not dated, but contains text to suggest that it was prepared and signed within the week prior to the November 4, 2003, election (sometime between October 28, 2003, and November 3, 2003). Two of the complainants state that they received the letter in the mail on November 3, 2003. All of the

¹ The Town's response is in the form of three affidavits prepared and signed by each member of the Town Council alleged to have engaged in the meeting in violation of the Open Door Law. These affiants are Ashley Stevenson, Mike Harris, and John Swick. In addition, the Town submitted its further response in the form of a letter from the Town's counsel.

complaints allege that the signatories met together to discuss the contents of the letter, including the conduct, hours and salary of the incumbent Clerk-Treasurer, and then signed the letter endorsing their chosen candidate. However, aside from the presence of the signatures on the letter, none of the complaints set forth any factual basis for the allegation that the three signatories gathered together to discuss, prepare and sign the letter, or when or where any such gathering occurred. One complainant states her belief that the meeting occurred on November 1, 2003, or November 2, 2003.

In response, the Town asserts that the letter was not prepared by the council members or by any one of the council members, but rather was prepared by the candidate to be endorsed and then carried by that candidate separately to each council member to obtain that council member's signature. The Town's response is supported by the sworn averments of each of the council members who assert that the letter was presented to that council member by the candidate to be endorsed, and that the council member signed the letter. The Town further responds that the three council members did not gather together at any point for the purpose of discussing the content of the letter or any other matter. Indeed, the Town asserts that Michael Harris was not present in town from October 31, 2003, to November 2, 2003, and that he signed the letter upon his return. The Town similarly asserts that Ashley Stevenson did not know about the letter until November 1, 2003, when he was contacted by the candidate while on a personal trip to Chicago, Illinois, and told about its existence. According to the Town's response, Mr. Stevenson signed the letter when he returned to Indiana on November 2, 2003. Mr. Stevenson's sworn affidavit further supports that response with his averment that he was in Chicago on November 1, 2003, and November 2, 2003.

ANALYSIS

The intent and purpose of the 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. Toward that end, a public agency is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. IC 5-14-1.5-5(a). A "meeting" that is subject to this requirement is defined by the Open Door Law 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). "Public business" means any function upon which the public agency is empowered or authorized to take official action. IC 5-14-1.5-2(e). "Official action" is not limited to establishing policy, making decisions or taking final action, but may also include receiving information, deliberating, and making recommendations. IC 5-14-1.5-2(d).

All of the complaints emphatically assert that the letter establishes that a gathering of a majority of the Town Council occurred without notice. However, aside from the fact of the letter and the presence of the three signatures on the letter, no evidence is offered to support that such a gathering occurred, and that a gathering occurred is not the only reasonable inference that can be drawn from the letter. On the face of the complaints and the supporting documentation, it is just as likely that the letter was prepared by one person and signed by each of the council members separately. This inference is supported by the Town's response and the sworn affidavits

submitted by each of the council members. The evidence does not support a finding that a majority of the Town Council met in violation of the Open Door Law.²

CONCLUSION

I find that the Town did not meet in violation of the Open Door Law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Randy J. Williams

² A separate issue, not reached here, is whether a gathering of the three council members to discuss the incumbent Clerk-Treasurer and to endorse the candidate for that position would have fallen within the definition of “meeting” under the Open Door Law.