

September 5, 2003

Ms. Donna Thacker  
323 Diehl Drive  
Lawrenceburg, IN 47025

Re: Advisory Opinion 03-FC-68; *Alleged Violation of the Indiana Open Door Law by the Lawrenceburg Conservancy District Board*

Dear Ms. Thacker:

This is in response to your formal complaint, which was received on August 7, 2003. You have alleged that the Lawrenceburg Conservancy District Board ("Board") violated the Indiana Open Door Law, ("ODL"), Indiana Code chapter 5-14-1.5. Specifically, you allege that Mr. Barrott Nanz, Mr. David Lorey, Mr. Larry Miller, and Mr. Bill Haag met without posting notice as required under the ODL. Mr. Nanz responded in writing to your complaint and copies of his response are enclosed for your reference. For the reasons stated below, it is my opinion that the subcommittee of the Board violated the ODL because it failed to post notice as required under the ODL.

#### BACKGROUND

According to your complaint, you attended a monthly meeting of the Board during which repeated references were made to business being discussed at a subcommittee meeting. During your opportunity to speak to the Board you asked about the subcommittee and were informed that the subcommittee met weekly, sometime more sometimes less, to discuss projects and gather information. Further, according to your complaint, you were told that the Mr. Nanz himself along with Board members Mr. Lorey, Mr. Miller, and Mr. Haag were in attendance at the July 17, 2003 subcommittee meeting.

In his response Mr. Nanz admitted that the subcommittee was appointed by him with approval of the Board and consisted of three of the seven Board members. The subcommittee, according to Mr. Nanz, was assigned the task of receiving information from consultants and others regarding projects ongoing within the District; however, the subcommittee was advised that no final decision could be reached by the subcommittee.

Mr. Nanz did admit that he attended some of the meetings, but advised that he is not a member of the committee, and that no final action was taken during those meetings. According to Mr. Nanz's response any final action necessary regarding the subcommittee's report is taken by the full Board. Mr. Nanz further advised that the subcommittee's recommendations regarding all matters are discussed at the full Board meeting and are taken into consideration before the full Board takes final action. Sinally, Mr. Nanz admitted that the meetings of the subcommittee are not advertised because they are not meetings of the Board.

## 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 provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1.

The Board is clearly a governing body subject to the requirements of the ODL. Ind. Code §5-14-1.5-2. Although you allege that four (4) of the seven (7) members of the Board were in attendance at a subcommittee meeting held on July 17<sup>th</sup> Mr. Nanz did not specifically address the meeting of July 17<sup>th</sup>. Rather Mr. Nanz asserted that the meetings of the subcommittee were "not and have never been designated as meetings of the Board at which action is going to be taken."

Mr. Nanz's response did raise the question as to whether the subcommittee of the Board is a governing body subject to the provisions of the ODL regardless of whether a majority of the Board was in attendance. A governing body is defined as "two (2) or more individuals who are . . . 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." Mr. Nanz in his response to this Office admitted that "[t]he subcommittee members were appointed by [him] as Chairman of the Board with the approval and consent at their initial appointment and subsequent thereto by all members of the Board" and that the subcommittee "was specifically tasked with the job of receiving information from consultants and others regarding projects ongoing within the District." Therefore, it is my opinion that the subcommittee is a governing body subject to the requirements of the ODL.

Since the committee is a governing body subject to the ODL it must post notice forty-eight (48) hours in advance of any meeting or executive session. Ind. Code § 5-14-1.5-5(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." Ind. Code § 5-14-1.5-2(a). "Official action" means to "receive information, deliberative, make recommendations, establish policy, make decisions, or take final action." Ind. Code § 5-14-1.5-2(d). "Public business" is defined as "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). Therefore, if a majority of the subcommittee is receiving information, deliberating,

making recommendations, establishing policy, making decisions, or taking final action regarding business delegated to it by the Board then it is conducting a meeting and must post notice. According to Mr. Nanz's response to your complaint it is clear that the subcommittee is charged with receiving information about business of the District, which would constitute a meeting as defined by the ODL. Therefore, the subcommittee should have posted notice of its meetings, which according to Mr. Nanz's response the subcommittee did not do. Mr. Nanz did not deny that a meeting of the subcommittee was held on July 17<sup>th</sup> therefore I will presume that a meeting of the subcommittee did occur on July 17<sup>th</sup>.

As an aside, when a majority of the Board will or may be in attendance at the subcommittee meetings it is my recommendation that the Board post notice advising the public that it may be in attendance, but that no action will be taken by the Board.

#### CONCLUSION

It is my opinion that the subcommittee of the Lawrenceburg Conservancy District Board violated the Indiana Open Door Law by failing to post notice of its meeting held on July 17, 2003.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor