

September 12, 2003

Ms. Melissa Widner  
Rensselaer Republican  
117 N. Van Rensselaer St.  
Rensselaer, IN 47978

Re: *03-FC-73*; Alleged Violation of the Indiana Open Door Law by the Tax Abatement Compliance Committee, City of Rensselaer

Dear Ms. Widner:

This is in response to your formal complaint, which was received on August 14, 2003. You have alleged that the Tax Abatement Compliance Committee of the City of Rensselaer ("Compliance Committee") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Compliance Committee violated the ODL by taking final action by telephone rather than at a telephone meeting. Mr. Ned Tonner, Attorney for the City of Rensselaer, provided a written response to your complaint. A copy of his response is enclosed for your reference.

#### BACKGROUND

According to your complaint, Jim Staton, President of the Compliance Committee, stated that he was contacted by the secretary of the Compliance Committee, Susan Smith, and asked to vote on a matter pending before the committee and scheduled for a public hearing. According to your complaint, Mr. Staton voted and was advised that a majority had already voted by phone to make a negative recommendation on the issue. You further stated that the on August 11, 2003 Mayor Arihood announced at a city council meeting that the Compliance Committee had voted via telephone not to make a recommendation to the City Council. Additionally, you provided copies of minutes from the March 16, 1998 City Council meeting which included a list of city appointments, specifically the Compliance Committee. You also included a copy of a document that appears to create the City of Rensselaer Redevelopment Commission.

In his response to this Office, Mr. Tonner stated that the Compliance Committee is a "committee formed by the Mayor of the City of Rensselaer." According to Mr. Tonner's response the committee was formed in February of 1998 through a committee which had been established by the Mayor as well, the Rensselaer Redevelopment Commission.

## 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 § 5-14-1.5-1. A meeting for the purposes of the ODL 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(c). The question here is whether the Compliance Committee is a governing body subject to the provisions of the ODL.

"Governing body" is defined in relevant part as:

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.

Ind. Code § 5-14-1.5-2(b)(3). Based on the information I have been provided it is impossible to determine whether the Compliance Committee is subject to the provisions of the ODL. According to the documents you have provided it appears that the Compliance Committee may be subject to the ODL. In the minutes of the March 16, 1998 City Council meeting there is reference to city appointments, which includes the Tax Abatement Compliance Committee although it does not specifically state that these appointments are City Council appointments. However, you did include a letter dated March 17, 1998 from the then Mayor Susan M. Smith which stated that notice was being given that Mr. Staton had been chosen to serve on the Compliance Committee. The letter further states that "[t]his decision was made during our Regular City Council Meeting of March 16, 1998." You additionally included a document that appears to create the City of Rensselaer Redevelopment Commission although it is unclear who created this document- the City Council or the Mayor's Office. Mr. Tonner in his response on behalf of the Mayor indicated that the Compliance Committee is a committee of the Mayor. He further advised that the Mayor in 1998 created the Compliance Committee through another committee created by the Mayor the Rensselaer Redevelopment Commission. Additionally, on August 14, 2003, in a telephone conversation I had with Mayor Arihood and Mr. Tonner, Mayor Arihood advised that the Compliance Committee was his committee and that he appointed the members of the committee. Therefore, it is unclear whether the Compliance Committee is subject to the ODL.

Obviously, if the Compliance Committee is a governing body then its meetings would be subject to the provisions of the ODL. Consequently, its “final action must be taken at a meeting open to the public” and not via telephone.

#### CONCLUSION

Based on the information I have been provided it is impossible to determine whether the Tax Abatement Compliance Committee is subject to the provisions of the Open Door Law. However, if the Compliance Committee is subject to the provisions of the ODL then it would be a violation of the ODL for the Compliance Committee to take final action outside of a public meeting.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

Cc: Mr. Ned Tonner, Attorney, City of Rensselaer