

February 4, 2004

Mr. Kent H. Hopper
5461 Steven Drive
Greenwood, Indiana 46142

*Re: Formal Complaint 04-FC-02: Alleged Violation of the Open Door Law
by the Johnson County Plan Commission*

Dear Mr. Hopper:

This is in response to your formal complaint alleging that the Johnson County Plan Commission (Plan Commission) violated the Indiana Open Door Law (Open Door Law) by taking final action on a matter without having included the item in any published agenda. The Plan Commission has submitted a response to your complaint, and that response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Plan Commission did not violate the Open Door Law.

BACKGROUND

On December 15, 2003, the Johnson County Plan Commission held a regular meeting of that body. It appears that the meeting was properly noticed, and there is no allegation or evidence to the contrary. The Plan Commission utilized an agenda. The agenda listed various items of business including "Continued Hearings," "New Hearings," and "Additional Business." No specific items were listed or otherwise scheduled under the category "Additional Business." During that meeting, the Plan Commission voted to rescind that body's prior authorization to pursue the prosecution of a local homeowner on an alleged ordinance violation regarding a drainage issue. The Plan Commission acknowledges that the vote occurred as set forth above, and that it occurred during the segment of the meeting where the Plan Commission was considering "Additional Business."

According to your complaint and supporting documentation, you were not present for the December 15, 2003, meeting, but learned about the vote taken at that time to rescind the prosecution on January 5, 2004, after contacting the Plan Commission regarding the status of the previously authorized prosecution. You filed your complaint alleging an Open Door Law violation on the following day. Specifically, you assert that the Plan Commission violated the Open Door Law by taking final action on this matter without having included the item in any published agenda.

In response to your complaint, the Plan Commission notes that the Open Door Law does not require that it publish or otherwise provide notice in an agenda of every item that will be considered at a meeting of that body. The Plan Commission asserts that it properly considered the item in the meeting segment for “Additional Business,” and notes that it similarly did not specifically list but considered and previously approved the prosecution of the homeowner in the same meeting segment in its prior meeting. Although not relevant to whether there was or was not an Open Door Law violation, the Plan Commission further shares that its decision to rescind the previously authorized prosecution was based on Plan Commission counsel’s legal opinion regarding the viability of that action if brought by the Plan Commission. The Plan Commission concludes that while it was required to provide notice of its regular meeting, it was not required to provide notice of every action that would be addressed at that meeting.

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, the Open Door Law requires that governing bodies provide public notice of the date, time and place of any meetings, and that such notice be given forth-eight (48) hours in advance of the meeting. IC 5-14-1.5-5(a). There is no requirement in the statute for the notice to include a notice of the items to be discussed at the meeting; date, time, and place are the only requirements in content. IC 5-14-1.5-5.¹ Moreover, there is no requirement that the notice be published in a media source or otherwise widely disseminated. IC 5-14-1.5-5. *See* Note 1. Rather, the governing body is required only to provide notice to the media outlets that request it (it is up to them to publish or not publish the information), and to “post” the notice at the principal office of the public agency or at the building where the meeting is to be held. IC 5-14-1.5-5(b).

The Open Door Law does not require a governing body to utilize an agenda. IC 5-14-1.5-4. However, where a governing body of a public agency does use an agenda, it is required to post a copy of the agenda at the entrance of the location of the meeting prior to the meeting. IC 5-14-1.5-4(a). Unlike with the notice provisions, there is no requirement that the governing body post the agenda within any specific time prior to the meeting. IC 5-14-1.5-4. Neither does the statute require that the posted agenda specify every item that will be considered at the meeting, or provide for any content requirements at all. IC 5-14-1.5-4.

Based on these clearly stated provisions from the statute, I cannot find that the Plan Commission’s failure to include the item regarding the prosecution of the homeowner in the agenda violates the Open Door Law. Indeed, it has been the consistent and long-standing position of this office that the statute does not require that an agenda list every item that is to be considered at a meeting, and that the governing body may add items to or otherwise change the agenda during the course of a meeting. The Plan Commission was not required by the Open Door Law to utilize an agenda in the first instance; thus their failure to include in an agenda all

¹ Title 36, governing zoning ordinances, and other provisions in the Indiana Code governing special matters, require notice of subject matter and content and also media publication with regard to certain public meetings. Those provisions are not alleged and do not appear to be applicable here.

detail of matters to be addressed at the meeting cannot be considered to be in violation of the statute. Moreover, the only requirement for the agenda, however brief or detailed it might be, was that it be posted outside the entrance of the meeting room prior to the meeting. However beneficial it might be for members of the public to have advance notice of the content of all matters that will be discussed at a meeting, neither the notice provisions nor the agenda provisions require that all items discussed and even voted upon at a meeting be first set forth in an agenda to be valid.

Because the statute does not require that an agenda include all items to be discussed for any of those items to be properly considered at a public meeting, I cannot find a violation of the Open Door Law.

CONCLUSION

For the reasons set forth above, I find that the Plan Commission did not violate the Open Door Law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Jeffrey C. Eggers