

November 18, 2004

Ms. Sheryl Hart
3499 East 716 North
Huntington, IN 46750-9364

Re: Formal Complaints 04-FC-193 and 04-FC-202; Alleged Violation of the Open Door Law by the Roanoke Town Council

Dear Ms. Hart:

This advisory opinion is in response to your formal complaints. In the first complaint, you allege that the Roanoke Town Council ("Town Council") violated the Open Door Law ("ODL") by failing to post notice of meetings of a committee of local citizens of which a member of the Town Council is a member. In the second complaint, you allege that a committee appointed by Ed Coy, the Town Council President, violated the Open Door Law by not posting notice of its meetings and allowing the public to attend. I forwarded a copy of your complaints to the Roanoke Town Council. Mr. Michael Hartburg, attorney, responded. I have enclosed a copy of his response for your reference. For the following reasons, I find that the Roanoke Town Council did not violate the Open Door Law with respect to membership of one of its members in a citizens group. I find that the Town Council violated the Open Door Law with respect to the committee appointed by the Council President.

BACKGROUND

04-FC-193; Committee Membership of Mr. Goetz

On August 17, 2004, the Town Council met in an open meeting and agreed by consensus that Mr. Jon Goetz, Councilman, should pursue the Town's concerns with the Indiana Department of Environmental Management ("IDEM") regarding contained animal feed operations (CAFO's) on behalf of the Town Council. You allege that after that meeting, Mr. Goetz wrote IDEM a letter calling for a three year moratorium on CAFO's. You allege that this either exceeded the authority given Mr. Goetz by the Town Council, or that because the Council had appeared to acquiesce in this action, such authority was obtained outside a formal meeting.

Also, you discovered that a group of people had formed a committee to stop the contained animal feed operations, and that Mr. Goetz is a member of that group. While the group refers to themselves as a group of citizens, you allege that they are conducting business on behalf of the Town. No notice of the group's meetings are posted.

You submitted an informal inquiry request regarding this issue to this office. You then filed a formal complaint, which was received by this office on October 19, 2004. Mr. Hartburg acknowledges that the Roanoke Town Council appointed Mr. Goetz to act on behalf of the Town Council to pursue informing IDEM of the Town's concerns about CAFO's, but states that it took no action to appoint any committee or any group of citizens to act on the Town Council's behalf.

All meetings of the majority of a governing body of a public agency must be open so that members of the public may observe and record them. Ind. Code §5-14-1.5-3. A governing body is defined, in pertinent part, as two (2) or more individuals who are: (3) 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. IC 5-14-1.5-2(b)(3). Although Mr. Goetz was appointed by the Town Council to act on its behalf regarding CAFO's, there is no evidence that the Town Council appointed the committee itself. Absent evidence that the citizen's group was appointed by the Town Council, or that after its formation the Town Council or its President ratified the committee and delegated to it the authority to take official action on Town business, it is my opinion that the citizen's group is not a governing body, and therefore, not subject to the Open Door Law.

To your allegations that Mr. Goetz's actions in pursuing a three year moratorium on the Town Council's behalf was beyond the scope of the authority given him, at least in a public meeting, I respond that I may not opine on matters outside of the Open Door Law, as I regard the first part of your allegation. On the other hand, any gathering of a majority of the Town Council to give more specific authority to Mr. Goetz would be a violation of the Open Door Law if not taken in a public meeting, but I do not regard your suspicions as constituting evidence that this occurred.

04-FC-202; Committee Appointed by President of Town Council

In your second complaint, you allege that a committee was "formed" to prioritize the Town's capital projects improvement plan. You state that this occurred at the meeting on September 21, 2004, and you supply a transcribed recording from that meeting. You also point to evidence that the committee met on September 27, 2004, so indicated from the transcript of the October 5 meeting. You state that the committee has never posted notice or allowed the public to attend its meetings.

In his response to your complaint, Mr. Hartburg states that the Council never intended to directly appoint a committee to consider projects and priorities for the Town. I also read nothing in his response that refutes that a committee was, in fact, appointed. He states that the Council took certain actions at its November 2 open meeting, which I take it were intended to "cure" any access problems with respect to the committee's activities taken outside of public scrutiny.

As cited above, a governing body means 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. IC 5-14-1.5-2(b)(3). Evidence from the transcript of the meeting, which was not controverted in the Town's response, shows Town Council Ed Coy, in response to Councilman Easterday's suggestion that a committee be formed to set priorities on Town projects, saying "Somebody have some objection to that? What I have in mind is you and Jim, Andy, Paul and perhaps John. Later in the exchange, President Coy states "just two council people...". Although not relevant to the analysis, the members of the committee were staff who were responsible for departments of Town government, except for two Council members.¹

The minutes of the meeting confirm that the committee was appointed directly by the presiding officer of the Council, with the consensus of the Town Council. The committee was assigned the task of prioritizing Town projects, which is the public business of the Town. Mr. Hartburg stated in his response that the committee's activities would have consisted mainly of gathering information on Town projects and purchases, prior to the Town Council deliberating on the priorities to be assigned those projects. "Receiving information" is taking official action. IC 5-14-1.5-2(d). The committee appointed at the September 21 meeting was a governing body, and a gathering of the majority of the committee to take official action on the Town's business was subject to the requirements of notice and opportunity for the public to observe and record the committee's meeting. The September 27 meeting of the committee and any other gathering of the majority of the committee were in violation of the Open Door Law.

Mr. Hartburg claims that at the November 2 meeting of the Town Council, Councilman Easterday disclosed to the public the substance of the meetings he had with the Town's department heads (committee members). Whether the disclosures made during the November 2 meeting complied with the Open Door Law is an evidentiary burden; whether that burden was met is a question that only a court may determine under the standards set out in *Azhar v. Town of Fishers*, 744 N.E.2d 947 (Ind.Ct.App. 2001) and *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (Ind.Ct.App. 1998).

¹ The Open Door Law's provision for a committee as a governing body is not limited by the representation on the committee of members of the appointing governing body. Hence, the fact that less than a majority of the Council were committee members does not mean that the committee is not a governing body. In fact, a committee consisting of no members of a governing body may be a governing body. This misconception is common.

CONCLUSION

For the foregoing reasons, I find that the Roanoke Town Council did not violate the Open Door Law with respect to membership of one of its members in a citizens group. I find that the Town Council violated the Open Door Law with respect to the committee appointed by the Council President.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Michael Hartburg