

August 26, 2005

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Re: Formal Complaint 05-FC-151; Alleged Violation of the Open Door Law by the French Lick Town Council.

Dear Sirs:

This is in response to your formal complaints alleging that the French Lick Town Council (“Council”) violated the Open Door Law (“ODL”) by meeting to discuss public business outside of a public meeting.

BACKGROUND

On July 27, 2005 you each filed nearly identical formal complaints against the Council, alleging violations of the ODL. Your complaints were consolidated under formal complaint # 05-FC-151.

Your complaints arise from the events of a Council meeting held on July 18, 2005. In that meeting the Council approved and signed two (2) contractual agreements without reading or discussing either during the meeting. You believe that the Council must have previously

discussed and agreed upon a course of action regarding these contracts prior to the July 18, 2005 meeting in order to approve the contracts with no discussion at the meeting. Although not required by this office, an audiotape of the July 18, 2005 Council meeting was submitted with the complaints. The tape was inaudible. While two of your complaints suggested that “the recording may require audio studio improvement work,” this Office does not have that capability. Therefore, the tape was not considered in the writing of this opinion. It would not have been necessary to consider the tape, at any rate, considering that the Council does not dispute the lack of lengthy discussion regarding the approval of the contracts in question.

Mr. David M. Umpleby, Attorney for the Town of French Lick, responded to your complaints on behalf of the Council by e-mail on August 10, 2005. A copy of that response is enclosed for your reference. Mr. Umpleby stated that the Council did not take action on, or make any decision regarding either document outside of an open meeting. He indicates that the Local Development Agreement (“LDA”) was negotiated in a properly held executive session of the French Lick – West Baden Springs Historic Hotel Preservation Commission. Representatives for the Town of French Lick (“Town”) and Mr. Umpleby were involved in those discussions. Mr. Umpleby indicates that two other public bodies had publicly approved the LDA prior to the July 18th meeting. He notes that the document was publicly available for at least one month prior to the meeting. He asserts that much public discussion regarding the LDA, including a formal presentation by Blue Sky Casino, LLC at a public meeting of the Indiana Gaming Commission, took place prior to the July 18th adoption of the LDA by the Council. Mr. Umpleby also states that the LDA had been a general topic of discussion at prior Council meetings during which the Council received reports from Town representatives and Mr. Umpleby himself. Finally, every member of each public body required to approve the LDA received a copy of the document for review well in advance of their scheduled meetings. Mr. Umpleby asserts that as the terms of the LDA were widely known prior to the meeting, there was no need to have detailed discussion of the document prior to voting on its approval.

Mr. Umpleby states that the same principles apply regarding the Midwest Engineers contract. He states that information regarding Midwest Engineers’ work had been discussed in several Council meetings over the last two years. When the contract was presented to the Council during the July 18th meeting, Mr. Umpleby summarized it and offered his opinion to the Council that the contract was acceptable. He also stated that, due to the fact that there would be no cost to the Town under the contract, there was little need for detailed discussion of the matter prior to approval.

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.” IC 5-14-1.5-1. Toward that end, except under very limited circumstances, all meetings of the governing body of a public agency must be open for the purpose of permitting members of the public to observe and record the meetings. IC 5-14-1.5-3(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.” 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 very broadly defined by our state legislature to include everything from merely “receiving information” and “deliberating” (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. IC 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes 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).

At issue here is whether a majority of the Council gathered, outside of a public meeting, for the purpose of taking official action on public business. Clearly, the Council is a governing body and any gathering of a majority of its members for the purpose of taking official action upon public business would constitute a meeting subject to the requirements of the Open Door Law. IC 5-14-1.5-2(a) and (b). Official action regarding the contracts in question could have included any of the following actions: receiving information; deliberation; making recommendations; establishing policy; making decisions or taking final action. The Council took final action, voting to approve the contracts, during the public meeting of July 18, 2005. The Council has denied that any non-public meeting regarding the contracts has occurred in violation of the Open Door Law.

It is your assertion that there was no discussion regarding the contracts in question prior to their approval at the July 18th Council meeting; therefore, you believe that the council must have met in violation of the Open Door Law. However, Mr. Umpleby has indicated that, in addition to the opportunity to perform independent review of the contracts, the Council had ample opportunity to individually receive information concerning these contracts through the media as well as during public meetings of both the Council and other public bodies. Mr. Umpleby stated that he and representatives of the Town have attended both public meetings and executive sessions of other public agencies and organizations. However, there has been no indication that a majority of the members of the governing body have met outside of a properly noticed public meeting to take action on public business. If two or more members of the Council met, outside of a public meeting, to take official action regarding the contracts then the Council would be in violation of the ODL. I cannot find upon the evidence before me that the Council held a meeting in violation of the ODL.

CONCLUSION

For the foregoing reasons, I do not find that the French Lick Town Council met in violation of the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: David M. Umpleby