

December 2, 2005

Harry D. Graves  
2204 Blue Cr. Road  
Brookville, IN 47012

*Re: Formal Complaint 05-FC-231; Alleged Violation of the Open Door Law by the West Harrison Town Council*

Dear Mr. Graves:

This is in response to your formal complaint alleging that the West Harrison Town Council (“Council”) violated the Open Door Law by not allowing members of the public to attend and record a meeting. I find that the Council held an illegal meeting in violation of the Open Door Law.

#### BACKGROUND

You claim in your formal complaint, filed on November 4, 2005, that you were denied admittance to a meeting of the West Harrison Town Council held on October 17, 2005 in Harrison, Ohio. Prior to the October 17 meeting, the Council had heard concerns at an October 11 meeting about the Sanitary Sewer Project to be placed alongside S. State Street in West Harrison. There is a right-of-way in dispute in connection with this project.

You allege that two members of the Council were gathered at offices in Harrison, Ohio for a “preconstruction meeting.” The Council had announced at the Council meeting on October 11 that they would attend a preconstruction meeting in Harrison, Ohio, to be held on October 17. You decided to attend, but although you were initially allowed admittance, when you began video recording the meeting, you were asked to stop recording, and eventually, to leave. You believe that this meeting should have been public, and that the Council gave permission for the Sanitary Sewer Project to take place outside a public meeting.

I sent a copy of your complaint to the Town of West Harrison. In response, I received a letter from Ms. Kimberly Schmaltz, an attorney representing the Council. There appears no

dispute that a majority of the Council were gathered in Harrison, Ohio. However, the Council disputes that the gathering constituted a meeting under the Open Door Law. The meeting was held by Arcadis, which is apparently a private firm in Hamilton, Ohio. Ms. Schmaltz stated: “While certain members of the West Harrison Town Council attended the meeting to gather information about potential impact of the construction plans in their jurisdiction, the preconstruction meeting concerns City of Harrison, Ohio business for which the Town Council for the Town of West Harrison, Indiana is not empowered or authorized to take official action.”

Ms. Schmaltz enclosed copies of the minutes of the meeting. Included was a fax cover sheet to “All Preconstruction Meeting Attendees.” The subject recited: “State Street/Campbell Road Preconstruction Meeting Minutes, Harrison, OH.” As you alleged, the minutes show that two members of the West Harrison Town Council, Jo Wesley and Danny Scott, were in attendance, as well as Gary Noel of the West Harrison Police. Also present was Jim Leslie of the City of Harrison. As the Council points out, under the heading “Agenda Topics” appears a notation that certain contract documents will be signed by the City of Harrison personnel. I have enclosed a copy of the Council’s submission for your reference.

#### ANALYSIS

In enacting the Open Door Law, the legislature established the policy 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. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. IC 5-14-1.5-3(a). A “meeting” is defined in the Open Door Law. “Meeting” means 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). “Official action” means to: 1) receive information; 2) deliberate; 3) make recommendations; 4) establish policy; 5) make decisions; or 6) take final action. IC 5-14-1.5-2(d). “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). The Council is a governing body. *See* IC 5-14-1.5-2(b).

For a three-member governing body, a gathering of two of the members for the purpose of taking official action on public business would constitute a meeting. If the Council gathered for a meeting, the meeting must have been open to the public and a notice posted. *See* IC 5-14-1.5-5(a).

The Council disputes that the gathering in Harrison, Ohio was a meeting. The Council mounts a two-part challenge to your contention that the Council met. While appearing to concede that a majority of the Council were present, the Council states that 1) the preconstruction meeting concerned the City of Harrison (Ohio) business for which the Council is not empowered or authorized to take official action, as evidenced by the fact that the City of Harrison is signing contract documents, not the Council, and 2) the meeting occurred in the State of Ohio, so Indiana Open Door Laws were not violated.

The contention of the Council that the preconstruction meeting concerned the Town of Harrison, Ohio, is not dispositive. The Council conceded in its complaint response that the Council attended the meeting “to gather information about potential impact of the construction plans in their jurisdiction.” “Receiving information” is official action. IC 5-14-1.5-2(d). The Council took official action when it received information about the potential impact of the construction plans in the Town of West Harrison, a function upon which the town is empowered to take official action. The argument that the primary reason for the meeting concerned Harrison, Ohio is not persuasive; the purpose for the Council’s participation in the meeting, which concerned potential impact to West Harrison, is the only relevant inquiry.

Also, I do not find it significant that the Council met in Ohio. The Open Door Law does not place geographic boundaries on its reach. So long as an Indiana governing body gathered to take official action upon public business, the requirements of the Indiana Open Door Law would apply, regardless whether the venue for the meeting is outside Indiana.

### CONCLUSION

The West Harrison Town Council violated the Open Door Law when two of its members met to take official action upon the public business of the Town of West Harrison.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Kimberly Schmaltz