

January 20, 2006

Kerry Rust
6620 S. State Road 39
North Judson, IN 46366

*Re: Formal Complaint 05-FC-263; Alleged Violation of the Open Door Law by the
North Judson Town Council*

Dear Mr. Rust:

This is in response to your formal complaint alleging that the North Judson Town Council ("Council") violated the Open Door Law. I find that the North Judson Town Council did not violate the Open Door Law.

BACKGROUND

You make two allegations of violations of the Open Door Law against the Council. First, you state that on two occasions, October 25, 2005, and November 21, 2005, two of the three members of the Council met outside of a public meeting. You state that on October 25, Bill Tolson and Guy Gardin met with a town employee at Mr. Gardin's residence. You claim that on November 21, 2005, Bill Tolson and Guy Gardin met at Mr. Gardin's residence before the regular Council meeting.

Your second allegation involves a statement at the November 21 public meeting. When a member of the public asked the Council why the police reserves had been disbanded, Council President Gardin stated that "there are legal issues surrounding the reserves being let go, but it will not be discussed tonight or at a public meeting." You supplied me with the memoranda of the November 21 meeting as documentation of this statement.

I sent a copy of your formal complaint to the Town of North Judson ("Town"). I received a responsive letter from Lee I. Lane, attorney for the Town. I have enclosed a copy for your reference. Mr. Lane stated that no violation of the Open Door Law occurred. On both occasions that you allege two members of the Council were meeting at Mr. Gardin's residence,

the two members of the Council were involved in a social visit. The two men are personal acquaintances as well as Council members. Mr. Lee stated that at no time during the gathering at Mr. Gardin's residence did the two discuss Town business. With respect to the comment regarding the reserves, Mr. Lee stated that there was discussion and a vote at the November 7 meeting to disband the police reserves. Prior to this meeting, the acting Town Marshall had spoken with each individual member of the Council. Further, Mr. Lee stated that it is not a violation of the Open Door Law to decline to provide a more detailed explanation of the decision to disband the police reserves.

ANALYSIS

The policy of the Open Door Law is that 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 for executive sessions, 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). "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). It does not include:

- (1) any social or chance gathering not intended to avoid this chapter;
- (2) any on-site inspection of any project or program;
- (3) traveling to and attending meetings of organizations devoted to the betterment of government; or
- (4) a caucus.

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). There are three members of the Council. Accordingly, a meeting of the majority could occur with only two members gathered. However, in order for the gathering to be a "meeting," the members must be gathered for the purpose of taking official action on public business. A social gathering not intended to avoid the Open Door Law is expressly excepted from the definition of a meeting. Hence, with respect to the gathering of Council members Tolson and Gardin at Mr. Gardin's residence, so long as the gathering was social in nature and the members did not take official action on the business of the Town, no meeting took place. No violation of the Open Door Law would have occurred in those circumstances.

Mr. Lee's explanation of the issue concerning discussion of the police reserves may not abate your concerns about why the Council reached its decision to disband the police reserves. The acting Town Marshal's discussion with each member of the Council individually did little to advance the public's interest in understanding how this decision was made. Nevertheless, I cannot find that the Council violated the letter of the Open Door Law. Because a meeting is a gathering of the majority of the Council, and no gathering of the majority occurred from the individual member's discussions with the acting Town Marshal, the Open Door Law was not violated.

Although you do not articulate your concerns about Council President Gardin's statement, you may have understood Council President Gardin to say that the legal issues regarding the reserves will not be discussed at a public meeting because they will be discussed *outside* of a public meeting. If the Council meant this, any ensuing discussion outside a public meeting or a proper executive session would violate the Open Door Law. On the other hand, the Council may have intended that it would not discuss the matter at all, since the decision of November 7 had been made. In any event, discussion of legal matters at a gathering of a majority of the Council, even with legal counsel, must occur in a public meeting. The only exception is for executive sessions set out in IC 5-14-1.5-6.1(b). For example, the Council could meet in executive session for strategy discussions with respect to initiation of litigation or litigation that is either pending or has been threatened specifically in writing. IC 5-14-1.5-6.1(b)(2)(B). This provision does not appear to apply, at least for the present.

CONCLUSION

For the foregoing reasons, I find that the North Judson Town Council has not violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lee I. Lane