

March 1, 2005

Ms. Gay A. Rife
126 S. Angle Street
Dunkirk, IN 47336-1107

*Re: Formal Complaint 05-FC-27; Alleged Violation of the Open Door Law by the
Yorktown-Mt. Pleasant Township Community Library Board*

Dear Ms. Rife:

This is in response to your formal complaint alleging that the Yorktown-Mt. Pleasant Township Community Library Board (“Board”) violated the Open Door Law by failing to post an agenda for an executive session. I find that the Board violated the Open Door Law, but for a different reason than the basis alleged in your complaint.

BACKGROUND

The Yorktown-Mt. Pleasant Township Community Library Board held an executive session on January 25, 2005. You enclosed a copy of the notice of the session. The notice is headed “Notice of an Executive Session” and contains the date, time, and place of the meeting. Nothing with respect to the purpose of the executive session is contained in this notice.

In your formal complaint to my office, filed on January 31, 2005, you allege that there was no agenda, and that you believe that is a violation of the Open Door Law. I sent your complaint to the Board. In response, Ms. Carol Ward, Board President, stated that the Board did meet in executive session on January 25, 2005. This meeting occurred following acceptance of the resignation of the library director, and the Board met “to discuss how we wanted to go about finding a new director and who on staff could fill in until we secured a new director.” She stated that no “action or votes” were taken on these issues. President Ward enclosed a copy of part of a reference manual for public library boards. The manual states that the law does not mandate that agendas be used, but states that if one is used, it must be posted on the door of the meeting room.

I have enclosed a copy of the Board’s response for your reference.

ANALYSIS

It is the intent of the Open Door Law 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. Hence, all meetings of a governing body of a public agency must be open at all times for the purpose of permitting members of the public to observe and record them, except as provided in section 6.1. IC 5-14-1.5-3(a). A meeting is defined as a gathering of a majority of a governing body for the purpose of taking official action on public business. IC 5-14-1.5-2(c). "Official action" means to: receive information; deliberate; make recommendations; establish policy; make decisions; or take final action. IC 5-14-1.5-2(d). A governing body utilizing an agenda shall post a copy of the agenda at the location of the meeting prior to the meeting. IC 5-14-1.5-4(a).

An executive session is a meeting from which the public is excluded. IC 5-14-1.5-2(f). Executive sessions may be held only for the instances contained in IC 5-14-1.5-6.1(b). Notice of an executive session must be posted at least 48 hours in advance of the executive session, excluding Saturdays, Sundays, and legal holidays. IC 5-14-1.5-5(a). The notice must contain the date, time and place of the meeting, and for executive sessions, must state the subject matter of the session by specific reference to the enumerated instance or instances for which executive sessions may be held under IC 5-14-1.5-6.1(b). IC 5-14-1.5-6.1(d).

The Board's notice does not meet the requirements of the Open Door Law, because it fails to state the subject matter of the executive session at all, much less by specific reference to the instance for which an executive session may be held. Also, from the response of Board President Ward, the Board could not have held an executive session to discuss its plans to recruit a new director and determine who could serve on an interim basis. This is not a purpose for which an executive session may be held, because it does not fit any of the instances cited in IC 5-14-1.5-6.1(b). These instances are narrowly construed, in accordance with the stated purpose of the Open Door Law. IC 5-14-1.5-1.

The fact that the Board did not take final action, defined at IC 5-14-1.5-2(g) as a vote on any motion, proposal, resolution, rule, regulation, ordinance or order, does not mean that it did not take official action. A discussion along the lines described is clearly official action on the Board's public business. Hence, the gathering for this purpose should have been open to the public.

With respect to the posting of an agenda, the Board would be required to post one only if it was utilizing an agenda for a meeting. The Open Door Law contains no requirement that a governing body utilize an agenda.

CONCLUSION

For the foregoing reasons, I find that the Yorktown-Mt. Pleasant Township Community Library Board violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Carol Ward