

April 18, 2005

Roger W. Neal
615 North Meridian Street
Lebanon, IN 46052

*Re: Formal Complaint 05-FC-53; Alleged Violation of the Open Door Law by the
Lebanon Common Council*

Dear Mr. Neal:

This is in response to your formal complaint alleging that the Lebanon Common Council (“Council”) violated the Open Door Law by holding a meeting for which notice was not provided. I find that the Lebanon Common Council violated the Open Door Law.

BACKGROUND

On February 28, 2005, at approximately 6:30 p.m., after unlocking a small conference room in the municipal building, you entered the room to find members of the Council and the Clerk Treasurer gathered. You believe that council meetings generally commence at 7:00 p.m. You were unable to locate any notice stating that the council would be meeting at any time prior to 7:00 p.m. You observed Councilman Robertson going over some papers located on an easel stand. After some of the people had left the room briefly upon your arrival, you observed them return to the room, shut the door, and then exit a few minutes later to attend the 7:00 p.m. meeting in the council chambers.

I sent a copy of your complaint to the Clerk Treasurer, Debra Ottinger. City Attorney Lawrence Giddings responded by letter. I have also spoken on several occasions with Ms. Ottinger. I have enclosed a copy of the Giddings letter for your reference. Mr. Giddings stated that the small conference room is not locked; it is open to the public, and it is customary for council members to congregate there in the minutes before the council meetings to review the agenda, and to review claims. All council members have been instructed not to conduct business, discuss strategy, or discuss policy during these meetings. Mr. Giddings admitted that on February 28, all council members were present in the small conference room. He also conceded that Councilman Robertson was responding to questions concerning the status of an

ongoing annexation program which has been openly discussed at other published council meetings. You were not asked to leave and were welcome to stay and observe.

In a message to me, Mr. Giddings explained that the council looks over vendor claims involving services and supplies for the city. He stated that the purpose of the council gathering to review the claims is to save time during the regular meeting. The council, having already reviewed the claims, would be able to move their approval and vote during the regular meeting.

In my conversations with Ms. Ottinger, she told me that there is a paper notice of regular meetings of the council and other city bodies. She supplied me with the notice that is sent to media; it contains the schedule for four city board meetings, including the council. This notice shows only the days on which the boards meet (the council meets on the 2nd and 4th Mondays), without any specific time. There is also a video monitor at the municipal building that displays announcements regarding city business, which includes some information about council meetings.

ANALYSIS

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. Ind. Code 5-14-1.5-3(a). 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). “Official action” means to receive information; deliberate; make recommendations; establish policy; make decisions; or 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).

Public notice of the date, time and place of any meeting shall be given at least forty-eight hours before the meeting, excluding Saturdays, Sundays and legal holidays. IC 5-14-1.5-5(a). Public notice shall be given by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. IC 5-14-1.5-5(b).

Although Mr. Giddings states that the council has been admonished to not discuss strategy or policy, there are many other forms of official action a governing body could take that require the governing body to post notice. In this case, the council was engaged in reviewing claims. This activity, at a minimum, involved the council receiving information on public business. There is no issue that a majority of the council was present in the small conference room to review claims in advance. In my opinion, this gathering of the majority of the council to review claims which the council would approve later in the evening constituted a meeting under the Open Door Law.

In addition, Mr. Giddings stated that Councilman Robertson responded to questions at the February 28 gathering regarding the ongoing annexation program. This appears to buttress your observation that Councilman Robertson was at the easel. The fact that the annexation program was the subject of other, open meetings of the council does not insulate this gathering from the

requirements of the Open Door Law. Any one of the two activities that occurred on February 28 triggered the notice and memoranda requirements of the Open Door Law.

According to Ms. Ottinger, the council does not post a paper notice that states the time the council meets at its regular semimonthly meeting. This omission is also a violation of the Open Door Law because the law requires that the notice contain the date, time, and place of the meeting. Notice of regular meetings need only be given once a year, except that an additional notice shall be given where the date, time, or place of a regular meeting is changed. IC 5-14-1.5-5(c). Hence, even if a notice did specify the start time of the meeting to be 7:00 as appears to be the custom, the 6:30 gathering would constitute a change of time from the regular 7:00 p.m. meeting that would require a separate notice to be posted 48 hours in advance.

CONCLUSION

For the foregoing reasons, I find that the Lebanon Common Council violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Lawrence Giddings
Debra Ottinger