

April 21, 2005

Leray R. Stokes
245 E. Willow
South Bend, IN 46637

*Re: Formal Complaint 05-FC-54; Alleged Violation of the Open Door Law by the
Roseland Town Council*

Dear Mr. Stokes:

This is in response to your formal complaint alleging that the Roseland Town Council ("Town Council") violated the Open Door Law by failing to post the agenda that it had utilized at the March 5, 2005 special meeting.

BACKGROUND

You have alleged that at a March 5, 2005 meeting of the Town Council, an agenda was posted at the meeting site that deviated from the agenda that the Town Council was actually using. You claim that although you were not present at the meeting, a person who was present noticed that the Town Council members had a different agenda than the one that was posted. The posted agenda had as the items for discussion, Code Enforcement and Citizen Recognition, the latter being the public comment portion of the hearing. A copy of the agenda that you allege was being used by the Town Council was also included in your complaint. It listed 8 different items, including Code Enforcement as number 6. You state that there were also items involving your property that were not mentioned in the posted agenda. You claim that you were deprived of the opportunity to be present at the meeting because of the change in agenda.

In response to your complaint, Mr. Glenn Duncan, attorney for the Town of Roseland sent a written response, which I enclose for your reference. Mr. Duncan was unsure of the precise nature of your complaint, but he believes you are arguing that the Town Council could not amend its agenda or cover an issue in a meeting unless it is included on the posted copy of the agenda. He states that there is no limitation on the governing body amending its agenda before or during the meeting. Mr. Duncan said nothing to refute your allegation that the agenda used by the Town Council was different from the posted agenda.

ANALYSIS

The General Assembly has declared 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. 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). Public notice of the date, time, and place of any meetings shall be given at least forty-eight (48) hours before the meeting, excluding Saturdays, Sundays, and legal holidays. IC 5-14-1.5-5(a).

A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. IC 5-14-1.5-4(a). The Open Door Law does not prohibit the governing body from changing or adding to its agenda during the meeting. Hence, this office has stated that a governing body may deviate from its agenda during a meeting. *See Opinion of the Public Access Counselor 04-FC-02.*

I take your allegations to differ from the situations presented in the office's previous guidance. You allege that the "posted" agenda, which I sent to the Town Council along with your complaint, was the agenda that was posted outside the meeting site. Under these facts, which the Town has not disputed, it seems apparent that there were two different agendas: one that was posted outside the meeting place, and the one that was actually being utilized by the Town Council (the "actual" agenda). Although I do not reproduce the "actual" agenda here, I note that it is completely different from the posted agenda. The only specific discussion item on the posted agenda is "Code Enforcement." The "actual" agenda lists eight items, only one of which was "code enforcement." Therefore, I infer that the eight items listed in the "actual agenda" are not merely more specific items subsumed under "Code Enforcement" in the "posted" agenda. To the extent that the actual agenda utilized by the Town Council was not the agenda that was posted outside the meeting place prior to the meeting, the Town Council did not meet the letter of the Open Door Law.

I conclude this by a plain, common sense reading of the statute, which states that "a governing body of a public agency utilizing an agenda shall post a copy of the agenda..." I read into this clause that the posted agenda should be the one that the governing body consults as it conducts the meeting. To be sure, the governing body may determine during the meeting that it must add to or delete items from its agenda, but I cannot endorse a view that our oft-repeated guidance stating that a body may deviate from its agenda during the meeting would permit a governing body to utilize an entirely different, printed agenda than the one it posts outside the meeting room just prior to the meeting.

I note that the Town Council is only required to post an agenda just prior to the meeting if it utilizes one. The Town Council is not required to include an agenda in its notice of the date, time and place of the meeting required under IC 5-14-1.5-5(a). Accordingly, if the "posted" agenda that you supplied to me was actually the Town Council's section 5(a) *notice*, it would not have been a violation for the Town Council to utilize the "actual" agenda, so long as the "actual agenda" was the agenda posted outside the meeting place before the meeting. The Town has not

argued this, but I wanted to be clear because individuals are often confused by the different requirements with respect to *notice* and *agenda*.

CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council, to the extent that it posted a different agenda from the printed agenda that it utilized during its March 5, 2005 meeting, violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Glenn Duncan