

September 20, 2006

Rosemary Penn
224 E. David Street
South Bend, IN 46637

*Re: Formal Complaint 06-FC-148; Alleged Violation of the Open Door Law by the
Roseland Town Council*

Dear Ms. Penn:

This is in response to your formal complaint alleging that Roseland Town Council (“Council”) violated the Open Door Law by making you leave two meetings.

BACKGROUND

You filed two complaints that I have consolidated for the purpose of issuing an advisory opinion. In your first complaint, filed on August 21, 2006, you allege that you were removed from the meeting of the Council of August 10. At the August 10 meeting, you sat in the front row and did not make a sound, you state, but were removed nevertheless.

Nine days later, you sent another complaint, this one alleging your removal by the Council from the August 24 meeting. You state that on August 24, you went to town hall for a meeting that had been posted for 1:00 p.m. for Chicago and 1:30 p.m. for Roseland, which is near South Bend. When you entered the meeting room, David Snyder, Council Vice President was in the room speaking with two people from the John David Mooney Company. After a few minutes, Dorothy Snyder, Council President entered the room and walked back out after observing you. After she returned to the room, she told you that you should leave because no meeting was taking place. After you left the meeting room, you observed that the notice now contained the word “cancelled” but did not bear any such message before you entered the meeting room. The third council member Charlie Shields was not present, and told you later that he had called the clerk to ask if the 1:00 meeting was still on. The clerk told him it had been cancelled.

Council President Dorothy Snyder wrote to address both complaints. With respect to the August 10 meeting, she acknowledged that you sat in the front row. After warning the public that Robert's Rules of Order would be observed and that disruption of council business would not be allowed, Ms. Snyder observed you speaking loudly enough that the sound disrupted the Council. The lady that you were speaking with acknowledged that you both were speaking, and was also excused from the meeting. Ms. Snyder believes that you and your husband intentionally incite others within a small group to disrupt the Council meetings.

With respect to the August 24 meeting 1:00 p.m. meeting, which was to have been in Chicago, the meeting had been cancelled although the notice remained on the door. That is why Ms. Snyder wrote "cancelled" on the notice. Ms. Snyder indicated in her letter and in a telephone conversation with me that only Mr. Snyder was involved in a meeting with the John David Mooney Foundation. Ms. Snyder told you that the meeting between Mr. Snyder and the Foundation was not a public meeting. Ms. Snyder did not participate in the meeting, having arrived at 1:10 p.m. to prepare for the 1:30 p.m. public meeting.

ANALYSIS

August 10, 2006 Meeting

The intent and purpose of the Open Door Law is 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. The provisions of the Open Door Law are to be "liberally construed with the view of carrying out its policy." IC 5-14-1.5-1. The Council is a governing body subject to the Open Door Law. IC 5-14-1.5-2(a)(2). Therefore, all meetings of the Council "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 (emphasis added). Although the Open Door Law provides the public with an opportunity to attend and record public meetings, it does not require the governing body to provide the public with an opportunity to address the governing body at public meetings.

The allegations of your first complaint are strikingly similar to those made in 06-FC-96, a complaint you made earlier this year against the Council. In the July 12, 2006 opinion, I stated:

"You have not complained that you had a right to address the Council at the June 8 meeting, and indeed, the Open Door Law guarantees no such right. Your complaints are directed to what you perceive to be an unreasonable use of the Council's discretion to conduct its meetings, particularly with respect to the behavior of those members of the public in attendance. In this respect, the information that I have before me is not crystal clear as to what transpired with any of you.

I have stated in the past that a governing body may regulate the conduct of individuals in attendance at a public meeting so that the governing can conduct the public business free of undue interference and interruption. Indeed, the right of the public to observe and record a meeting could be denied if a governing body failed to maintain decorum during the meeting. If a person attending a public meeting continues to disrupt the business of the governing body and

refuses to desist from that behavior after being requested to, it is not a violation of the Open Door Law to have that person removed, in my opinion.

However, it seems obvious that unbridled discretion of the governing body to remove persons from a public meeting could work to deprive that person of his or her right to attend a meeting under the Open Door Law. Hence, the governing body must exercise its discretion in a manner that is not arbitrary and capricious or unreasonable.”

I went on to state that: “...I find that the Roseland Town Council may deny a person the right to observe and record a meeting *only if the person’s removal is reasonable under the circumstances and is necessary to prevent disruption of the meeting.*” (emphasis supplied).

Although the Council states that by your manner of speaking you had disrupted the meeting, it is not clear whether the Council has set expectations for quiet in a public meeting at such a low bar as to prevent virtually anyone from engaging in any side conversations with others in the meeting. This measure would be far less than the standard stated in 06-FC-96.

However, my office is not constituted to make factual determinations based on disputed evidence. With receipt of this advisory opinion, you may pursue legal remedies: you may file a lawsuit in court to enjoin continuing or future violations of the Open Door Law. IC 5-14-1.5-7(a)(2). If you prevail, the court must award you reasonable attorney’s fees, court costs, and other expenses of litigation. IC 5-14-1.5-7(f).

August 24, 2006 Meeting

In this complaint, you claim that you were told that you could not attend a meeting, where the notice of the meeting did not indicate that it had been cancelled.

“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). Although notice is required to be posted, there is no requirement that a meeting be cancelled in any particular way. So long as a majority of the Council did not gather with the John David Mooney Foundation in the town hall prior to the 1:30 start of the August 24 public meeting, no violation of the Open Door Law occurred. According to Ms. Snyder, only Mr. Snyder met with the John David Mooney Foundation. If so, then only one member of the three-member Council attended, and one member does not constitute a majority. There is also no violation of the Open Door Law in the Council’s failure to mark its meeting notice “cancelled.”

Sincerely,

Karen Davis
Public Access Counselor

cc: Dorothy Snyder