

November 16, 2006

*Sent Via Facsimile*

Carole A. Snyder  
8212 N. Hall Road  
Monrovia, IN 46157

*Re: Formal Complaint 06-FC-181; Alleged Violation of the Open Door Law and the  
Access to Public Records Act by the Gregg Township (Morgan County) Board*

Dear Ms. Snyder:

This is in response to your formal complaint alleging that the Gregg Township Board (“Board”) violated the Open Door Law and the Access to Public Records Act.

#### BACKGROUND

You are the Trustee of Gregg Township. You allege that you have been denied a copy of a letter from the Board to the Department of Local Government Finance (“DLGF”). The letter was signed by Township Board members Lela Quillen and Joe Hayden. You contend that the letter is a record of the Board because it is referred to in a document titled “Findings of Fact and Final Determination” in Matter of Petition Objecting to Emergency Fire Loan, No. 06031-OBJ. In paragraph 21 of the Findings, the DLGF determined that on September 21, 2006 the DLGF received a letter signed by Gregg Township Board members Joe Hayden and Lela Quillen requesting that the emergency loan at issue be withdrawn. When you asked Ms. Quillen for the letter, she stated that she does not know what you are talking about.

In your Open Door Law complaint, you allege that Ms. Quillen and Mr. Hayden, a majority of the three member Board, met without knowledge of the Trustee or the third board member Mary Ann Banks and without public notice. From this meeting, the aforementioned letter was produced and sent to the DLGF. There are no minutes from this meeting.

I sent a copy of your complaint to Ms. Quillen, Board Secretary. I have enclosed a copy of the response for your reference. She attached copies of the September 19 meeting of the Board. During this public meeting, the majority of the Board voted to not pursue the petition for the emergency loan that was then-pending with the DLGF. Ms. Quillen learned that Ron Stinson from the DLGF would be the contact person to inform regarding the vote. Mr. Stinson advised that the Board put its withdrawal request in writing. Since Mary Ann Banks had voted no to withdrawing the emergency loan, Ms. Quillen did not think it necessary for Ms. Banks to sign a letter. Ms. Quillen contends that there was no meeting. She prepared a statement from Joe Hayden and herself, and Ms. Quillen went to his house and he signed the letter in accordance with his vote.

With respect to the letter, Ms. Quillen stated that she maintains no copy of it.

## ANALYSIS

### *Open Door Law*

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. Except as provided in section 6.1 of the Open Door Law, 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). “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). The question of whether the Board met sometime after the public meeting of September 19 is dependent on three factors. First, there must have been a gathering of a majority of the three-member board. Second, the Board must have taken official action. Third, the official action must have concerned the public business of the Board.

You contend that a majority of the Board must have met to sign the letter to the DLGF, but Ms. Quillen has denied that a meeting took place. By Ms. Quillen’s own account, the two members who had voted to withdraw the petition for emergency funding at the September 19 meeting met at Mr. Hayden’s home. It appears that a majority was gathered. Official action is defined very broadly, and withdrawal of the petition for emergency funding is a function upon which the Board is empowered or authorized to take official action. In previous opinions, this office has observed that it is not a violation of the ODL for a governing body to attend to some administrative tasks after the close of a public meeting, so long as the public is not excluded from observing the governing body during that time. *Opinion of the Public Access Counselor 03-FC-16*.

Accordingly, it is my opinion that a majority of the Board did meet at Mr. Hayden's home to take official action on public business, without notice to the public and not in a public forum. This meeting was in violation of the Open Door Law.

*Access to Public Records Act*

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a). Public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15. Public records not subject to Indiana Code 5-15 may be destroyed in the ordinary course of business. IC 5-14-3-4(e).

Ms. Quillen's response, "I have no copy of that" is somewhat ambiguous. First, it is not clear whether Ms. Quillen personally does not maintain it but the Board has it. In response to your October 9 e-mailed request for "all correspondence sent to the DLGF including any e-mails," Ms. Quillen states that she does not know what you are talking about, and suggested that you should ask the officials in local government (which I take to mean the Department of Local Government Finance).

Since it is clear that the letter was created, the Board's response should unambiguously state whether the Board had a copy but the copy was lost or destroyed, or whether no copy was made. From Ms. Quillen's e-mail response to your request and her response to your complaint, I cannot conclude definitively that the Board violated the APRA by virtue of its failure to produce the letter. However, the Board should be more forthcoming in explaining why it does not have a copy of a letter that was sent to the DLGF.

CONCLUSION

For the foregoing reasons, I find that the Gregg Township Board violated the Open Door Law when it met outside the public to sign a letter drafted by Ms. Quillen to the Department of Local Government Finance. I cannot conclude whether the Board violated the Access to Public Records Act, but the Board should be forthcoming in explaining whether the letter was lost, destroyed, or whether a copy was never made.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Lela Quillen