

June 12, 2006

Ms. Elizabeth A. Johnson
5110 S. Greensboro Pike
Knightstown, IN 46148

Re: Formal Complaint 06-FC-88; Alleged Violation of the Open Door Law by the Charles A. Beard Memorial School Corporation Board of Trustees

Dear Ms. Johnson:

This is in response to your formal complaint alleging that the Charles A. Beard Memorial School Corporation Board of Trustees ("CAB") violated the Open Door Law by meeting in executive session for a purpose that did not fit the purpose for which notice was given. I find that the CAB did not violate the Open Door Law with respect to the purpose for the meeting.

BACKGROUND

You contend in your formal complaint that the CAB held an executive session on April 13, 2006, that did not fit the purpose for which notice of the meeting was given, i.e., to train school board members with an outside consultant about the performance of the role of the members as public officials, under IC 5-14-1.5-6.1(b)(11). There is agreement that the subject of the CAB's meeting of April 13 was regarding the search for a superintendent to replace the departing Superintendent Hal Jester.

The basis for your contention that the CAB did not meet to be trained is that the presentation on April 13 appeared to be nothing more than a sales pitch for the services of the University Search Team, a group of consultants from Indiana's public universities that guide school boards through the process of selecting a superintendent. You also state that Dr. Lee Harman, the individual who met with the CAB, was acting from the standpoint of a consultant rather than that of a trainer. It is difficult to believe that any sort of training occurred, you claim. You also contend that one of the school board members attending the session, in response to your question of how community input would be sought, stated that he did not know; it would be up to the board to call people, leaving you with the impression that no instruction had occurred.

In response to your complaint, CAB attorney E. Edward Dunsmore wrote a letter, a copy of which is attached for your reference. Mr. Dunsmore stated that no vote was taken at the meeting, and that the meeting occurred as advertised; it was for the purpose of the members receiving training on how to search for and select a new superintendent. Mr. Dunsmore provided statements of Dr. Harman, Mr. Bundy, the school board member that you spoke with, and Dr. Hal Jester.

According to Dr. Harman, he did explain the services of the university search team, but primarily trained the CAB on the process of selecting a superintendent. He covered the issues of confidentiality, gaining community and staff involvement in the process, options for involving newly selected board members, and in addition, encouraged the members to give much thought to weighing the level of staff and community involvement with the board's duty to make the final decision. Dr. Jester explained that he arranged the training after CAB President Mr. Ron Westerfeld specifically asked for training on the selection process. Mr. Bundy stated that the Board had not conducted a search for a superintendent for 22 years, and none of the board members had expertise in that process. Mr. Bundy stated that he told you that the board had several options with respect to community involvement and that he personally would be talking to community members face to face for their input.

ANALYSIS

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. Ind. Code 5-14-1.5-3(a). Section 6.1 sets out twelve paragraphs containing the purposes for which an executive session may be held. One exception is "To train school board members with an outside consultant about the performance of the role of the members as public officials." IC 5-14-1.5-6.1(b)(11).

In construing any statute, Indiana courts will look to the plain, ordinary, and usual meaning of the language unless the statute itself clearly provides a contrary meaning. *Marion County Sheriff's Merit Bd. v. Peoples Broadcasting Corp.*, 547 N.E.2d 235, 237 (Ind. 1989). Non-technical, undefined words are to be defined by their ordinary and accepted dictionary meaning. *Bulkomatic Transport v. Department of Revenue*, 629 N.E.2d 955, 957 (Ind. Tax 1994), *citations omitted*. The dictionary defines "train" in relevant part "to make proficient by instruction and practice, as in some art, profession, or work." RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 1386 (2001).

Given the statements of the school board members and the consultant Dr. Harman, it is my opinion that the April 13 executive session was proper. According to the statements, the session covered basic principles of searching for and selecting a superintendent. Your allegations seem to be based on your belief that a sales pitch was the only purpose for the meeting, and that the member you spoke with did not impart much substantive knowledge in response to your questions. You also state that Dr. Harman was more consultant than trainer. The distinction between the terms is not apparent to me, but the exemption relied upon by the CAB allows an executive session for training by "an outside consultant." Nothing in your

complaint leads me to the conclusion that the April 13 executive session was not appropriate under IC 5-14-1.5-6.1(b)(11). I leave you to consider your options with respect to challenging the CAB in a lawsuit under IC 5-14-1.5-7 if you believe that the CAB did not meet for the purpose stated in its complaint response.

CONCLUSION

For the foregoing reasons, I find that on the record before me, the CAB's April 13 executive session to receive training by an outside consultant about the performance of the role of the members as public officials was proper.

Sincerely,

Karen Davis
Public Access Counselor

cc: E. Edward Dunsmore