

February 19, 2007

*Sent Via Facsimile*

Jason S. Smith  
*Kokomo Tribune*  
300 N. Union Street  
Kokomo, IN 46902

*Re: Formal Complaint 07-FC-11; Alleged Violation of the Open Door Law by the  
Tipton Hospital Board of Trustees*

Dear Mr. Smith:

This is in response to your formal complaint alleging that Tipton Hospital Board of Trustees ("Hospital" or "Board") violated the Open Door Law by posting annual notice of meetings without specifying the time of the public meetings, and by posting executive session notice that is not specific with respect to the purpose for the executive session. You also complain that the Hospital is meeting for purposes that are not contained in the Open Door Law. I find that the Hospital is required to post notice that includes the time of public meetings, and to specify the purpose of each executive session. However, the Hospital may hold an executive session for the additional purposes specified under Indiana Code 16-22-3-28.

#### BACKGROUND

You complained that the Hospital violated the Open Door Law when the Board posted an annual meeting notice for 2007 that showed twelve monthly meeting dates, specifying in the heading that an executive session would begin at 6:00 p.m. and a regular meeting would follow the executive session. You allege that the annual meeting notice was deficient because it did not state the time that the public meeting would be held. You also provided a copy of a specific executive session notice for the January 25, 2007 executive session. That notice lists 14 possible executive sessions without specifying which purpose or purposes the executive session of January 25 would be held. Finally, you also allege that the notice contains executive session instances at 10-14 which are not enumerated as permissible executive sessions in the Open Door Law.

I sent a copy of your complaint to the Hospital. I enclose the response of Hospital President and CEO Michael L. Harlowe. Mr. Harlowe indicated that after reviewing the Hospital's notice of executive session, the Hospital has revised it to comply with the Open Door Law. You were provided with the revised notice at least 48 hours prior to the first executive session of 2007, January 25. Accordingly, the executive session did not violate the Open Door Law. Mr. Harlowe also stated that items 10 through 14 are permissible executive sessions under the Indiana Hospital Law at Indiana Code 16-22-3-28.

## ANALYSIS

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).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Ind. Code 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency 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. In addition, the governing body shall deliver notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. IC 5-14-1.5-5(b).

Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. IC 5-14-1.5-5(c). The annual meeting notice provision does not apply to executive sessions. *Id.*

An executive session is a meeting from which the public is excluded. IC 5-14-1.5-2(f). Executive sessions may be held only for the purposes enumerated in Indiana Code 5-14-1.5-6.1(b). IC 5-14-1.5-6.1(b). An executive session may be held where authorized by federal or state statute. IC 5-14-1.5-6.1(b)(1). Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under [IC 5-14-1.5-6.1(b)]. IC 5-14.1.5-6.1(d).

In addition to the executive session instances at IC 5-14-1.5-6.1(b), a hospital organized or operated under Indiana Code 16-22 may hold executive sessions to do the following:

- (1) Discuss and prepare bids, proposals, or arrangements that will be competitively awarded among health care providers.
- (2) Discuss recruitment of health care providers.
- (3) Discuss and prepare competitive marketing strategies.

- (4) Engage in strategic planning.
- (5) Participate in a motivational retreat with staff or personnel, if the hospital does not conduct any official action (as defined in IC 5-14-1.5-2(d)).

IC 16-22-3-28(c).

In reviewing the executive session notice for January 25 that you enclosed with your complaint, it was apparent that it was deficient under the Open Door Law because it did not specify the particular instance or instances for the executive session, as required in Indiana Code 5-14-1.5-6.1(d). The Hospital reviewed its notice and has stated that it corrected the notice and posted the revised notice at least 48 hours in advance of the January meeting. The Hospital's posting a timely corrected executive session notice that contained a check mark indicating the specific purpose or purposes for the January 25 executive session would result in a finding of compliance by this office.

I note also that the annual meeting notice appears to provide for regular executive sessions in addition to public meetings. If no additional notice were posted for executive sessions at least 48 hours in advance, an executive session would be improper under IC 5-14-1.5-5(c), which prohibits annual meeting notices for executive sessions. However, the Hospital does provide 48 hours advance notice for each executive session.

The Hospital does not address your allegation that the annual meeting notice is deficient because it does not specify the time of the public meeting. The Open Door Law clearly states that notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meetings is required. The Hospital's annual meeting notice, which recites that the public meeting will follow the executive session, is not sufficient notice under the Open Door Law. This error is compounded by the fact that the annual notice refers to executive sessions, which cannot be the subject of an annual meeting notice. The Hospital should post a new annual meeting notice that sets out the specific time of the public meetings. I note also that it is not clear that the public meeting will be held in the same place as the executive session, although that seems implied. A revised annual notice should correct this problem as well.

The Hospital is correct that it may meet for five additional purposes as set forth in Indiana Code 16-22-3-28(c). These additional executive sessions are provided for in the Open Door Law pursuant to IC 5-14-1.5-6.1(b)(1), for purposes authorized by federal or state law.

## CONCLUSION

For the foregoing reasons, I find that Tipton Hospital should revise its annual meeting notice to specify the time and place of the public meetings. I recommend that the annual meeting notice omit any reference to executive sessions, since an executive session cannot be the subject of an annual meeting notice. The revised notice of executive session is sufficient so long as the executive session notice is clearly marked with the specific purpose or purposes.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Michael L. Harlowe