

June 18, 2007

William G. Zartman III
3309 Main Street
Macy, IN 46951

Re: Formal Complaint 07-FC-134; Alleged Violation of the Open Door Law by the Nyona South Mud Lakes Conservancy District

Dear Mr. Zartman:

This is in response to your formal complaint alleging that the Nyona South Mud Lakes Conservancy District (“District”) violated the Open Door Law.

BACKGROUND

You allege in your formal complaint that the District did not post notice of its April 17 meetings until the day of the meetings. That day, the District held an executive session and a public special meeting. You also allege that the District took final action at the executive session to contract with an independent contractor based on the information presented by the contract committee. You also allege that the District did not post notice of the April 18 public meeting to discuss easement issues. By the time you received published notice of the April 18 meeting in the newspaper, the meeting had already occurred.

I sent a copy of your complaint to the District. Mr. Ron Roe of the District wrote a response, which I enclose. He admits that with respect to the executive session held at 5:00 p.m. on April 17, a notice was published in the Rochester Sentinel but the notice was not posted until April 17 at 8:00 a.m. The District discussed previous interviews of applicants for the position of facility manager; no action was taken at this meeting. The special meeting held at 6:00 p.m. on April 17 was published in the Rochester Sentinel on April 12 and April 16. This meeting was also posted at approximately 8:00 a.m. on April 17, 2007. At this meeting, the District took action on the position of facility manager. Finally, the special meeting held on April 18 was requested for publication in the Rochester Sentinel for April 12, 2007.

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. IC 5-14-1.5-3(a). “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).

An executive session is a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. IC 5-14-1.5-2(f). A final action must be taken at a meeting open to the public. IC 5-14-1.5-6.1(c). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. IC 5-14-1.5-2(g). Section 6.1 of the Open Door Law provides the specific purposes for which an executive session may be held. IC 5-14-1.5-6.1(b).

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. IC 5-14-1.5-5(b). 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).

The District admits that with respect to the April 17 meeting and executive session, the notice was posted less than 48 hours in advance of the meeting. The District also stated that the notice for the April 18 meeting was published, but does not state that the notice was ever posted. It is not sufficient that the newspaper published notice of the meeting, in the absence of a specific statute that provides for publication notice. *See* IC 5-14-1.5-5(e).

Although your complaint is primarily concerned with the timing of public notice, I note that the purpose for the closed session, for the District board and its attorney to discuss previous interviews of applicants for the position of facility manager, may not fit the purpose for which an executive session may be held. The District has not stated the specific purpose for the executive session by reference to the enumerated instance for which an executive session may be held. This specificity for the notice is required by IC 5-14-1.5-6.1(d).

Based on the description of the discussion in the April 17 executive session supplied by the District, the District may have intended to meet to receive information about and interview prospective employees. IC 5-14-1.5-6.1(b)(5). This would have been a proper executive session if the facility manager was a prospective employee, not an independent contractor as you seem to allege. In addition, the purpose for this executive session would not have permitted the District to convene to discuss with the attorney the previous interviews for the facility manager position. This purpose does not fit the instance at IC 5-14-1.5-6.1(b)(5), given the narrow construction to

be accorded executive session instances. Narrow construction of exceptions to openness is required to fulfill the purposes of the Open Door Law. *See* IC 5-14-1.5-1.

Finally, the District denies taking a final action during the executive session of April 17, which I presume it meant by stating it took no action on the position of facility manager. A final action would be prohibited during an executive session.

CONCLUSION

For the foregoing reasons, I find that the Nyona South Mud Lakes Conservancy District violated the Open Door Law by failing to post notice of its April 17 meeting and executive session at least 48 hours in advance of the meeting. I also find that the purpose for the executive session may not have fit any executive session purpose. In addition, I find that notice for the April 18 meeting should have been posted at least 48 hours in advance of the meeting.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ron Roe