

June 20, 2007

Richard T. Kadlec
1521 S. Webster
Kokomo, IN 46902

Re: Formal Complaint 07-FC-138; Alleged Violation of the Open Door Law by the Kokomo Common Council

Dear Mr. Kadlec:

This is in response to your formal complaint alleging that the Kokomo Common Council (“Council”) violated the Open Door Law by meeting without notice to decide how the selection of members to an advisory board would be made.

BACKGROUND

You allege that on May 14, the Kokomo Common Council announced its appointment of three people to the newly created advisory board for the government access television station, known as KGOV. You allege there was no notice of the common council meeting that decided how the selection would be made. You enclosed a copy of the May 14 minutes, which show in relevant part a motion made by councilman Goodnight that the council appoint David Siefers, Roger Swartz, and Mike Ridenour to the KGOV board. The motion was seconded by Councilman Hayes. The president then asked for questions on the motion from the council members and from the public. No comments are recorded in the minutes, and the president called for a vote. The motion was carried by a vote of 8-0.

I sent a copy of your complaint to the Council. Mr. Corbin K. King, attorney for the Council, responded. A copy is attached. Mr. King enclosed the minutes for the March 26, April 9, April 23, and May 14 meetings in which the council discussed the KGOV ordinance establishing authority for a board, the board’s composition, and the need for appointments.

The Council argues that the Council has posted an annual notice as permitted under the Open Door Law. The Council uses an agenda which it posts at the entrance to the location of the

meeting prior to the meeting. All decisions were made in public, final action was taken at the May 14 open meeting, and you were in attendance at these meetings.

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). "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 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).

You complain that the Council announced its appointment of three people to the board of KGOV on May 14, and "there was no notice of the council meeting that decided how the selection would be made." The Council states that all decisions were made at the regularly scheduled council meetings and the Council took final action to approve appointments to the board on May 14, in public. It seems clear from the minutes that the Council did not merely announce its appointments to the board, but rather the Council member proposed a slate of appointees followed by a call for discussion, and ending with a public vote.

I take your complaint to be that, while the May 14 meeting and other meetings were posted, you believe that at some point prior to the May 14 meeting, the council must have met to discuss who the slate of appointees would be. Perhaps you are basing this on the lack of discussion from members of the council, and the unanimous support for those individuals who were nominated by one member.

The Council has not directly answered these allegations, but the Council may not have discerned from your complaint that you were alleging a secret meeting. In any event, it is axiomatic that if a majority of the Council met to take any official action on the slate of appointees to the KGOV board, the Council would have been required to post notice and invite the public. I cannot find that occurred based upon the information before me.

CONCLUSION

For the foregoing reasons, I find that if the Kokomo Common Council took official action on public business regarding the appointments to the KGOV board in a secret meeting, this would be a violation of the Open Door Law. I do not have information that would allow me to so conclude.

Sincerely,

Karen Davis
Public Access Counselor

cc: Corbin K. King