

June 25, 2007

Cheryl Gridley
137 E. Pendle
South Bend, IN 46637

Re: Formal Complaint 07-FC-140; Alleged Violation of the Access to Public Records Act by the Roseland Town Council

Dear Ms. Gridley:

This is in response to your formal complaint alleging that the Roseland Town Council (“Council”) violated the Open Door Law by holding a meeting without posting notice. I find that if the Council did not take official action on public business during the gathering, there was no meeting for which notice would have been required.

BACKGROUND

You are the clerk-treasurer for the Town of Roseland. You originally alleged in a formal complaint filed on May 24, 2007 that on that day, Charley Shields and Teddy Penn, two of three Council members, and Michael Lipsky, the town’s attorney, were seen at town hall going over financial documents. You alleged that this action was an illegal meeting, but you did not explain why the meeting would be illegal. After I contacted you about your complaint, you submitted a new complaint alleging that the May 24 gathering was an illegal meeting because no notice was posted.

I sent a copy of your complaint to the town council. Michael Lipsky submitted the enclosed response. In his response, Mr. Lipsky explained that he was at town hall to facilitate the process of uploading files into your computer. In addition, while at town hall, Mr. Lipsky asked police officer Larry Miller to obtain town records and other papers that had been stored in the town hall attic. The attic is located in the office shared by the Council president and vice-president.

While obtaining these records, Mr. Lipsky observed Vice-President Penn arrive at town hall. Mr. Penn reviewed paperwork at this desk. At various times Mr. Penn left his office and walked through town hall. Shortly thereafter, President Shields arrived at town hall. Mr. Shields also began going through paperwork on his desk. Mr. Shields and Mr. Penn looked through their

mail without comment to one another. At no time did Mr. Penn or Mr. Shields discuss town business. Therefore, although admittedly a quorum was present at town hall, the gathering was haphazard and did not result in official action.

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).

“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). Any social or chance gathering not intended to avoid the Open Door Law is not a meeting. IC 5-14-1.5-2(c)(1). “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 meeting is required to be given at least forty-eight (48) hours in advance of the meeting. IC 5-14-1.5-5(a).

You allege that a majority of the Council were gathered at 2:30 p.m. on May 24 and that no notice was posted. The Council concedes that they were gathered, but alleges that no official action took place, and that the two men did not exchange any discussion on town business. The members of the Council share an office due to the limited space in the town hall.

If the president and vice-president happened to be at town hall at the same time, and official action did not take place during this gathering, then no meeting occurred, and notice would not be required. I discourage members of a governing body from gathering in a shared office at the same time unless absolutely necessary, but the reality of limited office space sometimes makes such a gathering unavoidable. It is important that public officials earn the trust of their constituents that no official action is occurring. I also note that no notice is required for a town council to hold an administrative function meeting, as set forth at Indiana Code 5-14-1.5-5(f)(2). An administrative function meeting is required to be open to the public.

CONCLUSION

For the foregoing reasons, I find that if two of three members of the Roseland Town Council did not take official action on public business on May 24, then no notice was required because no meeting took place.

Sincerely,

Karen Davis
Public Access Counselor

cc: Michael Lipsky