

February 20, 2007

Kevin Russell
6123 Golden Eagle Drive
Zionsville, IN 46077

*Re: Formal Complaint 07-FC-15; Alleged Violation of the Open Door Law by the
Whitestown Town Council*

Dear Mr. Russell:

This is in response to your formal complaint alleging that the Whitestown Town Council (“Council”) violated the Open Door Law by holding a meeting in a location that is not accessible to persons with a disability. I find that the Town has not responded to your allegations, but may not hold its meetings in the Town Hall if the Town Hall does not meet the standards for accessibility contained in federal law.

BACKGROUND

You filed two complaints following meetings of the Council on December 28, 2006, and January 6, 2007. The Council met in the Whitestown Town Hall. You allege that the Town Hall has numerous deficiencies in the design of doorway widths, maneuvering clearances at the doors, doorway thresholds, door hardware, restroom facilities, and parking facilities. This list is not inclusive, you state.

Although I sent a copy of your complaint to the Town of Whitestown, I have not received a response.

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). A public agency may not hold a meeting at a location that is not accessible to an individual with a disability. IC 5-14-1.5-8(d). “Accessible” means:

“...the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

Indiana Code 5-14-1.5-8 mandates that public agency hearings must be held in facilities that permit barrier-free physical access to the physically handicapped. *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (Ind. Ct. App. 1998).

You have provided information about clearance widths and other specific criteria contained in the federal guidelines. Of course, I cannot determine whether the Town Hall meets these criteria. I offer only the opinion that if the Town Hall does not meet the applicable standards, the Council may not meet in the Town Hall. A meeting may not be held in a location that does not meet the standards for accessibility, even if no one from the public has requested an accommodation. *See Town of Merrillville v. Blanco*, 687 N.E.2d at 198.

You have asked that all items discussed or voted on at the meetings be voided until an accessible location is used for the meetings. A court may declare void any policy, decision, or final action taken at a meeting held in a location in violation of section 8 of the Open Door Law. IC 5-14-1.5-7(a)(3)(D). In any action filed under section 7 of the Open Door Law, a court shall award reasonable attorney’s fees, court costs, and other reasonable expenses of litigation to the prevailing plaintiff where the plaintiff first sought and received an advisory opinion from the public access counselor. IC 5-14-1.5-7(f).

CONCLUSION

For the foregoing reasons, I find that the Whitestown Town Council may not meet in a location that is not accessible to individuals with a disability.

Sincerely,

Karen Davis
Public Access Counselor

cc: Sam Sorter