

February 26, 2007

Sent Via Facsimile

Mr. James A. Halasz
202 East Washington
Lakeville, IN 46536

*Re: Formal Complaint 07-FC-21; Alleged Violation of the Open Door Law by the
Lakeville Town Council*

Dear Mr. Halasz:

This is in response to your formal complaint alleging that Lakeville Town Council (“Council”) violated the Open Door Law by meeting on two occasions without posting notice or meeting before the public.

BACKGROUND

You set forth two separate complaints that I consolidate under 07-FC-21 for purposes of this Advisory Opinion. You are a member of the three-member Council. First, you allege that on December 28, 2006, the Council had met in an open session that began at 8:15 a.m. and was adjourned by Council President Fred Holdeman at 8:35 a.m. After you and town clerk Cyndi McQueen left the meeting, two members of the Council remained in the meeting room and decided to fire town employee Dan Hall. This second meeting lasted 45 minutes, you estimate. You also allege that Council members Holdeman and Jim Clay met on January 4, 2007 at 601 North Michigan in Lakeville without public notice.

I sent a copy of your complaints to the Council. I enclose a copy of the response of Dr. Viola Woods, Council attorney. She enclosed the affidavits of Holdeman, Clay, and Town Superintendent of Utilities Marty Martin. The affiants stated that Mr. Hall had not been fired at all. Mr. Hall was a part-time employee, and his duties had been curtailed because the Town had hired a full-time employee for street maintenance duties that Mr. Hall had previously performed.

Further, the affiants stated that you and Cyndi McQueen left the meeting after the salary ordinance was revoked by the Council during the December 28 meeting. Dr. Woods stated that the meeting did not end at 8:35 a.m. as Ms. McQueen's notes may have shown, since she and you had left prior to the meeting's end. Accordingly, the Council denies that it held a meeting outside of the meeting that you attended on December 28, because the meeting was still in progress when you left. No violation of the Open Door Law occurred. In the alternative, the discussion that took place after your departure could be considered an administrative function meeting that needed no additional notice and could be attended by anyone who wished to. In fact, there was only one member of the public in attendance, Mr. Hall.

With respect to the meeting of January 4, Mr. Holdeman and Mr. Clay deny that the Council failed to provide notice. In fact, both you and Ms. McQueen appeared briefly for the meeting but did not stay long. Notice was posted by Mr. Holdeman and was also provided in the mailboxes of Ms. McQueen and all Council members, including your mailbox. This notice was provided prior to January 1. In addition, Dr. Woods stated that she also sent notice to the South Bend *Tribune*. Since you did appear briefly, it appeared that you had received the notice and knew about the meeting. The Council did not violate the Open Door Law on January 4.

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). Notice shall be given by the governing body of a public agency by posting a copy of the notice at the principal office or, if no such office exists, at the building where the meeting is to be held. Also, notice shall be delivered 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)(2).

There is a dispute regarding whether the January 28 meeting was or was not adjourned at 8:35 a.m. The Council alleges that the Town's Clerk Treasurer left abruptly before the meeting was adjourned; hence, the notes show adjournment at 8:35 although the meeting was not adjourned at that time. The Council cannot pinpoint when the meeting was adjourned, but the other members allege that the meeting was still occurring when the discussion regarding Mr. Hall's status as a part-time employee occurred. Ultimately, a court would make specific findings

of fact if you filed a lawsuit under IC 5-14-1.5-7. I find only that if the meeting was not adjourned before you absented yourself, then no violation of the Open Door Law occurred.

With respect to the January 4 meeting, you claim that no notice was provided at least 48 hours in advance of that meeting. While not describing where the notice was posted, the Council asserts it posted notice and sent notice to the media who had requested it. The notice provided in the mailboxes, while appropriate, does not satisfy the notice requirement of the Open Door Law. If the Council did fail to post notice at least 48 hours in advance of the January 4 meeting, the Council would have violated the Open Door Law. As previously stated, only a court could settle this factual dispute.

CONCLUSION

For the foregoing reasons, I find that you have not provided conclusive evidence that the Council did violate the Open Door Law on December 28 or January 4.

Sincerely,

Karen Davis
Public Access Counselor

cc: Dr. Viola Woods