

August 24, 2007

Jeff Pruitt
9311 Comfort Court
Fort Wayne, Indiana 46825

*Re: Formal Complaint 07-FC-220; Alleged Violation of the Open Door Law by the
Fort Wayne Common Council*

Dear Mr. Pruitt:

This is in response to your formal complaint alleging the Fort Wayne Common Council (“Council”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5) by holding a committee session meeting and regular session meeting in a room too small to accommodate all members of the public who attended. A copy of the Council’s response to your complaint is enclosed. I find that the Fort Wayne Common Council did not violate the Open Door Law.

BACKGROUND

In your complaint you allege that the Council held its weekly public meetings (a committee session followed by a bi-weekly regular session) on July 24, 2007 in a room different from the room where it usually holds its meetings. The new room, Room 200 of the City-County Building, did not accommodate all members of the public who appeared on July 24 to attend the meetings. You allege that once the room was filled to capacity, a police officer and sergeant at arms manned the door to allow new observers only as other observers left the meeting. You allege approximately eighty to one hundred people were locked out of the meeting. You filed your complaint on July 25.

In response to your complaint, City Attorney Timothy Manges sent a letter on behalf of Mrs. Sandy Kennedy, City Clerk, as well as the Fort Wayne Common Council. Mr. Manges provides further facts regarding the meeting in question. As Mr. Manges indicates, proper notice of the meeting is not in question. Further, Mr. Manges explains the normal meeting room for the Council is actually two adjoining rooms on the first floor of the City-County building. Council meetings have been conducted in those rooms since the early 1970s. Each room is equipped with audio-visual equipment which allows the meetings to be recorded and broadcast cable television.

The regular Council chambers are currently undergoing renovation. Because of that, Mrs. Kennedy and the Council have temporarily relocated the meetings to Room 200 of the City-County building, or the County Commissioners' Court Room. The room, which has a capacity of 58, has long served as the public meeting room for the Allen County Council, the Allen County Commissioners, and other governing bodies of public agencies. The room has also served as the meeting room for the Council since May 22, when the regular Council room has been under renovation. Generally, a nearby room, the Omni Room, has been used for overflow crowds twice during the eight weeks prior to July 24. On July 24, however, the room was occupied, and neither Mrs. Kennedy nor the Council knew it was to be occupied prior to the meeting.

Mr. Manges indicates the meeting room was not locked at any time during the July 24 meeting. He further indicates the Council always utilizes the services of a security guard to assist with room capacity requirements among other duties. Mr. Manges indicates he personally visited the area where the overflow crowd gathered and did not believe it to be eighty to one hundred as you indicate but between twenty and forty. Mr. Manges further indicates he is not aware of any protests related to the overflow into the hall. He indicates he observed frequent and fluid movement in and out of Room 200.

Mr. Manges asserts there were three public hearings on the agenda during the committee sessions. He indicates there were no assertions anyone was denied the opportunity to speak during those hearings. Mr. Manges further asserts that the overflow crowd was only present for the committee sessions and that the room was not filled to capacity for the regular meeting. At the end of the regular meeting, the Council allowed any member of the public to speak on any topic, as it regularly does. Mr. Manges also provides case law from states where courts have rejected a requirement that governing bodies hold meeting in locations sufficient to accommodate attendance by every member of the public.

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. I.C. §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. I.C. §5-14-1.5-3(a).

The Council is clearly a governing body of a public agency for the purposes of the Open Door Law. I.C. §5-14-1.5-2. As such, except where authorized by statute, the meetings of the Council must be conducted openly and with proper notice to the public. I.C. §5-14-1.5-3.

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. I.C. §5-14-1.5-5(a).

The question here is whether a meeting held in a room that did not accommodate all the members of the public who appeared to observe the meeting violated the Open Door Law. While the Open Door Law does provide that meetings of public agencies must be held in accessible facilities as described in I.C. §5-14-1.5-8, it does not provide specific requirements for capacity of meeting location. Furthermore, there is no provision of the ODL indicating it has been violated when a meeting location does not accommodate every member of the public who wishes to attend.

But the public agency must be mindful of the public policy of the ODL when considering meeting location: 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. I.C. §5-14-1.5-1. This office has previously addressed meeting location capacity in *Opinion of the Public Access Counselor 00-FC-13 and 13-FC-138*. In the former, the Counselor found the public agency violated the spirit of the ODL, though not the letter, when it refused to change meeting location upon request and upon receiving information its regular meeting room would not accommodate those who planned to attend. *Opinion of the Public Access Counselor 00-FC-13*. The latter opinion is more applicable here. There, the Counselor refused to find a violation of the letter or the spirit of the ODL when the public agency held its meeting in its regular meeting location and did not move the meeting when the room was filled to capacity. There the public agency provided a public address system so those in the overflow area could hear the meeting. *Opinion of the Public Access Counselor 03-FC-138*.

While no Indiana case law addresses the issue at hand, other jurisdictions have refused to require public agencies to hold meetings in locations sufficient for every member of the public to attend. In *Guierrez v. City of Albuquerque*, 631 P.2d 304 (N.M. 1981), the New Mexico Supreme Court held that as long as the public agency makes reasonable efforts and allows members of the public to attend meetings, the open door law is satisfied. In *Gerwin v. Livingston County Bd.*, 802 N.E.2d 410 (Ill. Ct. App. 2003), the Illinois Court of Appeals rejected the assertion that government actions would be invalidated if room capacity were exceeded and some members of the public denied access. The court said that if enough members of the public came to the meeting, “the business of government would come to a standstill for lack of venue.” *Id.* at 417.

Here the Council has held its meetings in Room 200 for eight weeks preceding your complaint. On two of those dates, the overflow crowd was accommodated in the Omni Room, where I understand they could hear and/or watch the proceedings in Room 200. On six of those occasions, the public in attendance did not exceed capacity. I have no evidence that prior to the July 24 meeting there were any complaints regarding the use of Room 200 for Council meetings while the regular meeting room is undergoing renovation. I further have no evidence the Council knew or should have known the meeting room would not have accommodated the crowd for the July 24 meeting. There is also no evidence the Council moved the meeting to Room 200 for the purpose of denying the public access to its meetings. To the contrary, the Council used a room commonly used by other public agencies for the meetings of its governing bodies. While the Council did employ the services of a security guard and sergeant at arms to monitor room capacity, it did not do so to block admittance but to be sure the Council was in compliance with applicable regulations.

There is no dispute the Council gave proper notice for its July 24 meeting. Further, the Council makes additional efforts to provide the public access to its meetings by recording the proceedings and having them broadcast on cable television. At the July 24 meeting, the Council provided time for public comments during the public hearing portion of the committee sessions. Further, under no obligation by the ODL, the Council regularly provides a time at the end of its meetings for public comment on any topic. For these reasons, I cannot find the Council violated the spirit or letter of the ODL by holding its July 24 meeting in Room 200.

CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Common Council did not violate the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Don Schmidt, Fort Wayne Common Council President
Sandra Kennedy, Fort Wayne City Clerk
Timothy Manges, Fort Wayne City Attorney