

August 27, 2007

Donna McCleery  
135 West McClung Road  
LaPorte, Indiana 46350

*Re: Formal Complaint 07-FC-221; Alleged Violation of the Open Door Law by the  
City of LaPorte Board of Public Works and Safety*

Dear Ms. McCleery:

This is in response to your formal complaint alleging the City of LaPorte Board of Public Works and Safety (“Board”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5) by not providing appropriate notice for an executive session and for excluding the Clerk-Treasurer from the executive session. A copy of the Board’s response to your complaint is enclosed. I find that the City of LaPorte Board of Public Works and Safety violated the Open Door Law.

#### BACKGROUND

In your complaint you allege that at the June 27, 2007 regular meeting of the Board, the Mayor announced an executive session would be held immediately following the meeting to “deal with a personnel issue.” You further allege the Clerk-Treasurer was not allowed to attend the executive session. You filed your complaint on July 27.

In response to your complaint, the Board responded by letter from Assistant City Attorney Donald Baugher. Mr. Baugher indicates the executive session in question did occur after the regular meeting on June 27. The executive session lasted fifteen minutes, and “no action was taken” at the meeting. Mr. Baugher explains the meeting was announced after the Mayor had received information that morning that an employee had been determined eligible for workmen’s compensation due to work related stress. The Mayor believed there was a need to determine whether the employee could return to work in the same position. Because the discussion would involve confidential medical information, the Board thought an executive session was appropriate. Mr. Baugher further contends that no members of the public in attendance at the regular meeting objected to the executive session when it was announced. The Board believed the matter should be addressed quickly rather than waiting 48 hours after notice to meet.

## 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 Board 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 Board must be conducted openly and with proper notice to the public. I.C. §5-14-1.5-3.

An executive session may be held only in an instance listed in I.C. §5-14-1.5-6.1. An executive session may be held to discuss records classified as confidential by state or federal statute. I.C. §5-14-1.5-6.1(b)(7). An executive session may be held to discuss a job performance evaluation of individual employees. I.C. §5-14-1.5-6.1(b)(9).

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). Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which the executive sessions may be held under subsection (b). I.C. §5-14-1.5-6.1(d).

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, the time requirements of notice under this section shall not apply, but

- (1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and
  - (2) the public must be notified by posting a copy of the notice according to this section.
- I.C. §5-14-1.5-5(d).

Here the Board announced during its regular meeting that it would hold an executive session immediately following the meeting to deal with a personnel issue. There was no written notice of the executive session. The Board indicated at the regular meeting the executive session would deal with a personnel issue but did not elaborate. During the regular meeting, the Board did not indicate the executive session was being held to discuss records confidential under statute.

While it may have been appropriate for the matter at hand to be discussed in an executive session, I do not have enough information to say definitively this was executive session subject matter. The ODL does allow an executive session to discuss job performance of an employee (see I.C. §5-14-1.5-6.1(b)(9)), but I do not understand this to be a job performance evaluation. The ODL also allows an executive session for discussion of records declared confidential by

statute. I.C. §5-14-1.5-6.1(b)(9). While the Board has indicated in its response to your complaint that it held an executive session because it would require a discussion of confidential information concerning the employee's physical and mental condition, the Board has not shown this would be a discussion of records declared confidential by state or federal statute.

Even if the Board can show an executive session was appropriate in this particular instance, the Board did not provide proper notice. Notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which the executive sessions may be held. I.C. §5-14-1.5-6.1(d). Here the Mayor announced during a regular meeting that an executive session would be held to deal with a personnel issue. This does not conform to the notice requirement in the ODL.

Further, the notice of the executive session was not provided to the public and media 48 hours in advance of the meeting. An emergency meeting may only be called to deal with an emergency involving actual or threatened injury to person or property or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency. I.C. §5-14-1.5-5(d). I do not believe the Board has demonstrated that to be the case here. Even if the emergency meeting provision were applicable, notice is still required. When an emergency meeting is held, the notice is not required to be posted 48 hours in advance of the meeting, but notice must still be made to the meeting as posted in accordance with the notice provisions of the ODL. I.C. §5-14-1.5-5(d).

Regarding the exclusion of the Clerk-Treasurer from the executive session, the Board may exclude anyone aside from its members from an executive session but may admit those necessary to carry out its purpose. I.C. §5-14-1.5-2(f). In the event the Clerk-Treasurer is excluded from the meeting, a member of the Board or other person present would be required to create the meeting memoranda or minutes which identify the subject matter considered by specific reference to the enumerated instance for which public notice was given. The memoranda and minutes must also contain a statement certifying no subject matter was discussed other than the subject matter specified in the public notice. I.C. §5-14-1.5-6.1(d).

### CONCLUSION

For the foregoing reasons, I find that the City of LaPorte Board of Public Works and Safety violated the Open Door Law when it held an executive session without proper notice to the public.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Mayor Leigh Morris  
Donald Baugher, LaPorte Assistant City Attorney