

September 27, 2007

Noelle Steele
Greenfield Daily Reporter
22 W. New Road
Greenfield, Indiana 46140

*Re: Formal Complaint 07-FC-258; Alleged Violation of the Open Door Law by the
Hancock County Sheriff's Department*

Dear Ms. Steele:

This is in response to your formal complaint alleging the Hancock County Sheriff's Department ("Sheriff") violated the Open Door Law ("ODL") (Ind. Code §5-14-1.5) by failing to provide notice for an executive session of the Sheriff's Merit Board. A copy of the Sheriff's response is enclosed for your reference. I find that the Sheriff violated Open Door Law by not providing proper notice of an executive session of a governing body.

BACKGROUND

In your complaint you allege the Sheriff's Merit Board met in executive session on August 21 for which no notice was provided. You allege a meeting was "announced 48 hours in advance," but no indication was given the meeting would be an executive session. You mailed your complaint on August 24, and I received it on August 28.

The Sheriff responded to your complaint by letter dated September 10. The Sheriff indicated that you knew about the executive session but did not mention you knew an executive session would be taking place when speaking with him about the meeting. The Sheriff indicated that during the meeting on August 21, there was a short executive session called by the Board's President. The Sheriff indicated he did not know he was to give you notice of the executive session 48 hours in advance.

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).

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 shall be given by posting a copy of the notice at the principal office of the public agency holding the meeting, and by delivering notice 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. I.C. §5-14-1.5-5(b).

Notice of an executive session must state, in addition to the date, time, and place of the meeting, the subject matter by specific reference to the enumerated instance(s) for which executive sessions may be held under subsection (b) of I.C. §5-14-1.5-6.1. I.C. §5-14-1.5-6.1(d). A final action must be taken at a meeting open to the public. I.C. §5-14-1.5-6.1(c). A final action means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. §5-14-1.5-2(g). A governing body may hold an executive session only for the purposes enumerated under section 6.1 of the ODL.

The governing body shall keep memoranda for all meetings and executive sessions. I.C. §5-14-1.5-4(b); I.C. §5-14-1.5-6.1(d). For executive sessions, the requirements in section 4 of the ODL for memoranda and any minutes being made available to the public is modified in that the memoranda and minutes must identify the subject matter considered by specific reference to he enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes that no subject matter was discussed other than the subject matter specified in the public notice. I.C. §5-14-1.5-6.1(d).

Here the Sheriff's Board violated the ODL by conducting an executive session without 48 hours notice of time, date, location, and the subject matter of the executive session (with specific reference to the enumerated instance for which it may be held). Further, the Sheriff indicated in his response he did not know he was required to notify *you* of the executive session. I would caution the Sheriff to review the statutes listed above requiring notice to be posted at the principal office of the agency to notify *the public* about the meeting as well as the media.

CONCLUSION

For the foregoing reasons, I find that the Sheriff violated Open Door Law by not providing proper notice of an executive session of a governing body.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: C.K. "Bud" Gray, Hancock County Sheriff