

October 15, 2007

Dorothy Snyder  
236 East Pendle Street  
Roseland, Indiana 46637

*Re: Formal Complaint 07-FC-279; Alleged Violation of the Open Door Law by the  
Town of Roseland*

Dear Ms. Snyder:

This is in response to your formal complaint alleging the Town of Roseland (“Town”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5) by failing to allow members of the public to speak at a public hearing regarding the Town budget. A copy of the Town’s response is enclosed for your reference. It is my opinion the Town had a statutory duty to allow taxpayers the opportunity to speak at the public hearing.

#### BACKGROUND

In your complaint you allege that at the September 12 meeting of the Roseland Town Council, which was convened to hold a public hearing regarding the Town budget, you were denied the opportunity to speak. You filed your complaint on September 14.

The Town responded to your complaint by letter dated September 27, contending that the ODL does not require a governing body to provide members of the public the opportunity to speak at public meetings. The Town referred to *Opinion of the Public Access Counselor 05-FC-24*. The Town further indicates that as the immediate former President of the Council, you are aware of this rule.

I did speak with the attorney for the Town prior to the filing of this formal complaint. At that time, I indicated to the attorney I did not know of any specific statutory authority requiring the Town to allow public testimony but that I did not have the resources in the office to research the issue further on a short timeframe.

## 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).

Although members of the public have the right to observe and record proceedings, the Open Door Law does not contain any requirement that members of the public be allowed to speak. *Opinion of the Public Access Counselor 05-FC-24*.

Regarding budgeting by political subdivisions, though, additional rules apply. The political subdivision shall formulate its estimated budget and its proposed tax rate and tax levy and then shall give notice by publication to taxpayers. In the notice, the political subdivision shall state the time and place at which a public hearing will be held on these items. I.C. §6-1.1-17-3. Taxpayers have a statutory right to speak at these public hearings. *Brademas v. South Bend Community School Corporation*, 783 N.E.2d 745 at 750 (Ind. Ct. App. 2003) *qtg. State Board of Tax Commissioners v. State ex. rel. City of Indianapolis*, 198 Ind. 343 at 353 (Indiana 1926). While I.C. §6-1.1-17-3 does not provide that taxpayers must be allowed to speak, the Indiana Supreme Court has held that taxpayers do have a right to speak at public hearings held to address the estimated budget of a political subdivision.

## CONCLUSION

For the foregoing reasons, it is my opinion the Town had a statutory duty to allow taxpayers the opportunity to speak at the public hearing.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Michael Lipsky, Attorney at Law  
Charlie V. Shields, Council President