

October 31, 2007

Rodrigo Panares
649 Conkey Street
Hammond, Indiana 46324

Re: Formal Complaint 07-FC-310; Alleged Violation of the Open Door Law by the Hammond Common Council

Dear Mr. Panares:

This is in response to your formal complaint alleging the Hammond Common Council (“Council”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by denying you access to a meeting held prior to the scheduled meeting of the Council on September 26. I have enclosed the Council’s response to your complaint for your reference. It is my opinion the Council did not violate the ODL.

BACKGROUND

In your complaint you allege the Council scheduled a meeting for 4:30pm on September 26, 2007. You allege that at 4:30pm for about 45 to 50 minutes, the Council held a meeting in the caucus room and denied you access to the meeting. You submitted your complaint to my office on October 4.

The Council responded to your complaint by undated letter from Council President Daniel Repay received by my office on October 22. Mr. Repay contends that the meeting, although scheduled for 4:30pm, did not begin until after 5:00pm for several reasons. First, not enough Council members were present to constitute a quorum to conduct the meeting. Second, the Council was awaiting copies of documents for the meeting from the Clerk’s office because the Council’s copy machines were inoperable. Finally, two council members were finishing their dinner before the start of the meeting. Mr. Repay contends that the Council Secretary did not allow anyone to enter the room where the two members of the Council were eating their dinner. Mr. Repay asserts the gathering was not a meeting.

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). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c).

A “governing body” means two or more individuals who are

(1) a public agency that

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

I.C. §5-14-1.5-2(b).

“Official action” means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy

(5) make decisions; or

(6) take final action.

I.C. §5-14-1.5-2(d).

“Public business” means any function upon which the public agency is empowered or authorized to take official action. I.C. §5-14-1.5-2(e).

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). Executive sessions may only be held for the instances listed in I.C. §5-14-1.5-6.1.

Here you allege the Council conducted a meeting and did not allow members of the public to attend. You allege that you were denied access to the room where the Council members gathered before the start of the meeting scheduled for 4:30pm. The Council contends a meeting did not take place. If the meeting constituted a gathering of a majority of the Council and the members present took official action on public business, it was a meeting. I.C. §5-14-1.5-2. Because the definition of official action is so broad, it was a meeting even if the majority of members of the governing body present did not intend to make decisions about public business but participated in a discussion of public business. I.C. §5-14-1.5-2. If the gathering

was attended by less than a majority of the members of the Council, it was not a meeting. I.C. §5-14-1.5-2. If the gathering was attended by a majority of the Council but they simply ate their dinners and did not discuss public business, it was not a meeting.

It is my understanding, based on Mr. Repay's assertion that a meeting could not be conducted because not enough members were present, that the gathering prior to the start of the meeting did not constitute a meeting because it was not attended by a majority of the members of the Council.

CONCLUSION

For the foregoing reasons, it is my opinion the Council did not violate the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Daniel Repay, President, Hammond Common Council