

November 26, 2007

R. Michael Johnson
38 North Washington Street
Bloomfield, Indiana 47424

*Re: Formal Complaint 07-FC-326; Alleged Violation of the Open Door Law by the
Greene County Historical Society*

Dear Mr. Johnson:

This is in response to your formal complaint alleging the Greene County Historical Society (“Society”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by moving the location of a meeting of the governing body without proper notice. I have enclosed the Society’s response to your complaint for your reference. It is my opinion the Society did not violate the ODL because the Society is not a public agency.

BACKGROUND

In your complaint you allege that a meeting of the Society was scheduled for October 21, 2007 at the Bloomfield-Eastern Green County Public Library in Bloomfield. About one hour prior to the start of the meeting, Linda Sharp, President of the Society, posted a notice on the door of the library indicating the meeting had been moved to the Historical Society. You further allege that minutes prior to the meeting Ms. Sharp saw several members of the Society at the library and did not notify them of the change in location. It was not until after the election of officers that those members who had arrived at the library for the meeting were told of the change in location. You filed your complaint on October 25.

The Society responded to your complaint by letter dated November 19 from Ms. Sharp. As I understand it, Ms. Sharp indicated the Society receives \$2500 from the Greene County Council, and the Society’s budget is \$11,790.15. The county contribution constitutes less than fifty percent of the Society’s operating budget. Ms. Sharp further indicates that she had filed for and received a protective order on October 19 against an individual who appeared at the library prior to the start of the meeting. Because of his appearance, the decision was made to move the meeting to the Society, which was specifically listed in the protective order as a place restricted from the individual. Ms. Sharp indicates that because the protective order was issued just two days prior to the meeting, there was not time to get the notice published in the local newspaper.

Ms. Sharp further indicates that approximately 25 members of the Society were in attendance at the 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).

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).

Here you allege the Society failed to post notice of the change in location for the October 21 meeting. The first issue to address is whether the Society is a public agency for the purposes of the Open Door Law. The definition of public agency for the purposes of the ODL can be found at I.C. §5-14-1.5-2(a). The provision at issue here is I.C. §5-14-1.5-2(a)(3), which says that any entity subject to audit by the Indiana State Board of Accounts (“SBOA”) is a public agency. The Greene County Historical Society is an Indiana not-for-profit corporation, as confirmed by the Indiana Secretary of State’s website (www.in.gov/sos). As such, the Society is only considered a public agency if it is subject to audit by the SBOA.

Pursuant to state statute, the SBOA is responsible for making an examination of “all accounts of all financial affairs of every public office and officer, state office, state institution, *and entity.*” I.C. §5-11-1-9(a) (emphasis added). Under this provision, an entity organized as a not-for-profit corporation that derives at least 50% and more than \$100,000 in public funds shall be subject to an audit. I.C. §5-11-1-9(b). The determination of whether an entity is subject to audit is made by the SBOA annually, following submission of an annual report called an E-1. My office has contacted the SBOA and learned the Society has not submitted an E-1. As such, the SBOA has not made a determination on the Society’s audit status.

Because the Society has not been determined to be subject to an audit by the SBOA, I cannot find that the Society is a public agency for the purposes of the ODL. As such, the issue whether the Society provided proper notice for the meeting is outside my purview.

CONCLUSION

For the foregoing reasons, it is my opinion the Society is not a public agency for purposes of the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Linda Sharp, President, Greene County Historical Society