

February 8, 2007

Dorothy Snyder  
236 E. Pendle Street  
South Bend, IN 46637

Cheryl L. Gridley  
Clerk Treasurer  
Town of Roseland  
137 E. Pendle Street  
South Bend, IN 46637

*Re: Consolidated Formal Complaints 07-FC-6; 07-FC-7; 07-FC-12; Alleged  
Violations of the Open Door Law by the Roseland Town Council*

Dear Ms. Snyder and Ms. Gridley:

This is in response to your formal complaints alleging that the Town of Roseland (“Town Council”) violated the Open Door Law. I am consolidating your complaints for purposes of issuing this advisory opinion.

#### BACKGROUND

Your complaints concern gatherings of two members of the Roseland Town Council, Charles Shields, the Town Council President, and Teddy Penn. The third member of the Roseland Town Council is David Snyder. Ms. Gridley alleges that the Town ended the snow plowing contract with Greenscapes without holding a public meeting. She learned this on January 29, although the January 31 meeting agenda contained the item “termination of Greenscapes contract.” Ms. Snyder filed a complaint with the Office of the Public Access Counselor on February 7, setting forth similar allegations that Shields and Penn admitted on tape that they had gathered to decide to cancel the current contract and hire Advance Property Maintenance outside a public meeting. I sent a copy of the February 7 complaint of Ms. Snyder to the Town.

In addition to the allegations concerning the snow plowing contract, Ms. Gridley also complained that on January 3 and January 4, Shields and Penn were in their joint office at the Town Hall, and the door was closed. Then, on January 7, Ms. Gridley observed Shields and Penn with Ross Catanzarite, Mrs. Penn, Michael Schalk and Shirley Schalk. The men gathered in the office and closed the door. These allegations were assigned complaint #07-FC-6.

In a complaint dated January 8, 2007, Ms. Snyder alleged that on January 7, she observed Mr. Penn drive past her home in the direction of Town Hall. Within minutes, she observed Mr. Shields driving past her home toward Town Hall. Later, she spoke with Ms. Gridley, who told her that Shields and Penn were seen at Town Hall and they had decided to post a meeting notice on January 10 and told Ms. Gridley to post the notice. In addition, Ms. Snyder alleges that outside of a public meeting or a legally noticed executive session, the decision was made to hire Aaron Catanzarite and to take applications for a deputy marshal. These decisions were made by Shields and Penn, and at no time has she or Mr. Snyder observed these decisions in any public meeting. I assigned to this complaint #07-FC-7.

Finally, on January 19, 2007, Ms. Snyder filed a complaint stating that Shields and Penn directed the clerk treasurer to post a notice of an administrative meeting for January 15, 2007 at 11:00 a.m. As it was represented to be an "Administrative meeting" Ms. Snyder did not take time off work to attend, believing that the meeting was conducted under IC 5-14-1.5-5(f). Later in the day, David Snyder reported that at the meeting, Penn moved to remove current members from the Redevelopment Commission. As this notice misled the public into believing that only administrative functions would occur, the public was deprived of the right to attend. Ms. Snyder included the notice and agenda, which showed "Administrative Meeting" as the heading. Below were listed "call to order, roll call, administrative matters, and claims review/approval." To this complaint I assigned number 07-FC-12.

I sent a copy of each complaint and the supporting documentation to the Town Council, via Town Attorney Jamie C. Woods. Mr. Woods responded in writing. The first response was a letter dated January 19, 2007 to respond to 07-FC-6 and -7. In this response, Mr. Woods explained that no official action was taken at a gathering of Shields and Penn, or Shields and Penn and the other individuals. There is limited space in the Roseland Town Hall. Prior to January 2007, the three council members occupied one room, which contained three desks. Now, this same room is occupied by only Shields and Penn along with the consultant for the Redevelopment Commission. This office is in close proximity to the Clerk and her staff. Because the Clerk and her staff often are using the telephone, the door to this office is often closed to avoid disruption to the town Clerk and staff when purely social gatherings are occurring. Neither of you alleged that any official action was taken, and the gatherings were merely social in nature, not for the purpose of taking official action.

In a February 2 supplemental response that included a response to #07-FC-12, Mr. Woods stated the following. At a January 18 meeting at which all three council members were present, there was a motion that was carried 2-1 to change the snow plow contract from Greenscapes. After advising the contractor that the Town intended to terminate the contract, there was a heavy snowfall. President Shields made arrangements on his own for a contractor to remove snow. This was discussed at the January 31 meeting and bids were taken at the meeting

and a decision was completed to hire a new contractor. In neither instance did two of the three council members gather to take official action with respect to snow removal.

With respect to the decision to hire Aaron Catanzarite as deputy marshal, President Shields had explained in a public meeting on January 31 that Mr. Catanzarite approached him several weeks ago and inquired if a deputy position was open. Wishing to create a position for Mr. Catanzarite in the Town, President Shields took his application and the full Council discussed the matter at its January 31 meeting. At no time did Shields and Penn gather to discuss or take any other official action on this matter.

Regarding #07-FC-12, the appointments to the Redevelopment Commission, which is a department or unit of the Town, were done only after notice, as Ms. Snyder acknowledges in her allegations. In addition, there was no contract or binding obligation entered into during this meeting. None of the above allegations constituted a violation of the Open Door Law.

## 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. Ind. Code 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. IC 5-14-1.5-3(a). "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. IC 5-14-1.5-2(c). A meeting does not include a social or chance gathering not intended to avoid the Open Door Law. IC 5-14-1.5-2(c)(1).

"Official action" means to 1) receive information; 2) deliberate; 3) make recommendations; 4) establish policy; 5) make decisions, or 6) take final action. IC 5-14-1.5-2(d). "Deliberate" means a discussion which may reasonably be expected to result in official action. IC 5-14-1.5-2(i). "Public business" means any function upon which the public agency is empowered or authorized to take official action. IC 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. Ind. Code 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. In addition, the governing body shall deliver 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. IC 5-14-1.5-5(b).

Notice may be dispensed with if an executive of a county or the legislative body of a town gathers solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on

matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. IC 5-14-1.5-5(f).

The allegations that two of the three Town Council members met behind closed doors in Town Hall, as witnessed by the Clerk Treasurer, and the allegations that certain decisions have been made without any evidence that those decisions were approved in a public meeting, are met with a denial by the Town Council. A meeting is a gathering of a majority to take official action on public business. Not all gatherings of two members of the three member council are meetings, if the gatherings were social gatherings not intended to avoid the Open Door Law. In addition, some actions may be carried out by a single member of the Council, the President, who is the town executive. *See* IC 36-5-2-2. Hence, actions taken may not be evidence that the Council held a meeting. I cannot resolve factual disputes. Accordingly, I write to state that the Town Council violated the Open Door Law if a majority of the Town Council met to take official action on public business without posting notice and without allowing the public to observe and record the meeting.

With respect to the administrative meeting held on Monday, January 15, 2007, Ms. Snyder does not dispute that the notice of the meeting was posted, and no issue is raised that it was posted less than 48 hours in advance of the meeting, not counting Saturday, Sunday, and January 15, a legal holiday in Indiana. *See* IC 1-1-9-1. The only allegation is that it was billed as an administrative meeting, misleading Ms. Snyder and the public into staying away because only administrative functions would occur.

As set forth above, an administrative function meeting is a public meeting for which no notice is required. The notice did not state that the meeting was held under IC 5-14-1.5-5(f) or was for administrative functions. In fact, an administrative function meeting would normally be held without any notice at all. Public agencies may use the word "administrative" to include actions like approving claims. In fact, approving claims was listed on the agenda. Approving claims could not occur in an administrative function meeting since that would create a binding obligation on the town, something that cannot occur in an administrative function meeting.

In addition, this office has stated on many occasions that a public agency may deviate from its agenda during a meeting, so long as the agenda that is being utilized is the one that is posted outside the meeting room before the meeting. I do not agree that the notice misled or was meant to mislead the public.

I also do not agree with the Town that the meeting could have occurred as an administrative function meeting. The Town did not hold an administrative function meeting. It posted notice of the date, time, and place of the meeting. It was not a violation of the Open Door Law to call a public meeting an administrative meeting in the notice.

If you believe that two of the three members of the Town Council met to take official action on public business, you may file an action to obtain a declaratory judgment, enjoin continuing, threatened, or future violations of the Open Door Law, or to declare void any policy, decision, or final action taken in violation of the Open Door Law, in accordance with IC 5-14-

1.5-7. In any action filed under section 7, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation if the plaintiff prevails and had sought and received an informal inquiry response or advisory opinion from the public access counselor prior to filing the lawsuit. IC 5-14-1.5-7(f).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jamie C. Woods