

April 5, 2007

Cheryl Gridley
Clerk Treasurer
Town of Roseland
137 Pendle
South Bend, IN 46637

*Re: Formal Complaint 07-FC-62; Alleged Violation of the Open Door Law by the
Roseland Town Council*

Dear Ms. Gridley:

This is in response to your formal complaint alleging that the Town of Roseland ("Town Council") violated the Open Door Law.

BACKGROUND

The meeting that is the subject of this complaint was allegedly held on February 26. The Town Council had posted notice of a meeting, but never convened the meeting. However, you observed two of the three council members, Charley Shields and Teddy Penn, go into a council office and hold an executive meeting. Within a short time they had another agenda posted for a March 1 meeting.

I have sent a copy of your complaint to the Town Council. The council attorney Jamie Woods responded, a copy of which is attached for your reference. He states that your complaint does not allege that the council made any decisions relative to any item on the agenda. The council's position is that two members did not meet to discuss or make any decisions or take any official action. Your allegations that the two council members met to decide upon a meeting date and an agenda does not on its face allege 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).

"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).

The Town Council argues that two of three members could meet to decide to hold a meeting in the future and to set the agenda, and that this is not official action on public business. Because official action is broad and includes making decisions or making recommendations, it is my opinion that the majority of the council was gathered to take official action on public business. Hence, it held a meeting on February 26.

This does not resolve the issue of whether by doing so the Town Council violated the Open Door Law. 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).

Although there was notice for a meeting originally posted, apparently that meeting was cancelled or never convened. For purposes of this opinion, I assume that there was no notice of the meeting involving Shields and Penn. However, the requirements for posting notice do not apply when the executive of a county or the legislative body of a town meets, if the meetings are held 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. IC 5-14-1.5-5(f)(2). The "administrative function" meeting, while notice is not required, must be held in the public.

The Town Council should have met so that the public could observe and record the meeting, but it was not necessary to post notice of the meeting because determining when to meet and setting the agenda, if no other discussion occurred, was an administrative function

meeting. If the two council members met behind closed doors, and it appears they did since the clerk treasurer herself could not observe the meeting, the Town Council violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jamie C. Woods
Charley Shields