

April 9, 2007

Sent Via Facsimile

Lori L. Caldwell
1065 Broadway
Gary, IN 46402

*Re: Formal Complaint 07-FC-64; Alleged Violation of the Open Door Law by the
Gary Police Civil Service Commission*

Dear Ms. Caldwell:

This is in response to your formal complaint alleging that the Gary Police Civil Service Commission (“Commission”) violated the Open Door Law by closing a committee meeting to the public without providing adequate notice. I find that the Commission’s personnel committee did not post proper notice, in violation of the Open Door Law.

BACKGROUND

You filed a formal complaint challenging the personnel committee of the Commission to show that the committee could hold certain discussions in an executive session. The session, on February 19, 2007, was the subject of a notice that gave the date, time, and place of the closed session, reciting as the topic “Discuss personnel matters.”

I sent a copy of your complaint to the Commission. I enclose a copy of the complaint response, sent on the Commissioner’s behalf by Mr. Charles D. Brooks, Jr., attorney for the Commission. He conceded that the notice did not specifically reference the specific Indiana Code under which the meeting was to be held, but the notice did provide that personnel matters were to be discussed. He advances the argument that this notice met the substantial compliance standard of the Open Door Law. The committee met under Indiana Code 5-14-1.5-6.1(b)(6), according to the minutes of the executive session which were accepted at the March 1 meeting of the Commission.

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).

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 of an executive session must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). IC 5-14-1.5-6.1(d). There are 13 enumerated instances for which an executive session may be held. *See* IC 5-14-1.5-6.1(b). There is no executive session for “personnel matters.” An executive session may be held for discussions concerning an employee’s job performance [IC 5-14-1.5-6.1(b)(9)], to receive information concerning an individual’s alleged misconduct [IC 5-14-1.5-6.1(b)(6)], or to receive information about and interview prospective employees [IC 5-14-1.5-6.1(b)(5)]. In addition, certain things may be done in executive session when considering the appointment of a public official. IC 5-14-1.5-6.1(b)(10).

In determining whether to declare any policy, decision, or final action void, a court shall consider certain factors, among other relevant factors:

- The extent to which the violation:
- (A) affected the substance of the policy, decision, or final action;
 - (B) denied or impaired access to any meetings that the public had a right to observe and record; and
 - (C) prevented or impaired public knowledge or understanding of the public's business.

IC 5-14-1.5-7(d). This standard is often referred to as a “substantial compliance” standard. In other words, not all violations of the Open Door Law would result in a court finding that the action should be voided.

The Commission argues that it met the substantial compliance standard because the public was not denied or impaired access to a meeting that the public had a right to observe, since the executive session was held for a proper purpose and therefore could not impair the

public's right to attend the meeting. In addition, the minutes of the March 1 meeting showed for what purpose the committee met the previous week.

However, it is my opinion that the notice wholly failed to inform the public of the purpose for the executive session. The notice did not cite the specific exemption or include the text of the exemption. The public had no information that would lead it to conclude that the committee had closed the meeting for a proper purpose at all. There may be personnel-related discussions that would have to take place in a public meeting, since not all personnel-related discussions involve the type of privacy considerations that led the General Assembly to craft the narrow instances for which a public body could meet in executive session.

I find that the Commission's personnel committee met in executive session without posting proper notice of the executive session, and this violation was not in substantial compliance with the Open Door Law. I strongly urge the Commission to cite the specific purpose for which an executive session may be held in all future executive sessions.

CONCLUSION

For the foregoing reasons, the Gary Police Civil Service Commission violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Charles D. Brooks, Jr.