

April 9, 2007

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

*Re: Formal Complaint 07-FC-65; Alleged Violation of the Open Door Law by the
Roseland Town Council*

Dear Mr. Snyder:

This is in response to your formal complaint alleging that the Roseland Town Council (“Town Council”) violated the Open Door Law by taking official action on public business of the town without posting notice and permitting the public to observe and record the meetings. I find that the Town Council violated the Open Door Law only if two of its three members met to take official action on public business, but the allegation that a gathering occurred are denied by the Town Council.

BACKGROUND

You allege that in five different situations, two members of the three-member Town Council must have met to take official action on public business. You are concerned that as a member of the Town Council, the Town Council is meeting behind closed doors without your knowledge.

Specifically you cite several actions taken that show that the two other members are meeting behind closed doors. The following actions have occurred without your knowledge:

1. The Town hired another police officer and committed town funds to advertise for applications;
2. The Town Council cancelled a regular meeting for the second Thursday of the month; you were not informed of any meeting where the Town Council decide to cancel a meeting nor was a notice posted to discuss whether to cancel the regular meeting;

3. Sometime before March 6, Council members Shields and Penn authorized the town attorney to issue to the clerk a letter demanding that she do certain things or the town would sue her. As further evidence of this, the town attorney copied only Shields and Penn on the letter to the clerk;
4. Councilman Penn mailed letters of fine rescission; no council action was taken to rescind the fines;
5. Councilmen Shields and Penn with attorney Jamie Woods dismissed at least 30 lawsuits with fines totaling \$45,000, in contravention of town code.

I sent a copy of your formal complaints to the town's attorney Mr. Woods. He provided a written response, a copy of which is attached for your reference. He explains that with respect to the corresponding numbered action above:

1. The Town Council did not meet to discuss the police officer's hiring; rather, at the town's organizational meeting in January, the council authorized President Shields to serve as liaison to the town police department. Mr. Shields and the town marshal decided it was necessary to fill the position within the police department. There was never a meeting with another council member.
2. As town executive, Mr. Shields has authority to set and schedule town meetings. Mr. Shields alone decided to cancel the March 8 meeting.
3. With respect to the letter sent to the clerk, the town's attorney Mr. Woods was instructed by Mr. Shields to send a letter to the clerk. No conversations were had with anyone other than the town attorney and President Shields.
4. Numbers four and five relate to the same issue; at the town's first organizational meeting in January, the town council appointed council members to serve in certain positions. Vice President Penn was appointed to head the Code Enforcement Department. Mr. Penn alone instructed the town attorney to take the actions to dismiss the lawsuits and rescind fines.

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).

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).

If the averments of the town council are taken as true, no violation of the Open Door Law occurred in the absence of a gathering of two of the three-member town council. The Open Door Law concerns notice and opportunity for the public to observe and record a gathering of a majority of a governing body. If no gathering occurs, then no meeting occurs for which notice and public observation are required.

The president of the town council is the executive of the town. *See* IC 36-5-2-2. It is clear that certain actions such as adopting ordinances or resolutions must be accomplished by the legislative body. IC 36-5-2. It is also apparent that a town council may take certain actions only at a meeting of the town council. *See e.g.*, IC 36-5-4-4(“Except as provided in section 12 of this chapter, the town legislative body or a board of the town may allow a claim: (1) only at a meeting of the legislative body or board; and (2) only if the claim was filed in the manner prescribed by IC 5-11-10-2 at least five (5) days before the meeting.”)

The Open Door Law does not generally prescribe the powers and duties of a governing body; it provides that notice be posted for meetings and memoranda be maintained. To the extent that your complaint is that the Town Council met without notice, that allegation has been countered by the Town Council, which denies any gathering. To the extent that you allege that certain members of the Town Council performed acts that were outside the scope of their authority, this issue would not be properly addressed to this office. *See* IC 5-14-4-10(6).

CONCLUSION

For the foregoing reasons, I find that the Town of Roseland, having denied that two of its three members gathered for the purposes you allege, did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jamie Woods
Peter Agostino