

April 25, 2007

David Snyder
236 E. Pendle
South Bend, IN 46637

Cheryl Gridley
137 E. Pendle
South Bend, IN 46637

*Re: Consolidated Formal Complaints 07-FC-79; 07-FC-87 Alleged Violation of the
Open Door Law by the Roseland Town Council*

Dear Mr. Snyder and Ms. Gridley:

This is in response to your formal complaints alleging that the Roseland Town Council (“Council”) violated the Open Door Law by holding a public hearing without posting notice at the town hall. I find that the Council did not violate the Open Door Law, and that the Council otherwise did not hold a meeting.

BACKGROUND

Your allegations are about the same meeting. Mr. Snyder is a member of the three-member Council, and Ms. Gridley is the town clerk treasurer. You each allege that on March 26, 2007, two members of the Council met but did not post notice at the town hall. Mr. Snyder discovered on March 28 that a hearing had been held on March 26 although Mr. Snyder had been apprised that the Council had cancelled a meeting set for that day. Mr. Snyder alleges that without full Council action, the attorney had placed two newspaper notices for the March 26 hearing, but no notice was posted at the town hall.

I sent a copy of your complaints to the Council president, Mr. Charley Shields. He informed this office that the then-town attorney, Peter Agostino, would respond to the allegations. Mr. Agostino did so by letter dated April 13, 2007. In his response, Mr. Agostino stated that as Council president, Mr. Shields could call for a public hearing for the purpose of approving the expansion of the Clay Fire Territory to include German Township. The two notices published in the *South Bend Tribune* advertised the hearing for March 26, 2007 at 6:30 p.m. in the Roseland Town Hall. These notices were in accordance with Indiana Code 36-8-19 and IC 5-3-1.

The notice for the March 26 meeting was not posted at the town hall 48 hours in advance. On March 26, Mr. Shields did allow members of the public to provide comments, but no other action was taken by the Council. A meeting for purposes of voting on the proposed fire territory

was posted more than 48 hours in advance of the March 30 meeting. Any defect in the prior notice was cured by the later meeting notice for the March 30 meeting. A vote did occur at the March 30 meeting after proper notice was posted. Mr. Agostino stated there was no violation of the Open Door Law.

Since the filing of the Council's response to your complaints, Mr. Michael Lipsky has been hired as the town attorney. He filed a supplemental response stating that he has reviewed the responses of Mr. Agostino and Mr. Jamie Woods (who stated that Mr. Agostino would respond for the Council in the wake of Mr. Woods' resignation as town attorney). He confirmed that Mr. Agostino's response was the response of the Council. I have enclosed the letters of Mr. Woods, Mr. Agostino, and Mr. Lipsky.

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). Section 5 does not apply where notice by publication is required by statute, ordinance, rule, or regulation. IC 5-14-1.5-5(e).

As stated in *Opinion of the Public Access Counselor 02-FC-39*, under the Open Door Law, a public agency is generally required to post notice of the date, time and place of its meeting at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. IC 5-14-1.5-5(a). This notice must be posted outside the principal office or meeting location and provided to any news media that has, by January 1 of any calendar year, provided a written request to receive such notices. IC 5-14-1.5-5(b). The Open Door Law recognizes that the General Assembly has required public agencies to publish notice of meetings or public hearings in certain instances. Under Indiana Code section 5-14-1.5-5(e), the notice requirements for a public meeting under the Open Door Law do not apply to any meetings for which notice by publication is required by statute, ordinance, rule or regulation. IC 5-14-1.5-5(e). According to Mr. Agostino, the March 26 meeting was a public hearing for which publication notice is required by statute. Indiana Code 36-8-19-6 requires publication notice for purposes of taking public comments on an ordinance establishing a fire protection territory.

Although Mr. Agostino did not argue the point, the Open Door Law makes clear that publication notice under a statute supersedes the requirement that a governing body post notice at its principal office. Therefore, the Council did not violate the Open Door Law when it failed to post notice of the March 26 public hearing in addition to its publication notice.

It appears that the Council intended to meet on that same date, although the time for the meeting was different from that of the hearing. The Council states that it did not meet on March 26 for any purpose other than the public hearing. In that event, the lack of posted notice for a separate meeting of the Council presents no violation of the Open Door Law. I find that to the extent that the Council convened a majority for the purpose of holding a public hearing under IC 36-8-19-6, the Council did not violate the notice requirements of the Open Door Law by failing to post notice of the hearing in addition to the publication of notice in the newspaper, for the reasons stated above.

CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Michael Lipsky