

February 9, 2007

Larry J. McCoy  
P.O. Box 535  
241 Chestnut Street  
Dana, IN 47847

*Re: Formal Complaint 07-FC-8; Alleged Violation of the Open Door Law by the Dana Town Council*

Dear Mr. McCoy:

This is in response to your formal complaint alleging that the Dana Town Council (“Town Council”) violated the Open Door Law by meeting outside of the public before a regularly scheduled meeting. There is no conclusive evidence that the Town Council took official action on public business prior to the regularly scheduled meeting on January 9, but the Town Council should avoid gathering as a majority prior to the start of a meeting.

#### BACKGROUND

You allege that generally, and more particularly on January 9, 2007, the Town Council met in advance of the posted meeting time to discuss town business. You alleged that the Town Council has told the public that it would continue to meet before the scheduled meetings and discuss items of town business and that “there was nothing wrong.” You allege that on January 9, most of the Town Council except Mary Nickles was gathered from 7:00 p.m., 30 minutes prior to the scheduled time. You have noticed that a lot of items come up at the meetings and the “motion, second and vote” actions are taken with very little discussion.

After receiving a copy of your complaint, the Town Council sent the enclosed response. The response is signed by all members of the five-member council, as well as the town clerk. The statement was prepared by the town attorney Don Darnell, it says. According to the response, the meeting on January 9, 2007 was the town’s regular monthly meeting, which commenced at 7:30 p.m. in accordance with the notice. There was no other meeting prior to that

time. Three citizens of the town arrived early and were present a few minutes before the meeting at 7:30. You could have entered and taken a seat also.

## 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).

The Town Council has denied that it took official action on public business before the convening of the January 9 meeting. Certainly if a majority of the Town Council *had* gathered to take official action on public business prior to the convening of the 7:30 meeting, this would violate the Open Door Law. Although it is apparent from the complaint response that the Town Council would permit members of the public to observe the Town Council before the convening of the meeting, it is not enough to say that anyone who happens to arrive early may observe the Town Council, if in fact the Town Council takes official action prior to the 7:30 convening of the regular meeting. The notice of the meeting states it will convene at 7:30 p.m., so no official action should occur prior to that time.

I note as well that the Town Council has not directly addressed your allegations that the Town Council has told you that there was nothing wrong with meeting prior to the meeting. The Town Council has also not addressed your concern that there is scant discussion on matters during meetings. Because it is silent on these allegations, the Town Council's complaint response does little to assure the public that it does not meet outside of the public.

Oftentimes a majority of members of a governing body will gather but not take official action on public business. This may create the impression that conversations are occurring that constitute a meeting, when no such thing is happening. This Office usually discourages governing bodies from taking a seat at the meeting place more than just a few minutes prior to the meeting, or from holding conversations before the meeting is convened, so that there is no misunderstanding that the governing body is holding a meeting outside the public.

## CONCLUSION

The Dana Town Council is required to wait until the convening of the public meeting at the time stated in the notice to take official action on public business. I recommend that the Dana Town Council avoid gathering in advance of the stated meeting time.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Dana Town Council