

February 12, 2007

Cindy Johnson  
6968 N. U.S. Highway 35  
Williamsburg, IN 47393

*Re: Formal Complaint 07-FC-9; Alleged Violation of the Open Door Law by the Centerville Center Township Public Library Board of Trustees*

Dear Ms. Johnson:

This is in response to your formal complaint alleging that Centerville Center Township Public Library Board of Trustees ("Library" or "Board") violated the Open Door Law.

#### BACKGROUND

You allege that the Board violated the Open Door Law with respect to its December 13, 2006 meeting. You allege that:

- The Board locked the door to the Library at 5:00 p.m. The Board's meeting began at 4:30 and did not end until 6:00 p.m. Persons were not able to attend after 5:00 p.m. because they could not gain admittance to the Library.
- The Board requires that individuals attending the meeting sign their name, address, and telephone number on a sign in sheet. The spouse of one of the Board members said that the sign up procedure was mandatory.
- The Board room in which the meetings are held is too small to accommodate those who are interested in attending. The room can accommodate only 20 people, and there were 40 people at the meeting in December. Some persons were standing in front of the two other doors to the board room, which were locked.
- You were told that you could not tape the meeting. You were allowed to record only those persons from the public who were allowed to speak at the meeting.
- The Board, in its minutes of January 11, 2006, stated that they used the Palladium-Item and Western Wayne News newspapers for advertising. You called both papers and "they have no record."

- The Board did not have an executive session to discuss individuals who are staff employees. They also do not have the minutes for the public to view.

I sent a copy of your complaint to the Library. Board member Catherine A. Stevenson responded, a copy of which is attached for your reference. Ms. Stevenson acknowledged that the door was locked prior to the adjournment of the meeting. The Board now realizes this was in error and at the January 11 meeting, the door remained unlocked. The door will remain unlocked at future meetings until after the Board adjourns the meetings.

A member of the public did ask people to sign in but no one stated that it was mandatory. The Board believes it is permissible to have a sign in sheet. Not everyone signed in and the Board did not make an issue of it. In the future there will be a voluntary sign up sheet available. The Library has a small board room and has never had more than a few members of the public in attendance at meetings. For the December 13 meeting, 15 people had signed up to speak. The Board rearranged the furniture and set up over 20 chairs. There were more in attendance than expected. All the doors to the meeting room are unlocked, although there were people standing in front of the doors. As long as a large crowd is anticipated at meetings, the board room will not be used. On January 11, the meeting was held in the largest room at the Library and there were adequate chairs for the space that could be accommodated. The Board has no public address system but the Board will do its best to be heard at future meetings.

Ms. Stevenson recalled that you came to the meeting with a tape recorder and you asked if you could tape the meeting. The Board told you that it would be taping public comments but it was fine if you recorded also. Ms. Stevenson denied telling you that you could not tape the meeting.

The Library does use the Palladium-Item and the Western Wayne News as newspapers for legal advertisements. The Board has always published public hearings and budgets. The Board posts meeting notices and agendas on the Library door at least 48 hours prior to the meetings. The Board has already published notice of regular board meetings for 2007 in the newspapers. The Board will publish notice of all special meetings in the future.

The Board had an executive work session on October 11, 2006 to discuss the 2007 budget. The Board published notice of this meeting on the Library door but did not publish in the media. The Board "has corrected that oversight" and in the future will publish all meetings and executive sessions. In addition, the minutes of the Board meetings are available upon request in the Library during regular hours.

## 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). (Emphasis supplied.)

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).

There are no requirements in the Open Door Law prescribing where a governing body may hold a meeting, except that a meeting may not be held in a location that is not accessible to individuals with a disability. IC 5-14-1.5-8.

A governing body may hold an executive session, which is a meeting from which the public is excluded, only for the purposes prescribed in IC 5-14-1.5-6.1(b). IC 5-14-1.5-2(f); IC 5-14-1.5-6.1(b). Although a governing body is permitted to hold an executive session for these instances, a governing body generally is not required to hold an executive session.

The Library violated the Open Door Law when it locked the doors to the Library building during the time that the Board was meeting. The Board began its meeting at 4:30 p.m. consistent with its public notice, but did not adjourn until 6:00 p.m. If individuals were not permitted access to the Library because it was closed, they were denied the right to observe and record the meeting. It does not matter that the meeting was advertised to begin at 4:30 when the Library was open. The public must be allowed to observe and record the meeting at any time during the meeting. The Board and its Director now understand this requirement and have stated that the Library will not be locked during the time that the Board has convened a meeting.

There are no provisions in the Open Door Law for a sign up sheet, but sign up sheets are not prohibited. If a person wishing to attend a meeting prefers to not sign a sheet indicating attendance, the person may not be denied access to the meeting. Your complaint does not allege that anyone was asked to leave, but you allege that members of the public were told by someone not a member of the Board that the sign up sheet was mandatory. The Board denies that the public was told it must sign the sheet. A voluntary sign up sheet may be used so long as the public is informed that signing up is not mandatory in order to attend the meeting. Requiring that a person who wishes to address the Board during the meeting sign up in advance or at the meeting does not violate the Open Door Law, since the Open Door Law does not provide the public with a right to speak during a meeting, only to observe and record the meeting.

A governing body should provide adequate room for the public to observe and record a meeting. If attendance at a meeting is unanticipated or is greater than normal, it is not *per se* a violation of the Open Door Law to not be able to accommodate every single person who wishes to observe a meeting. However, now that attendance at meetings has been higher than usual, the Board should make every effort to try to accommodate those who wish to attend. We have said that having an overflow area with a visual or auditory means for observing the meeting is

sufficient to accommodate unexpected attendance. The Board has said that it will no longer use its small Board room, but will use the largest room in the Library for meetings in the future.

Because the Open Door Law specifically provides that the public has the right to record a meeting, a governing body may not ban the use of tape recorders. Because a meeting is a gathering of the governing body, it is essential that members of the public be allowed to record what the Board is saying. The Board denies that you were told you could not tape record the December 13 meeting. If the Board told you that you could not tape record the meeting yourself because the Board was recording the meeting, this would have been a violation of the Open Door Law.

With respect to publication of notices of meetings, the Open Door Law provides that the governing body must *send* a meeting notice to all news media who request it by January 1 for the succeeding year. IC 5-14-1.5-5(b). However, the Open Door Law itself makes no provision for publication of the notice or advertisement of meetings in a newspaper. If notice by publication is required by a statute, ordinance, rule or regulation, the provisions of section 5 of the Open Door Law do not apply. IC 5-14-1.5-5(e). Accordingly, only if a statute or ordinance requires notice by publication would such publication be required. The Open Door Law does not require it. The Board has stated that in the past, meeting notices were posted at the Library but not published in the Palladium-Item and Western Wayne News except for public hearings and budgets. Failure to publish notice of regular meetings was not a violation of the Open Door Law.

Your complaint regarding an executive session to discuss individual staff employees appears to claim that the Board should have held an executive session. You do not specify what purpose would allow a particular executive session, but in any case, executive sessions are not mandated by the Open Door Law, only permitted. A statement in the Board's response is troubling, because the Board states that the October 11, 2006 executive session was held to discuss the 2007 budget. The legislature did not provide an executive session instance for budget discussions. *See* IC 5-14-1.5-6.1(b). Therefore, the Board violated the Open Door Law if it met in executive session on October 11 for a purpose that is not provided for in the Open Door Law.

A governing body is required to keep memoranda for public meetings, pursuant to IC 5-14-1.5-4. In addition, memoranda are required for executive sessions. IC 5-14-1.5-6.1(d). You do not specify why you believe that the Board does not have the minutes for the public to view. The Board avers that its minutes are available upon request at the Library offices during regular business hours. The Board is not required to post minutes on the website or at the library, but may do so. I find no violation of the Open Door Law regarding maintaining memoranda.

## CONCLUSION

The Centerville Center Township Public Library Board of Trustees violated the Open Door Law when it locked the doors to the Library prior to the adjournment of the public meeting. The Board is required to 1) permit persons to record a meeting, 2) send notice to news media that have requested the notices, and 3) make a good faith effort to hold meetings in a room adequate to accommodate the public. The Board may use a voluntary sign in sheet. Finally, the Board may not hold an executive session to discuss the budget.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Friends of the Library  
Catherine A. Stevenson