

May 10, 2007

John Davis
204 N. Lafayette St.
Cloverdale, IN 46120

Re: Formal Complaint 07-FC-94; Alleged Violation of the Open Door Law by the Cloverdale Township Trustee

Dear Mr. Davis:

This is in response to your formal complaint alleging that the Cloverdale Township Trustee (“Trustee”) violated the Open Door Law by signing a contract outside of a public meeting. I find that the Trustee is not a governing body under the Open Door Law.

BACKGROUND

You alleged a violation by the Trustee of the Open Door Law, noting on the complaint form “public meeting not held.” You state specifically that on April 9, 2007, a contract was accepted and signed by the township trustee outside of a public meeting. The meeting where the contract was signed was posted as a town of Cloverdale executive session. You provided a copy of the agreement for fire services, which was entered into by the Town of Cloverdale where you are a member of the town council, the township volunteer fire department, and the township, by Trustee Daryl Branneman, who you name in your complaint.

I sent a copy of your complaint to the Trustee. A response to the complaint was submitted by township attorney Allan Yackey. Mr. Yackey responded to the allegations in the same way he responded to allegations of a violation of the Open Door Law against the Cloverdale Town Council filed by Judy Whitaker, in #07-FC-91. He explained that the executive session purpose was for strategy discussions for pending litigation, as a result of a court order mandating that the parties to the agreement mediate their dispute. A summary of his response is more fully set out in *Opinion of the Public Access Counselor 07-FC-91*.

ANALYSIS

The Open Door Law provides that all meetings of governing bodies of public agencies are required to 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). A “governing body” is *two or more* individuals who are a public agency that is a board or commission, a board or commission of a public agency, or a committee appointed directly by the governing body or its presiding officer. *See* IC 5-14-1.5-2(b)(Emphasis supplied.) Final action must take place in a meeting open to the public. IC 5-14-1.5-6.1(c)

Your complaint is against the Trustee. In order for the Trustee to have violated the Open Door Law, the Trustee must be subject to the Open Door Law. *See Opinion of the Public Access Counselor 06-FC-187*. The governing body of a township is the township board. IC 36-6-6-2; IC 5-14-1.5-2(b). It is not clear whether you believe the Open Door Law was violated because the Trustee took final action by signing the contract in an executive session, or if you believe that the Trustee could not have participated in the executive session because it was not a proper executive session. If you mean to allege that the Trustee must post notice and hold public meetings to sign a contract, your allegation has no merit, because the Trustee is not a governing body. In addition, if you believe that final action took place in an executive session, I conclude no violation of the Open Door Law occurred by the Trustee for the same reason: the Trustee is not a governing body. This conclusion does not depend on the propriety of the executive session in which the Trustee participated. Nor does this opinion affect the propriety of the Town Council’s meeting in the executive session. I simply find that the Trustee is not a governing body subject to the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that the Cloverdale Township Trustee did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Allan Yackey