

March 4, 2008

Daniel Jehl
Fort Wayne Public 1, Inc.
4230 Dalewood Drive
Fort Wayne, Indiana 46815

Re: Formal Complaint 08-FC-51; Alleged Violation of the Open Door Law by the City of Fort Wayne Common Council and Republican Majority Caucus

Dear Mr. Jehl:

This advisory opinion is in response to your formal complaint alleging the City of Fort Wayne Common Council and the Republican Majority of the Common Council (“Council”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by holding a caucus to take official action on public business, in violation of the ODL. I have enclosed a copy of the Council’s response to your complaint for your reference. It is my opinion the Council did not violate the ODL because the gathering did not constitute a meeting under the ODL.

BACKGROUND

In your complaint you allege the Council violated the ODL “sometime in early January” 2008 by holding a party caucus at which the Council made decisions it then affirmed at its January 8 meeting. You allege a majority of the Council met at a private home with no public notice and made decisions about public business, namely the office, committee, and board assignments for the Council members. You cite *Opinion of the Public Access Counselor 05-FC-53* and *Evansville Courier v. Willner*, 563 N.E.2d 1269 (Ind. 1990) as supporting authority for your claim that the meeting was a caucus held in violation of the ODL. You mailed this complaint on January 31, and I received it on February 5.

The Council responded to your complaint by letter dated February 19 from attorney Joseph Bonahoom. Mr. Bonahoom contends, and submits several affidavits in support of the claim, that the gathering at issue could not have been a meeting of the Council because the gathering, held on December 9, 2007, was attended by only four of the nine sitting Council members. The other three attendees had been elected to the Council in November 2007, but they were not yet Council members. Since the gathering was not attended by a majority of the governing body (i.e. the Council), the gathering was not a meeting for the purposes of the ODL.

Mr. Bonahoom further asserts that if the gathering were a meeting, it was an acceptable political party caucus authorized by the ODL.

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. I.C. § 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. I.C. § 5-14-1.5-3(a).

“‘Meeting’ means a gathering of a majority of a governing body of a public agency for the purpose of taking official action upon public business. It does not include:

. . . (4) a caucus.”

I.C. § 5-14-1.5-2(c).

“‘Governing body’ means two or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business . . .”

I.C. § 5-14-1.5-2(b).

You present the question whether the gathering was a caucus in violation of the ODL. That question is not addressed here, though, because it is my opinion the gathering was not a meeting. For a gathering to be a meeting for the purposes of the ODL, it must be attended by a majority of the governing body. I.C. § 5-14-1.5-2(c). Here, the governing body is the Fort Wayne Common Council. The Council is composed of nine members. The meeting was held on December 9, 2007, as evidenced by the affidavits of five individuals. On December 9, 2007, three of the attendees at the meeting (Mitch Harper, Liz Brown, and Mary Bender) were not members of the Council. They had been elected to the Council in November, but their terms as Council members had not commenced.

The December 9 meeting was also attended by four individuals who were members of the Council as of December 9 (Thomas Didier, Tom Smith, Don Schmidt, and John Crawford). Since the Council is a nine-member body, the presence of four members at one gathering does not constitute a meeting under the definition provided in I.C. § 5-14-1.5-2(c).

Since the gathering on December 9 was not a meeting, it was not subject to the notice, open meeting and other requirements of the ODL. In fact, the ODL does not prescribe any requirements for such gathering which does not constitute a meeting. As such, neither the Council nor the other individuals in attendance violated the ODL at this gathering.

CONCLUSION

For the foregoing reasons, it is my opinion the Council did not violate the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Joseph Bonahoom, Bonahoom & Bonahoom, LLP
Fort Wayne Common Council, Thomas Didier, President