



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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June 10, 2010

Mr. Joseph L. Weingarten  
14066 Deer Stone Lane  
Fortville, IN 46040

*Re: Formal Complaint 10-FC-118; Alleged Violation of the Open  
Door Law by the Town of Fishers*

Dear Mr. Weingarten:

This advisory opinion is in response to your formal complaint alleging the Town of Fishers ("Town") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, by failing to provide adequate public notice of its May 10, 2010, public meeting (the "Meeting"). The Town's response is enclosed for your review.

## BACKGROUND

In your complaint, you allege that Town posted notice of its Meeting on May 7, 2010 at 1:10 p.m. The Meeting occurred on Monday, May 10th at 7:00 p.m. You allege that the Town violated the ODL because it failed to post its notice at least 48 hours (excluding weekend days) prior to the Meeting.

In response to your complaint, Town Manager Gary A. Huff denies that the Town violated the ODL. He states that the Town originally posted notice of the meeting on Thursday, May 6th at approximately 4:30 p.m. After Mr. Huff was informed by the Fall Creek Township Trustee that the meeting room listed on the notice would not be available at the time of the Meeting, the meeting was changed to another location within the same building. As a result, the Town posted an updated notice on Friday, May 7th reflecting the different meeting room.

## ANALYSIS

The General Assembly enacted the ODL with the intent 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 ODL, 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).

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. I.C. § 5-14-1.5-5(a) (emphasis added). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. I.C. § 5-14-1.5-5(b). Notice has not been given in accordance with Section 5 of the ODL if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. I.C. §5-14-1.5-5(h).

A one-time general notice of the regularly scheduled meetings may be provided by a public agency of meetings that are subject to the ODL. I.C. §5-14-1.5-5(c). Regular meetings may be rescheduled, but the ODL requires that “an *additional* notice *shall be given* where the date, time, or *place* of a regular meeting” has been changed. *Id.* (emphasis added). The additional notice must be provided in accordance with Section 5 of the ODL, which provides that:

(a) 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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

\* \* \*

(b) Public notice shall be given by the governing body of a public agency by:

1. 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; and
2. depositing in the United States mail with postage prepaid or by delivering 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.

I.C. §5-14-1.5-5. Thus, the general rule is that a change in location must be posted at least 48 hours in advance of the meeting. Here, however, the location was changed not from one building to another but from one room to another within the same building. Moreover, the Town posted an updated notice on the building reflecting the room change that would have notified anyone who attempted to attend the Meeting in the original

room to discover the Meeting's new location. Counselor Davis did not find a violation of the ODL under similar circumstances, and I agree with her reasoning. *See Opinion of the Public Access Counselor 06-FC-179* (“[A] room change within the Conference Center is not fatal for purposes of notice under the Open Door Law....”).

#### CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack  
Public Access Counselor

Cc: Gary A. Huff