



STATE OF INDIANA

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June 18, 2010

Mr. Stephen Morse
3230 25th St.
Columbus, IN
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*Re: Formal Complaint 10-FC-138; Alleged Violation of the Open Door Law
by the City of Jasonville*

Dear Mr. Morse:

This advisory opinion is in response to your formal complaint alleging the City of Jasonville ("City") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The City's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege the City adopted an ordinance without advanced publication or public discussion. You argue that the City's action in adopting the ordinance were intended to "circumvent the established process for vacating platted areas (IC 36-7-3-11) and that they deny notice to the owners of land in affected plats." You also claim that the adoption of the ordinance violated "the intent of the Indiana Home Rule statute (IC 36-1-3-8a) that specifically withholds from units the power to condition or limit their civil liability.

In response to your complaint, the City, through its attorney Jeff R. Hawkins, claims that the ordinance was adopted at a public meeting that complied with the ODL. The City also takes the position that your other complaints do not fall within the purview of either the ODL or the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

ANALYSIS

The General Assembly enacted the ODL intending 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).

As Counselor Neal noted in Formal Complaint 08-FC-149, Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *See Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; *see also* I.C. § 5-14-1.5-3 (“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.”). “Indiana law does require a governing body to allow public testimony in certain instances (e.g. a hearing on a proposed budget), but as a general rule the ODL does not guarantee the right to speak at a meeting.” *Opinion of the Public Access Counselor 08-FC-149*. Consequently, it is my opinion that the City did not violate the ODL in this respect.

As to whether or not the City violated Ind. Code §§ 36-7-3-11 or 36-1-3-8, I do not have the authority to issue an opinion on those issues because they fall outside of the realm of public access laws. *See* I.C. § 5-14-4-10.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Jeff R. Hawkins