



STATE OF INDIANA

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July 8, 2010

Mr. Gary Robinson
595 Sugar St.
Marengo, IN 47140

Re: Formal Complaint 10-FC-142; Alleged Violation of the Open Door Law by the Town of Marengo

Dear Mr. Robinson:

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

BACKGROUND

According to your complaint, the Council held an executive session on May 12, 2010, which was not properly noticed. You claim that the meeting notice in the local paper read as follows: "May 12, 2010, Executive Meeting, 7:00PM, Regular Meeting 7:30PM." You also note that "no certified statement" was read into the minutes at the Council's next meeting "stating that nothing was discussed in the executive session that should not have been discussed."¹

In response to your complaint, Town Council President Tony Jones states that the May 12th executive session was for the purpose of conducting a performance review regarding a particular employee. The Council met on May 12th, but the executive session was adjourned without discussion because the employee did not attend the meeting. Mr. Jones notes that the Council did conduct an executive session prior to its June meeting to review the two employees of the waste water treatment plant. He claims that the Council took note of that session during its regular meeting the same night.

¹ Your complaint also includes allegations regarding an executive session in April, but because that meeting was ultimately not held I do not address it in detail here.

ANALYSIS

The intent and purpose of the ODL is 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. The provisions of the ODL are to be “liberally construed with the view of carrying out its policy.” I.C. § 5-14-1.5-1. The Council is subject to the ODL. I.C. §§ 5-14-1.5-2(a), (b).

As I noted in my previous opinion related to the Council, *Opinion of the Public Access Counselor 10-FC-54*, notice of the date, time and place for a meeting or executive session of a governing body must be provided at least forty-eight (48) hours in advance, not including Saturdays, Sundays or legal holidays. I.C. § 5-14-1.5-5(a). Executive sessions, which are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Mr. Jones claims that the May 12th and June executive sessions were held for the purpose of discussing the performance evaluation of an individual employee (or, in the case of the June meeting, two such evaluations). The ODL does permit executive sessions for that purpose; subsection (a)(9) of the ODL permits executive sessions held “[t]o discuss a job performance evaluation of an individual employee.” I.C. § 5-14-1.5-6.1(a)(9).

However, the ODL also requires that all notices of executive sessions must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. See I.C. § 5-14-1.5-6.1(d). If Mr. Robinson’s complaint accurately describes the executive session notices by the Council with respect to its May and June meetings, the Council violated the ODL’s notice provisions. Specifically, the ODL requires that “[p]ublic notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held....” I.C. § 5-14-1.5-6.1(d).

I recommend that the Council use the following format for its notices in the future:

For Regular or Special Meetings Open to the Public:

Meeting (or Special Meeting) of the
Any Town City Council
Monday, August 1, 2010
5:30 p.m.
City Hall Meeting Room; Two North Main Street; Any Town, Indiana

For Executive Sessions:

Notice of Executive Session of the
Anytown City Council
Monday, August 1, 2010
4:30 p.m.
City Hall Meeting Room; Two North Main Street, Anytown, Indiana
The Council will meet to discuss a job performance evaluation of an individual employee as authorized under I.C. §5-14-1.5-6.1(b)(9).

With regard to the allegation that the Council violated the ODL by failing to read into the minutes at the Council's next meeting a certification stating that nothing was discussed in the executive session that should not have been discussed, the ODL does not require governing bodies to read such a statement aloud. *See* I.C. § 5-14-1.5-6.1(d). Rather, the governing body satisfies its obligations under the ODL if it "certif[ies] by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice." *Id.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Council's notice of executive session did not comply with subsection 6.1(d) of the ODL if it did not include a statement of the purpose of the executive session and an appropriate citation to a provision in the ODL allowing the session. The Council did not otherwise violate the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Tony Jones, Town Council President