



STATE OF INDIANA

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September 2, 2010

Ms. Lynette A. Stainbrook
10001 Smoky Row Road
Greens Fork, IN 47345

*Re: Formal Complaint 10-FC-176; Alleged Violation of the Open Door Law
by the Nettle Creek School Corporation*

Dear Ms. Stainbrook:

This advisory opinion is in response to your formal complaint alleging the Nettle Creek School Corporation ("NCSC") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* A copy of NCSC's response is enclosed for your reference.

BACKGROUND

Your complaint relates to the NCSC's meeting on July 28, 2010 (the "Meeting"). At the Meeting, the NCSC's school board (the "Board") took various actions that you allege constitute violations of the ODL.¹ Specifically, you allege that the Board did not ask Superintendent Joe Backmeyer for a comment prior to voting to hire a "Finance/Business Manager" (the "Position") for the NCSC named Derek Stevens. You also claim that the Board conducted a series of smaller meetings "in small groups" with Mr. Stevens prior to the Meeting at which the nature of the Position was discussed.

My office forwarded a copy of your complaints to the NCSC. Attorney Ronald L. Cross responded on behalf of the NCSC and its Board. Mr. Cross claims that your complaint does not allege actions that are illegal under the ODL, and he denies that the Board violated the statute. In response to your claim that the Board held a series of meetings with a small number of Board members, Mr. Cross notes that you have not identified any particular meeting or meetings that allegedly occurred in violation of the ODL. He further states that he investigated your claims and determined that only one

¹ I note that many of your allegations concern the procedures applied by the Board at its Meeting. For better or worse, the ODL does not regulate most of the decision making procedures employed by governing bodies of public agencies. Consequently, my opinion is limited to the portions of your complaint that allege Board actions and procedures that are subject to the ODL. I note that I have no authority to express an opinion as to whether or not the remaining aspects of your complaint are illegal or actionable before a court or another public agency. *See* I.C. § 5-14-4-10.

instance of a smaller gathering occurred that could have arguably violated the ODL. Specifically, the Board's president met with two Board members in mid-May as part of a committee to discuss a proposed math program. Mr. Cross maintains that the mid-May gathering did not involve a majority of the Board and did not otherwise qualify as a serial meeting under the ODL. He notes, however, that it is unclear whether or not the committee was appointed directly by the Board or the Board president such that it would be a committee subject to the ODL. Finally, Mr. Cross states that the Board voted at its August 11th meeting to rescind the actions it took at its July 28th meeting due to concerns expressed by patrons of the NCSC.

ANALYSIS

It is the intent of the ODL that public agencies conduct business and take official action openly unless otherwise 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).

With regard to your allegations regarding the nature of the public comments that were or were not permitted at the Meeting, 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*.

As to your allegation that the Board conducted a series of smaller meetings in violation of the ODL's language prohibiting serial meetings, Ind. Code § 5-14-1.5-3.1, if Mr. Cross' statement that only one such meeting occurred, the Board did not violate the ODL's serial meetings provision because there is no evidence that “at least two (2) gatherings of members of the governing body . . .” occurred. *See I.C. § 5-14-1.5-3.1(a)*. If more than one gathering of less than a quorum of the Board's members did not occur within a seven (7) day period, the Board could not have conducted serial meetings in violation of the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion that the NCSC 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: Ronald L. Cross