



STATE OF INDIANA

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December 20, 2010

Ms. Robyn L. Emmert
230 W. Main, P.O. Box 211
Atlanta, IN 46031

Re: Formal Complaint 10-FC-289; Alleged Violation of the Open Door Law by the Town of Atlanta

Dear Ms. Emmert:

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

BACKGROUND

You are the clerk-treasurer for the Town. In your complaint, you allege that the Town violated the ODL by excluding you from an executive session on November 2, 2010. You do not allege that the executive session was improperly noticed or otherwise invalid. Rather, you argue that as the clerk-treasurer, I.C. § 36-5-6-6 requires you to attend the executive session and create the memoranda for the meeting.

My office forwarded a copy of your complaint to the Town. In response, Town Attorney Aaron Culp states that the Town was entitled to exclude you from its executive session per I.C. § 5-14-1.5-2(f), and nothing in I.C. § 36-5-6-6 requires otherwise. He notes that a board member or other person present could create the meeting memoranda and minutes, so your presence is not required by the ODL.

ANALYSIS

It is the intent of the ODL that, unless otherwise permitted by statute, governing bodies of public agencies conduct business and take official action openly so that the people may be fully informed. I.C. § 5-14-1.5-1. Accordingly, 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).

In support of your argument that, as clerk-treasurer, statute requires you to attend the Town's executive sessions, you cite to I.C. § 36-5-6-6. That section states that the clerk-treasurer shall "[s]erve as clerk of the legislative body by attending its meetings and recording its proceedings." I.C. § 36-5-6-6(a)(10). Under the ODL, an executive session is defined as a meeting "from which the public is excluded, except *the governing body* may admit those persons necessary to carry out its purpose." I.C. § 5-14-1.5-2(f) (emphasis added). I.C. § 36-5-6-6(a)(10) pertains to meetings of the Town generally, while section 6.1 of the ODL prescribes conditions for executive sessions in particular. Under the rules of statutory construction, "specific statutory provisions take priority over general statutory provisions." *White v. Indiana Parole Board*, 713 N.E.2d 327, *329 (Ind. App. 1999), citing *Ezzell v. State*, 246 Ind. 268, 271, 205 N.E.2d 145, 146 (Ind.1965). Consequently, it is my opinion that the Town did not violate the ODL by excluding you from its executive session because it is permitted to do so under I.C. § 5-14-1.5-2(f).

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Aaron Culp