



STATE OF INDIANA

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December 21, 2010

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

Re: Formal Complaint 10-FC-316; Alleged Violation of the Open Door Law by Fall Creek Township

Dear Mr. Weingarten:

This advisory opinion is in response to your formal complaint alleging Fall Creek Township (the "Township") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

Initially, I note that you have previously filed complaints against the Township alleging violations of the ODL related to meeting notices. *See Ops. of the Public Access Counselor 10-FC-303; 10-FC-287.* In this complaint, you allege that you went to the Fall Creek Township Hall on December 13, 2010, to attend a meeting that was published in the *Indianapolis Star* on December 9, 2010. That meeting notice read:

Legal Notice of Public Meeting

The 2010 Fall Creek Township Board, Hamilton County, will hold a meeting on December 13, 2011 [sic] at 7 pm in the Township Offices at 11595 Brooks School Road, Fishers, IN 46037. Agenda item will be a proposed plan for referendum regarding the Township/Town of Fishers Merger and the transformation of Fishers from a town to a city.

Terry L. Michael, Trustee
Fall Creek Township
Marion County

You claim that no one was present at the listed location on December 13th, and the building was dark. On the door was a notice that the meeting was actually at Fishers Town Hall and that Mr. Michael had not been notified until 10:38 p.m. on Friday, December 10, 2010, "due to a lack of communications," presumably between the Fall Creek Township Board ("Board") and Mr. Michael. You argue that even if Mr. Michael had posted the change in meeting location on Friday, it would not have been sufficient to

satisfy the ODL's 48-hour notice rule. You argue that all actions taken by at the December 13th should be invalid because (1) the 10-day notification was not properly published in the newspaper or the offices of the Township, and (2) the Township did not post notice of the meeting 48 hours in advance.

My office forwarded a copy of your complaint to the Township. In response, Township Trustee Terry Michael contacted my office and conceded that the posted notice was not correct, and that he posted what he could based on the limited information provided to him by the Board.

Subsequently, the Town of Fishers' (the "Town") attorney, Douglas Church, contacted my office to inform me that Nathan George, the deputy town manager for the Town, has been posting notices of the Board's meetings. Mr. Church states that the Town was not aware of this complaint or your previous complaints against the Township until yesterday, December 20th. According to Mr. Church, the December 13th meeting in question in this complaint, as well as those addressed in the recent advisory opinions cited above, have all been joint meetings with the Town. The Board requested that Mr. George post notice on behalf of the Board at the same time he posted it for the Town. Mr. George drafted a detailed account of his actions, which I have enclosed for your reference. With regard to the public hearing allegation, Mr. George states that such a meeting has not yet occurred. Rather, that hearing was scheduled for December 20th, and the notice for it was published on December 10th.

ANALYSIS

The ODL requires that 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). 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:

(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(b). In reviewing Mr. George's submission concerning his actions in notifying the media and posting the physical meeting notice at both the meeting place and the Township's office, it appears that the Township posted notice of the December 13th meeting as required by the ODL. Nothing in the ODL requires a township's meeting notices to be published by the associated township trustee. Rather, the ODL requires that

public notice “shall be given *by the governing body...*” *Id.* (emphasis added). Here, the governing body delegated the task to Mr. George, who posted the notice in accordance with the provisions of the ODL. If Mr. George’s assertions are accurate, in my opinion the Township has complied with the ODL.

Mr. George’s account also contradicts the information upon which I based my previous advisory opinions in *10-FC-287* and *10-FC-303*. According to the materials submitted by Mr. George, those meetings were also properly noticed. Consequently, to the extent that those opinions were based upon incomplete information, they are superseded and replaced by the analysis and conclusion herein: i.e., that if Mr. George posted notice as described in his detailed account of his actions prior to each meeting in question, the Township did not violate the ODL with respect to its November 15th or November 29th meetings.

With respect to the meeting notice published in the *Indianapolis Star* by Mr. Michael, that notice lists a meeting date of December 13, 2011. That date has not yet passed. Moreover, the correct notice was already published by the Town. As discussed previously, that notice met the Township’s obligations under the ODL.

As to your allegation that the Township failed to post notice of a public hearing 10 days in advance of the December 13th meeting, Mr. George states that the December 13th meeting was not a public hearing. Rather, the public hearing was scheduled for December 20th, and notice of that meeting was published on December 10th. Under those circumstances, I can find no violation of the ODL.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Terry Michael
Douglas Church