



STATE OF INDIANA

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April 25, 2010

Mr. Kyle Olson
801 W. Norton, Ste. 1
Muskegon, MI 49441

Re: Formal Complaint 10-FC-80; Alleged Violation of the Open Door Law by the Indianapolis Public Schools

Dear Mr. Olson:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Public Schools ("IPS") violated the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.* IPS' response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that on March 24, 2010, Don VanderKooi and you attended an IPS budget meeting held by IPS Superintendent Eugene White. You are the vice president of the Education Action Group ("EAG") and Mr. VanderKooi is EAG's cameraman. You both signed in at the door to the meeting room and provided your names, address, phone numbers, and purpose for attending, which was to collect footage for a documentary film. You then entered the meeting in an IPS cafeteria, and Mr. VanderKooi set up a large camera as Supt. White began his presentation.

Roughly 45 minutes into the meeting you chatted briefly with *Indianapolis Star* reporter Andy Gammill, who then spoke with Mary Louise Bewley of IPS. Ms. Bewley then approached you and Mr. VanderKooi and asked to speak with you in the hallway. Ms. Bewley was accompanied by a police officer as she asked Mr. VanderKooi who he represented. Mr. VanderKooi stated that he was with EAG. In response, Ms. Bewley "said he couldn't take video for 'disingenuous purposes.'" [Complaint at 1]. Mr. VanderKooi explained that he signed in, but Ms. Bewley "said she didn't care and demanded that [you and Mr. VanderKooi] leave immediately." [*Id.*]. When you spoke to Ms. Bewley again, she repeated her allegation that you were disingenuous and demanded that you leave. Thereafter, you and Mr. VanderKooi left the building.

My office forwarded a copy of your complaint to IPS. In response, IPS' attorney, Roberta Sabin Recker, denies that IPS violated the ODL. Ms. Recker notes that only

three of the seven IPS board members were present at the March 24th meeting, which she described as a “budget information session.” She lists the three board members present as Mary Busch, Elizabeth Gore, and Diane Arnold and says that they “were there only to observe and, if necessary, answer questions.” Ms. Recker argues that because less than a majority of IPS’ board members were present, the March 24th session was not a “meeting” under the ODL and, therefore, the ODL’s open meeting requirements did not apply. She also claims that the “session was held for the purpose of gathering community feedback and not ‘for the purpose of taking official action’ and, therefore, was not a ‘meeting’ within the meaning of the ODL. [Response at 2].

ANALYSIS

The General Assembly enacted the ODL with the intent 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. *See* 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).

Under the ODL, a “meeting” is defined as “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” I.C. § 5-14-1.5-2(c). Here, only three of IPS’ seven board members attended the March 24th budget information session. If the session lacked a majority of the IPS board members, it was not a “meeting” of the board under the ODL. In that case, the requirements in section 3 of the ODL regarding open meetings and the public’s right to record such meetings do not apply.

However, I note that while IPS argues “the budget information session was held for the purpose of gathering community feedback and not ‘for the purpose of taking official action,’”¹ “gathering community feedback” is clearly the type of activity that falls under the definition of “official action” in the ODL. *See* I.C. § 5-14-1.5-2(d)(1). Under the ODL, “official action” includes, among other things, the act of “receiv[ing] information.” IPS cites to *Dillman v. Trustees of Indiana Univ.*, 848 N.E.2d 348, 351 (Ind. Ct. App. 2006), in arguing that no official action can occur in the absence of a majority of a governing body’s members. I agree, but also I note that the General Assembly added the “serial meetings” section to the ODL in 2007 in an attempt to prohibit public agencies from engaging in the type of conduct that was at issue in *Dillman*. *See* I.C. § 5-14-1.5-3.1. In that case, the president of Indiana University admitted during his deposition testimony that “he deliberately gathered with fewer than a quorum of the Trustees ‘to exclude any impropriety with respect to the Open Door Act.’” *Id.* at 350. In its decision, the Indiana Court of Appeals noted that “[t]he conduct of the I.U. Trustees was in direct contravention to the public policy behind the Open Door Law.” *Id.*

¹ [Response at 2].

Because less than a quorum of its board members was present, IPS did not violate the ODL when it asked EAG's representatives to leave the budget information session. Moreover, unlike the situation in the *Dillman* case, there is no allegation here that IPS conducted a series of meetings. Nevertheless, it is disturbing that two members of the public were apparently singled out for unspecified "disingenuous purposes" and asked to leave a meeting that was otherwise open to the public and relevant to the public's business.

CONCLUSION

For the foregoing reasons, it is my opinion that IPS did not violate the ODL because its March 24th budget information session was not a "meeting" subject to the requirements of 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: Roberta Sabin Recker