



STATE OF INDIANA

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May 19, 2010

Mr. Daniel C. Watson
608 East Vistula
Bristol, IN 46507

Re: Formal Complaint 10-FC-98; Alleged Violation of the Access to Public Records Act by the Bristol Town Council

Dear Mr. Watson:

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

BACKGROUND

According to your complaint, on April 15, 2010, a majority of the Council's members remained in a meeting room following the adjournment of the Council's public meeting, which concluded at approximately 8:00 p.m. that evening. You noticed three (out of four total) members of the Council in the room at approximately 9:00 p.m. The members present were Barb Long, Tom Stutsman, and Floyd Lynch. Also in the room were Town Manager Bill Wuthrich and Town Marshal Mike Swallow. You entered the room and informed the Council members that you believed they were violating the ODL. The town attorney responded that the members were not violating the ODL because they were not discussing public business and the door to the room was physically open. You state that you were "unable to discern the topic of [the Council members'] conversation, and the people present did not inform me of the content of their conversation."

My office forwarded a copy of your complaints to the Council. Attorney Glenn L. Duncan responded on the Council's behalf. Mr. Duncan argues that the Council did not violate the ODL because the Council did not engage in any official action upon public business. Rather, he describes the gathering following the regular meeting as a social or chance gathering not intended to avoid the ODL. Mr. Duncan also enclosed an affidavit from Marshal Swallow in which Mr. Swallow testifies to his presence at the posted meeting and the post-meeting gathering. He claims that he overheard general discussion in the room regarding many topics, including education, school board issues,

the new medical care bill and how many states have filed lawsuits regarding that bill, and the Indiana Gaming Commission's income.

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).

Under the ODL, a "meeting" is "a gathering of a majority of a governing body of a public agency for the purpose of taking official action upon public business." I.C. § 5-14-1.5-2(c). It does not include any social or chance gathering not intended to avoid the ODL. *Id.* "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action (i.e., vote). I.C. § 5-14-1.5-2(d). "Public business" refers to any function upon which the public agency is empowered or authorized to take official action. I.C. § 5-14-1.5-2(e).

Here, it is undisputed that a majority of the Council gathered after its meeting adjourned on April 15th. The question is whether the Council did so to take official action upon public business. The only specific topics that Marshal Swallows acknowledges were discussed included education, the local school board, the health care bill, and the Indiana Gaming Commission's income. If the Council did not discuss these issues pursuant to its authority or power to take official action, then it is my opinion that the Council did not violate the ODL. If, however, the Council discussed these topics in the context of the Council's authority to act upon public business, the Council was "receiv[ing] information" regarding the public's business under subsection 2(d) and was conducting a "meeting" under the ODL. In that case, the Council violated the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Council did not gather to take official action upon public business following the adjournment of its meeting on April 15, 2010, the Council did not violate the ODL.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Glenn L. Duncan