



STATE OF INDIANA

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April 10, 2012

Ms. Mary Faye Shaffer
6960 Green St. SW
Central, Indiana 47110

*Re: Formal Complaint 12-FC-74; Alleged Violations of the Open Door Law by
the New Amsterdam Town Council*

Dear Ms. Shaffer:

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

BACKGROUND

In your formal complaint, you allege that on Tuesday, March 6, 2012 at approximately 8 p.m., you were informed that the Town Hall lights were on. Melissa Shaffer, the New Amsterdam Clerk-Treasurer, went to the Town Hall to see if someone had left the lights on. Upon arrival, she found Lee McCullum, Howard Phipps, and Regina Glass (members of the Council), "with papers, books, and a computer on the table discussing the finances of the town budget and talking about photos for the town hall." Melissa Shaffer asked what the group was doing as it appeared they were having a meeting.

In response to the formal complaint, the Council provided that on March 6, 2012, it held an orientation of its members on their roles and responsibilities as public officials. As newly elected members recently joined the Council, the Council indicated that it needed to address certain administrative issues. Some of the topics on the agenda were the placement of historical photographs in the Town Hall, the recently transcribed financial budgets, and the roles of Town Board Members. When Melissa Shafer appeared on March 6, 2012, there was no discussion of new business or and decisions being made. In a previous meeting of the Council, Melissa Smith had orally provided a copy of the budget to the Council that Councilwoman Glass had transcribed. The Council explained to Melissa Shaffer on March 6, 2012 that they were not discussing anything new but since she had not supplied a copy of the budget, Councilwoman Glass had now provided a written copy. Melissa Shaffer was offered a copy to look at, but did

not appear to be interested in it. Thereafter, Councilman McCullum inquired with Melissa Shaffer regarding the moving bids that have been brought up at the January 2012 Council meeting. The Council provided that no decisions were made regarding the moving bids on March 6, 2012.

The Council inquired with the State Board of Accounts regarding the March 6, 2012 orientation, who provided that an orientation of the members of the governing body on their role and responsibilities as public officials could be legally held, but not for any other official action. The Council noted that it may not need to conduct any future orientations. The Council further detailed a number of administrative actions in needed to take in the near future and issues that it was having with the Town's Clerk-Treasurer.

ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 5-14-1.5-3(a).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action. "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Pursuant to the I.C. § 5-14-1.5-2(c)(6), a "meeting" does not include an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action.

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. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2).

The requirements for posting notice do not apply when the executive of a county or the legislative body of a town (e.g., the Council, in this case) meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. *See* I.C. § 5-14-1.5-

5(f)(2). Administrative functions do not include the awarding of contracts, the entering into contracts or any other action creating an obligation or otherwise binding a county or town. *Id.* Even though notice is not required, the “administrative function” meeting must be held in the public, since the notice provision of the ODL is *the only provision* that does not apply to an “administrative function” meeting. I.C. § 5-14-1.5-5(f)(2), emphasis added.

In theory, the Council’s action of conducting an orientation on March 6, 2012 for its members on their roles and responsibilities as public officials, but not for any other official action, would not be considered a “meeting” pursuant to the ODL. However, just because the Council did not discuss any new business or make any decisions at the orientation does not mean that it did not take “official action.” “Official action” is broadly defined and includes receiving information, deliberating, making recommendations, establishing policy, making decisions, or taking final action. As to the issues discussed on March 6, 2012 regarding receiving bids for mowing, the Council provided that “we were only following up on old town business that needed to be resolved at the next meeting.” It is my opinion that when the Council received a transcribed copy of its budget and discussed the mowing bids at the March 6, 2012 orientation, it violated the requirements of I.C. § 5-14-1.5-2(c)(6) by taking “official action” on issues beyond the Council member’s roles and responsibilities as public officials.

The Council appears to be confusing an orientation, allowed under I.C. § 5-14-1.5-2(c)(6), with meetings held to carry out administrative functions pursuant to I.C. § 5-14-1.5-5(f)(2). The former is not considered to be a “meeting” pursuant to the ODL, and the requirements of the ODL do not apply. The latter is still considered a meeting pursuant to the ODL, and the *only* provision that is not applicable would be the requirements of I.C. § 5-14-1.5-5 (i.e. notice). As outlined in the Council’s response, it is my opinion that it could hold an “administrative function meeting” to discuss the hanging of photographs in the Town Hall, the configuration of the Town Hall Offices, decorating the Town Hall, or the installation of a flag pole outside the Town Hall. Notice would not be required of such a meeting, but all other requirements of the ODL would apply. I would encourage the Council that in the future, should it have any further questions regarding the ODL, please do not hesitate to contact this office for assistance.

CONCLUSION

Based on the foregoing, it is my opinion that the Council violated the ODL when it took official action at its March 6, 2012 orientation on issues beyond the Council member's roles and responsibilities as public officials.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: New Amsterdam Town Council