



STATE OF INDIANA

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June 4, 2013

Mr. Stephen A. Wilson
23807 Euclid St.
Schneider, Indiana 46376

*Re: Formal Complaint 13-FC-154; Alleged Violation of the Open Door Law by
the Schneider Town Council*

Dear Mr. Wilson:

This advisory opinion is in response to your formal complaint alleging the Schneider Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Richard Ludlow, Council President, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that you are a member of the Council. You allege that on May 1, 2013, Council President Ludlow entered into a contract on behalf of the Town with Mr. Larry Winkle, to provide town utilities, sewer, and water to Mr. Winkle's business. The matter was never brought before the Council for discussion or vote prior to the contract being agreed to by Council President Ludlow, which you allege is in violation of the ODL.

In response to your formal complaint, Council President Ludlow advised that pursuant to the Town's Water and Wastewater Ordinance, anyone located inside the Town limits must be provided water and sewer service. In 2007, Mr. Winkle's business was granted permission to provide his own temporary well. On September 13, 2012, during a public meeting, the Council addressed the issue of a building inside Town limits that the Town did not supply service to. During the February 25, 2013 public meeting, a resident inquired why Mr. Winkle's business was not hooked up to the Town's service. On March 14, 2013, the issue was again discussed in a public meeting. A sewer camera was being rented and Councilman Jack Jeralds explained that the camera would be used to find any possible utility taps for the business. All three members of the Council agreed to set up water and sewer service to the business.

At the April 22, 2013 public meeting, it was explained that the Town had the means to connect the business to the water and sewer service, but additional materials

were needed. An estimate was provided for the materials and labor to accomplish the connection. Councilman Jeralds was absent from the meeting, the affirmation to purchase the materials was given by Council President Ludlow. The minutes of the April 22, 2013 meeting were accepted by you and Council President Ludlow.

After receiving information on an estimate of installation, Town Clerk-Treasurer Jenny Beier was advised by Councilman Jeralds to make a contract for agreement to pay for such services. Ms. Beier created a contract and explained to Mr. Winkle that it was not an official invoice, but a promise to pay for the installation. Ms. Beier further provided that after the work was completed, an official invoice would be submitted. Mr. Winkle agreed and signed the document. On May 2, 2013, the signed contract was discussed further and you were not in agreement with the dollar amount. It was explained that what was provided was only a rough estimate; a further detailed invoice would follow once the job was completed. It was necessary to create a contract to hold Mr. Winkle liable for the respective costs.

During the May 20, 2013 public meeting, you voted against the acceptance of the Clerk-Treasurer's docket. Specifically, you questioned the purchase of warrants outlined by APV 3660 and 3661. The Town's Basic Code Chapter 33 – Finance, 33.06 provides that the Clerk-Treasurer is authorized to make payments in advance of allowance for utility connections, maintenance, and service agreements. A fully itemized invoice is required, which was in possession by the Clerk-Treasurer for both warrants in question. Lastly, (C) provides that the Council will give allowance at the next public meeting, which was approved by vote of the Council. Pursuant to the 2012 Indiana Elected Officials Handbook, a municipal utility may maintain, extend, and install its services without adopting plans and specifications if the work is done by the employees of the utility. In sum, Council President Ludlow maintains that the outline provided clearly demonstrates that there were no “back room” decisions being made as to the connection to Mr. Winkle's place of business and the Council has ensured that all residents of the Town are provided with the best water and sewer services.

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. *See* I.C. § 5-14.1.5-2(e). “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). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c).

The basis of your formal complaint is that members of the Board conducted private meetings at to the connection of utility services to Mr. Winkle's place of business, no deliberation was taken prior to the services being provided, and lastly no vote was taken to approve the matter. From the Council's response, it is clear that the issue had been discussed a number of times at prior meetings of the Council, dating back to September 2012. Council President Ludlow has denied that private "back room" decisions had been made regarding the connection. The ODL does not instruct governing bodies as to what actions require the governing body to vote. *See Opinions of the Public Access Counselor 08-FC-136 and 12-FC-144.* Further, even if the Council did vote, there is no requirement that a governing body deliberate prior to taking such action. The Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80.* Therefore, it is my opinion that the Council complied with the requirements of the ODL if all meetings of the body were held in public and all final action that was taken was done in a public meeting.

CONCLUSION

Based on the foregoing, it is my opinion that the Council complied with the requirements of the ODL if all meetings of the body were held in public and all final action taken was performed in a public meeting.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, flowing style.

Joseph B. Hoage
Public Access Counselor

cc: Richard Ludlow