

April 19, 2000

Mr. Ralph Nicolosi, Board Member
Cordry Sweetwater Conservancy District
509 Owl Drive
Ninevah, IN 46164

Re: Advisory Opinion 00-FC-11 *Grounds to File a Formal Complaint with the Office of the Public Access Counselor for Alleged Violations of the Indiana Open Door Law when Complainant Attended the Meeting.*

Dear Mr. Nicolosi:

This is in response to your formal complaint, which was received on March 24, 2000. You have alleged that the Board of the Cordry Sweetwater Conservancy District ("Board" and "District") has violated the Indiana Open Door Law ("ODL,") Indiana Code chapter 5-14-1.5, by taking final action in an executive session conducted on February 23, 2000. Mr. Brian J. Deppe, Attorney for the District, responded in writing to your complaint in a letter dated March 28, 2000. A copy of his response is enclosed for your reference. In addition to addressing your complaint, Mr. Deppe has also alleged that you do not have standing to file a formal complaint under Indiana Code section 5-14-5-6(2) because you were not denied the right to attend a public meeting of the Board-as a member of the Board you were in attendance at the meeting in question.

It is my opinion that since you were not denied the right to attend a meeting conducted under the ODL, you do not have grounds to file a formal complaint with this Office. You are, however, entitled to make an informal inquiry about the state's public access laws. The substance of your complaint, therefore, has been addressed in the enclosed informal written response from this Office.¹

BACKGROUND

According to your complaint, you are a new member of the Board. On February 23, 2000, an executive session was conducted that excluded members of the public and a local newspaper reporter. The Board was having problems with a contractor that had been hired to dredge the lake. The substance of your formal complaint concerned a possible violation of the ODL during that executive session.²

In his response, Mr. Deppe stated that under Indiana Code section 5-14-5-6, a person who has been denied the right to attend a public meeting may only file a formal complaint. Since you are a

member of the governing body, therefore, your formal complaint is not appropriate. Mr. Deppe also addressed the substance of your complaint.³

ANALYSIS

In 1999, the Indiana General Assembly enacted legislation creating the Office of the Public Access Counselor and a formal complaint process. *See generally, P.L. 70 and P.L. 191-1999.* The Public Access Counselor may receive and respond to informal inquiries and issue advisory opinions in response to formal complaints. Ind. Code §5-14-4-10(5) and (6); Ind. Code §5-14-5-9. An informal inquiry may be made by the public or public agencies by telephone, in writing, by facsimile, in person, or electronic mail. Ind. Code §5-14-4-10(5). The informal inquiry process, therefore, is available to most any person who has questions or concerns about the state's public access laws.

Alternatively, in the formal complaint process, the grounds for filing a formal complaint, and receiving a formal advisory opinion in response are limited to:

Any person or public agency denied

1. the right to inspect or copy records under the Access to Public Records Act;
2. the right to attend any public meeting of a public agency in violation of the ODL; and
3. any other right conferred by the Access to Public Records Act or the ODL or any other statute or rule governing access to public meetings or public records.

See, Indiana Code section 5-14-5-6. In the present case, you were not denied the right to attend a public meeting of the Board. For this reason, you do not have grounds to file a formal complaint with this Office. You are, however, entitled to receive an informal response to your concerns and that response is enclosed.⁴

CONCLUSION

It is my opinion that you do not have grounds to file a formal complaint with this Office alleging violations of the Open Door Law because you were not denied the right to attend a public meeting of the Board of Cordry Sweetwater Conservancy District. You are, however, entitled to and will receive an informal response to your concerns.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Brian J. Deppe, Attorney
Cordry Sweetwater Conservancy District

¹ Indiana Code section 5-14-4-10(5) governs informal inquiries. For those who are viewing this opinion electronically, [click here](#) to access the text of the informal written response.

² See footnote 1.

³ See footnote 1.

⁴ See footnote 1.
