

June 12, 2000

Mr. Joe Kreyling  
6733 Eagle Drive  
Ninevah, IN 46164

Re: Advisory Opinion 00-FC-14      *Alleged Violation of the Indiana Open Door Law by the Board of the Cordry Sweetwater Conservancy District.*

Dear Mr. Kreyling:

You filed a formal complaint with this office on May 22, 2000, concerning the legality of a meeting between two members of the Cordry Sweetwater Conservancy District Board ("CSCD" and "Board"), and representatives of a dredging contractor and bond company on April 24, 2000. Specifically, you have asked whether action taken violated the Indiana Open Door Law, Indiana Code 5-14-1.5-1 et. seq. since there was no notice provided or opportunity for the public to attend this meeting. Mr. Brian Deppe, attorney for the Board, filed a response on behalf of the Board and its Chair, Deborah Wencka, on June 1, 2000 and supplemented that response with a copy of the minutes of the March 15, 2000 Board meeting on June 8, 2000. Copies are enclosed for your reference.

For the following reasons, it is my opinion that a committee of the Board that constituted a governing body under Indiana Code section 5-14-1.5-2 was formed on March 15, 2000. Consequently, this committee violated the Open Door Law when it held a meeting on April 24, 2000 without posting notice and providing the public an opportunity to observe and record this meeting.

#### BACKGROUND

The CSCD entered into a contract with Tennant's Industrial Dredging, Inc. ("Tennant") for the dredging of Sweetwater Lake. The Board was responsible for negotiating the contract and was to oversee the execution of Tennant's dredging responsibilities. Problems with Tennant ensued and the Board called an executive session<sup>1</sup> on February 23, 2000, to discuss its options regarding the contract.

According to the information you provided, Chair Wencka, Mr. Stan Willen, Vice-Chair of the Board, and Mr. Deppe met with the dredger, Tennant, his attorney and a representative of the bond company. President Wencka prepared a summary of the meeting that indicated that it was an "informational meeting," that Tennant agreed to take various steps concerning the dredging project and that the members of the Board in attendance were "optimistic that (Tennant) will continue the project in the fall." Other members of the Board were not included in this meeting nor was the public invited.

Mr. Deppe responded that the April 24th gathering of Chair Wencka, Vice-Chair Willen, representatives of the Bond Company and Tennant was not a "meeting" that is subject to the requirements of the Open Door Law. He indicated that "pursuant to the terms of the bond, the District cannot declare a default under the contract . . . until it requests and attempts to arrange for a conference between the contractor . . . and the surety . . .to discuss methods of performing the contract." The meeting was not subject to the Open Door Law and no official action was taken according to Mr. Deppe's analysis, therefore, so there was no requirement that the public be notified or invited. Mr. Deppe also stated that it was "well known" within the District that this conference would be held concerning the contractual dispute and that no one was excluded from it, nor did anyone attend it.

In order to determine how it was decided that the Chair and Vice-Chair of the Board attended the meeting on April 24th, I contacted Mr. Deppe on June 7, 2000. He consulted with the Chair and provided me a copy of the Board's meeting minutes of March 15, 2000, at which a motion to appoint the Chair and Vice-Chair to represent the Board in the meeting with Tennant and the bond company was made and carried by the Board.<sup>2</sup>

## ANALYSIS

The intent and purpose of the Open Door Law is that the "official action of public agencies be conducted and taken openly, unless otherwise expressly permitted by statute, in order that the people may be fully informed." Ind. Code §5-14-1.5-1. The provisions are to be "liberally construed with the view of carrying out its policy." Id.

Indiana Code section 5-14-1.5-3 provides that "all meetings of the *governing bodies of public agencies* must be open at all times" except as provided in Indiana Code section 5-14-1.5-6.1, which concerns executive sessions, so that the public may observe and record them. (Emphasis added.) A "meeting" is defined as "a gathering of a majority of the members of the governing body of a public agency for the purpose of taking official action on public business." Ind. Code §5-14-1.5-2(c). A governing body is defined, in relevant part, as:

two (2) or more individuals who are:

\* \* \*

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

"Official action" includes, receiving information, deliberating, making recommendation and establishing policy. Ind. Code §5-14-1.5-2(d).

Applying these definitions to the facts presented, it appears clear that the two members of the Board were a committee of the Board to which authority to take official action on public business had

been delegated. A governing body must be at least two or more persons and there were two Board members were appointed at their March 15, 2000 meeting. Official action was taken in the form of receiving information as is evidenced by Chair Wencka's own summary of the April 24th meeting in which she indicated this was an "informational meeting." Certainly the matter was also public business in that it concerned the performance, or lack thereof, under a contract between the CSCD and Tennant. It is my opinion, therefore, that the committee of the Board that met with Tennant and the bond company on April 24, 2000 was subject to the requirements of the Open Door Law and the failure to post notice as required under Indiana Code section 5-14-1.5-5 and to provide the public an opportunity to observe and record this meeting violated the Law.

## CONCLUSION

It is my opinion that the meeting held by the committee of the Cordry Sweetwater Conservancy District Board on April 24, 2000, was subject to the requirements of the Open Door Law and the failure to post notice of this meeting and provide the public an opportunity to observe and record it violated the Open Door Law.

Sincerely,

Anne Mullin O'Connor

cc: Mr. Brian Deppe, Attorney  
CSCD

<sup>1</sup>This executive session was the subject of Advisory Opinion of the Public Access Counselor, Number 00-FC-12.

<sup>2</sup>According to the minutes, all seven members of the Board were present at this meeting.

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