

May 16, 2001

Mr. Richard A. Brackemyre
7722 N. Cr. 1000 E.
Seymour, IN 47274

Re: 01-FC-25; Alleged Violations of the Open Door Law by the Board of the Seymour Community Schools

Dear Mr. Brackemyre:

This letter is in response to your formal complaint, which was received in this Office on April 26, 2001. You have alleged that the Seymour Community School's Board ("Board") violated the Open Door Law ("ODL") Indiana Code section 5-14-1.5.

Specifically you have alleged that during the course of the March 13, 2001 executive session the Board discussed the basketball coach and sports and other extra-curricular activities in violation of the ODL. You also allege that on April 10, 2001 the Board held another executive session and discussed two items in violation of the ODL.¹ First, you claim that the Board discussed the changing of the home economics curriculum to a synergistic system and the expenditure of ninety-thousand dollars. Second, you claim that the Board received information and discussed the building of a fence at Brown School to keep people from using the open field during school hours. Mr. David W. Paugh, the School attorney, responded on behalf of the Board. A copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that a discussion of an employee's job performance evaluation during the March 13th executive session was not a violation of the ODL because the Board did provide notice under Indiana Code section 5-14-1.5-6.1(d). If, however, the Board held a discussion that went beyond that of an employee's job performance into another discussion about sports and other extra-curricular activities, then it is my opinion that those discussions would have violated the ODL. It is also my opinion that the Board violated the ODL by discussing the Home Economics curriculum and the expenditure of money during the April 10th executive session. Further, the discussion of the fence at Brown School during the April executive session also violated the ODL.

BACKGROUND

According to the facts as you have presented them, two executive sessions were held in recent months during which the Board discussed various matters regarding the school. One such meeting was held on March 13, 2001. According to your complaint, at that meeting the Board discussed the basketball coach, sports and other extra-curricular activities. Then, on April 10, 2001 the Board held another executive session. During that meeting, you allege that the Board discussed the Home Economics curriculum, the expenditure of ninety-thousand dollars and the erection of a fence at Brown School.

In response to your complaint, Mr. Paugh stated that on March 13th the Board had a discussion regarding the job performance of its varsity basketball coach, but that proper notice had been given for that exception.² Mr. Paugh did not, however, address whether the Board held a discussion about sports and other extra-curricular activities during the executive session.³ Mr. Paugh admitted that the April 10th discussion concerning the Home Economics' curriculum and expenditure of money was held in violation of the ODL. Mr. Paugh also stated that the Board did receive information concerning the building of a fence at Brown School on April 10th. According to his response "the topic was brought up not to get the approval of the School Board, but to advise the Board that it may be hearing from employees of the school system who were upset about the location and erection of the fence."

ANALYSIS

The intent and purpose of the ODL is 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." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Board is a governing body of a public agency subject to the ODL. Ind. Code § 5-14-1.5-2(b)(2).

As noted above, the general rule is that meetings of public agencies are to be held openly, so that the public may "observe and record them." Ind. Code § 5-14-1.5-3(a).

The exception to the general rule that a meeting of the governing body must be open to the public is an executive session. Executive session is defined as a meeting "from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose." Ind. Code § 5-14-1.5-2 (f). Executive sessions, however, may only be held under the narrowly construed statutory exceptions listed under Indiana Code section 5-14-1.5-6.1 and only after posting appropriate notice to the public. Ind. Code §5-14-1.5-6.1(d).

March 13, 2001 Executive Session

According to your complaint, during the March 13th executive session the Board discussed the varsity basketball coach. In his response, Mr. Paugh admitted that the Board "discussed the job performance of the Varsity Basketball Coach." Mr. Paugh asserts and I agree that the discussion of a job performance evaluation of a coach is an appropriate topic of conversation for an executive session pursuant to Indiana Code section 5-14-1.5-6.1(b)(9) so long as proper notice of the executive session was provided.⁴ Therefore, it is my opinion that to the extent that the Board discussed the job performance evaluation of the basketball coach during its March 13th executive session, there was no violation of the ODL.

You also allege, however, that the Board discussed sports and other extra-curricular activities during the March 13th executive session. Mr. Paugh did not address this issue in his response. Since I did not have

any information other than that provided in your complaint about this issue, it is my opinion that the extent that the Board discussed anything other than the job performance evaluation of individual employees, such discussion would have violated the ODL.

April 10, 2001 Executive Session

According to your complaint, two issues were discussed during the April 10, 2001 executive session that you believe were in violation of the ODL. First, you stated that the Board discussed changing the Home Economics curriculum to a synergistic system and the expenditure of ninety-thousand dollars. Mr. Paugh, in his response, admits that the Board did receive information from the administration regarding construction of a home economics lab by a vendor, Synergistics, Inc and that this was discussion was held in violation of the ODL. The discussion of the Home Economics curriculum and expenditure of money by the Board in executive session, therefore, violated the ODL.

Secondly, you complain that the Board received information and discussed the building of a fence at Brown School. During the executive session, the Board was informed by the administration that it may be hearing from employees of the school system who were upset about the location and erection of the fence. According to Mr. Paugh, the former Superintendent thought that this action was appropriate under the ODL as involving personnel. The ODL does provide certain personnel-related exceptions, none of these exceptions would have permitted such a discussion in executive session.⁵ It is my opinion that the Board violated the ODL when it received and discussed information about building the fence in executive session.

Mr. Paugh stated in his response to your complaint that there was no intention to make a decision about the fence. He said that the topic of the fence was brought up "*not to get the approval of the School Board, but to advise* the Board that it may be hearing from employees of the school system who were upset about the location and erection of the fence." Official action under the ODL is more broadly defined than just making a decision or approving an item. Official action includes receiving information, deliberating, making recommendations, establishing policy, making decisions, or taking final action. Ind. Code § 5-14-1.5-2(d). The fact that no decisions were made during this executive session does not mean that the Board did not take official action in executive session in violation of the ODL.

CONCLUSION

In conclusion, it is my opinion that to the extent that the Board of the Seymour Community Schools discussed the job performance evaluation of the basketball coach during its March 13th executive session, there was no violation of the ODL. As for the allegation that other issues were also discussed during that executive session, it is my opinion that any discussion beyond the notice, which provided only for the discussion of the job performance evaluation of individual employees, violated the ODL.

With respect to the April 10th executive session, it is also my opinion, and the Board concedes, that it was a violation of the ODL to discuss changing the Home Economics' curriculum and the expenditure

of ninety-thousand dollars. Finally, it is my opinion that the Board violated the ODL when it received and discussed information concerning the erection of a fence at Brown School during that executive session.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Paugh, Seymour

Community Schools, Attorney

¹ The minutes of the March 13th executive session do not indicate that sports and extra-curricular activities were discussed. According to a telephone conversation you had with my staff attorney Sandy Barger, you did not know about this discussion until April. For this reason, I will consider your complaints about the March 13th executive session timely filed and address it in this Opinion.

² The Agenda for the March 13th Regular Meeting included as the last item "Executive Session to Discuss Job Performance of Individual Employees (I.C. 5-14-1.5-7). The citation should have been to Indiana Code section 5-14-1.5-6.1(b)(9) and while not part of your complaint, I would remind the Board to ensure that their meeting and executive session notices conform to the requirements of both Indiana Code sections 5-14-1.5-5 and 5-14-1.5-6.1(d).

³ In response to another complaint filed with this Office, Mr. Paugh did indicate that the former Superintendent did acknowledge that there was a discussion on these subjects, but he did not recall when that discussion took place.

⁴ See footnote 2.

⁵ See Indiana Code sections 5-14-1.5-6.1(b)(5), (6), & (9).