

June 7, 2001

Mr. Richard E. Frost
507 Stonehedge Drive
Carmel, IN 46032

Re: Advisory Opinion 01-FC-29; Alleged Violation of the Notice Requirements of the Open Door Law by the Carmel City Council.

Dear Mr. Frost:

This is written in response to your formal complaint, which was filed on May 17, 2001. You have alleged that the Carmel City Council ("Council") violated the Indiana Open Door Law, Indiana Code chapter 5-14-1.5. In particular, you claim that the Council's Land Use and Annexation Committee ("Committee") conducted a public meeting on May 16th without publishing legal notice in the local newspapers and that a majority of the full Council was present and that there was no notice that the Council would be meeting. Mr. Wayne Wilson, Chairman of the Committee, responded in writing to your complaint and a copy of his response is enclosed for your reference. In addition, Ms. Sue Beesley, attorney for the Council, provided additional information, a copy of which is enclosed. For the reasons set forth below, it is my opinion that the Council did not violate the Open Door Law notice requirements in the conduct of its meeting on May 16, 2001.

BACKGROUND

According to your complaint, on May 16, 2001, the Committee held a public "hearing" on the subject of a possible annexation of 8,800 acres of Western Clay Township, Hamilton County, Indiana, into the City of Carmel. You were in attendance and observed a majority of the members of the Council were present, five (5) of seven (7) members. You allege that since a majority of the Council was present this violated the Open Door Law. Further, you allege that no legal notice was published in either the Noblesville *Ledger* or the Noblesville *Times* newspapers.¹

In response to your complaint, Mr. Wilson stated that your complaint is without merit. The scheduled public information meetings concerning the annexation of Western Clay Township, including the meeting at Towne Meadow on May 16, 2001, were all meetings of the full Council, not the Committee. Notice was sent to the official newspaper by the Carmel City Clerk's Office on May 7, 2001. Further, Ms. Beesley's correspondence included a copy of the public notice posted in City Hall.

ANALYSIS

Under the Open Door Law, when the majority of the members of a governing body meet to take official action on public business, they must provide notice under Indiana Code section 5-14-1.5-5. Notice must be provided of the date, time and place of the meeting. Ind. Code §5-14-1.5-5(a). Notice to the public must be posted outside the principal office of the governing body, or if no such office exists, at the building where the meeting will take place. Ind. Code §5-14-1.5-5(b)(1). Notice must also be provided to any media that requested copies of the governing body's notices by January 1 of any calendar year. Ind. Code §5-14-1.5-5(b)(2).

The notice to the media under Indiana Code section 5-14-1.5-5(b)(2) is not for the purpose of publishing a legal notice. Rather, this notice is to alert the media that a meeting will be held by the governing body. There are instances when a governing body must, by statute, ordinance, rule or regulation publish a legal notice in a local newspaper pursuant to Indiana Code chapter 5-3-1. Ind. Code §5-14-1.5-5(e). The Open Door Law states that if a legal notice is published, then the governing body need not also comply with the additional notice requirements under Indiana Code section 5-14-1.5-5.

The question is whether there would be any obligation for the Council to publish legal notices in the local newspaper(s) under Indiana Code chapter 5-3-1 for the five (5) public information meetings in question. Generally, governing bodies are directed to publish legal notices by statute.² If a governing body is required to publish a legal notice under Indiana Code chapter 5-3-1, then Indiana Code section 5-3-1-2 sets forth the requirements for the frequency and number of those publications.

Often, the requirement for publication of notices is part of the governing body's enabling act. Under Indiana Code section 36-4-6-7, the requirements for conducting regular and special meetings of the Council are addressed.

(a) The legislative body shall hold its first regular meeting in its chamber at 7:30 p.m. on the first Monday in January after its election. In subsequent months, the legislative body shall hold regular meetings at least once a month, unless its rules require more frequent meetings. (b) A special meeting of the legislative body shall be held when called by the city executive or when called under the rules of the legislative body.

The enabling act for the Council, therefore, does not require the publication of a legal notice for the five (5) public information meetings in question.

Finally, there are requirements for publication of legal notices under the state land annexation statutes, Indiana Code chapter 36-4-3. From the information you provided, it appears that the public information meetings in question are being held prior to the introduction of any annexation ordinance. There does not appear, therefore, to be any statutory requirement that the Council publish legal notice of the public information meetings held concerning the annexation of Western Clay Township. For the reasons set forth above, it is my opinion that the Council was not required to publish legal notice of the public information meetings under Indiana Code chapter 5-3-1.

he Council did have obligations to post notice under the Open Door Law apart from the publication of a legal notice under Indiana Code chapter 5-3-1. Notice should have been provided in accordance with Indiana Code section 5-14-1.5-5. Under this provision, notice to the public must be posted outside the principal office or the meeting location. According to Ms. Beesley's correspondence, the public notice of the May 16th informational meeting was posted at City Hall, its principal office, and, in the case of meetings held on other days, the notice was also posted at the meeting location. As far as notifying the media under Indiana Code section 5-14-1.5-5, the Council was only required to send a copy of their notice to the newspapers so that they would be aware of the meetings. According to both Mr. Wilson and Ms. Beesley this was done. For these reasons, it is my opinion that the Council did comply with the Open Door Law notice requirements under Indiana Code section 5-14-1.5-5.

You have also alleged that it was a violation of the Open Door Law for five (5) of the seven (7) Council members to attend the meeting on May 16, 2001. According to Mr. Wilson, the notice of these public information meetings provided that they were meetings of the Council, not the Committee. It is clear from the notice posted at City Hall that the notice stated that these meetings were meetings of the Council. A copy of the notice is enclosed for your reference. Your allegation that the Council violated the Open Door Law in this instance, therefore, is not supported by the facts.

CONCLUSION

For the reasons set forth above it is my opinion that the Council did not violate the Open Door Law notice requirements in the conduct of its meeting on May 16, 2001.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Wayne A. Wilson
Carmel City Council

Ms. Sue Beesley
Attorney

¹ You have also raised concerns about the organization of the Council in January, 2000 as being contrary to Indiana Code section 36-4-6-8(b). As I have informed you on at least one prior occasion, this question is beyond the scope of the authority of this Office and this Opinion will not address it.

² See, for example, Indiana Code section 6-1.1-17-3 which expressly requires a public agency to publish legal notices in qualified newspapers of their estimated budgets and proposed tax rates and levies.