

April 4, 2002

Mr. Richard E. Frost
507 Stonehedge Drive
Carmel, IN 46032-7400

Re: *Advisory Opinion 02-FC-11*;

Alleged Violation of the Open Door Law by the Hamilton County Board of Commissioners and the Hamilton County Council.

Dear Mr. Frost:

This is in response to your formal complaint, which was received on March 21, 2002. You have alleged that the Hamilton County Board of Commissioners ("Commissioners") and Hamilton County Council ("Council") have violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Commissioners and Council held a joint retreat without properly posting notice of this meeting under Indiana Code section 5-14-1.5-5(b)(1). Mr. Michael A. Howard, attorney for the Commissioners, and Mr. John F. Culp, attorney for the Council, provided a joint written response to your complaint. A copy of their response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Commissioners and Council did comply with the notice requirements of the ODL with respect to their joint retreat held on March 1, 2002.

BACKGROUND

According to your complaint, the Commissioners and Council held a joint retreat on Friday, March 1, 2002. You allege that these governing bodies did not post a copy of the notice of the retreat outside of the principal offices for these governing bodies as is required under Indiana Code section 5-14-1.5-5(b)(1). With your complaint, you have provided digital photos taken on February 28th that show that notices were not posted as required under the ODL. In particular, you provided a photo of the area outside of the Commissioners and Council meeting room as evidence that there was no notice posted of the March 1st retreat. You acknowledge that the media must have received notice of the retreat as the time and date were published in the Indianapolis Star, so your complaint is limited to your allegation that the Commissioners and Council did not post notice properly under Indiana Code section 5-14-1.5-5(b)(1).

In response to your complaint, Messrs. Howard and Culp provided an affidavit prepared by Ms. Kim Rauch, Executive Secretary to the Hamilton County Auditor, who is responsible for posting notices for the Commissioners and Council. According to Ms. Rauch, she did post a copy of the meeting notice/agenda for the March 1st meeting on February 20, 2002 on the public bulletin board in the southwestern corner of the first floor of the Hamilton County Government and Judicial Center. This bulletin board is apparently the closest bulletin board to the principal offices for the two governing bodies. She also faxed

copies of this notice/agenda to various media organizations on February 20th and provided copies of the facsimile transmission receipts with her affidavit. The meeting agenda was posted at the meeting location during the entire meeting held on March 1st.

Ms. Rauch confirmed by telephone today that the bulletin board on which she placed the meeting notice is used for all such notices¹ and is directly across from the principal offices of both the Commissioners and Council. She stated that the sign outside of the meeting room typically used by these governing bodies is used only for the posting of the specific agenda for whatever meeting may be taking place in the meeting room, a room that is used by many different groups.

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 Commissioners and the Council are public agencies and governing bodies subject to the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b).

Notice of the date, time and place for a meeting of a governing body must be provided at least forty-eight (48) hours in advance, not including Saturdays, Sundays or legal holidays. Ind. Code §5-14-1.5-5 (a). The notice must be posted "at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held." Ind. Code §5-14-1.5-5(b).

Under the facts presented, it appears the Commissioners and Council did post notice of their meeting in accordance with the ODL. The notice/agenda was posted at the principal office for each governing body, specifically on a bulletin board used for this purpose that is located outside of the two principal office entrances for the governing bodies involved. The fact that the notice was not also posted at the Commissioners and Council's usual meeting room is not problematic under the ODL because the notice need only be posted at the principal office or the meeting location, not both, at least forty-eight (48) hours before the meeting takes place. For these reasons, it is my opinion that the Commissioners and Council did conform to the requirements of the ODL with respect to the posting of their joint retreat notice/agenda.

CONCLUSION

It is my opinion that the Hamilton County Board of Commissioners and the Hamilton County Council did post notice of their joint retreat, held on March 1, 2002, in conformance with the Open Door Law.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Michael A. Howard, Attorney for HCBoC

Mr. John F. Culp, Attorney for HCC

¹ The bulletin board is used for other notices as well, such as employment notices and other items of interest to Hamilton County residents