

May 31, 2002

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

Re: *Advisory Opinion 02-FC-18*;

Alleged Violation of the Open Door Law by the Hamilton County Drainage Board.

Dear Mr. Frost:

This is in response to your formal complaint, which was received on May 17, 2002. You have alleged that the Hamilton County Drainage Board ("Drainage Board") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Drainage Board violated the ODL by listing an executive session at the end of its public meeting agenda for May 13, 2002 but then not holding one. Mr. Michael Howard, attorney for the Drainage Board, provided a written response to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Drainage Board did not violate the ODL by canceling its executive session scheduled for May 13, 2002.

BACKGROUND

According to your complaint, at the May 13, 2002 Drainage Board meeting, an agenda listed an executive session to be conducted at the end of the public meeting. You claim that during the public meeting, the Drainage Board indicated that a certain matter would be discussed in executive session, but instead Mr. Howard met with individual outside of the meeting room to discuss the issue. Consequently, no executive session was held. You claim that the Drainage Board should not have placed an executive session on the agenda unless they were certain that they would be holding one. As a result, you filed a formal complaint with this Office.

In response to your complaint, Mr. Howard stated that the Drainage Board did in fact schedule and advertise an executive session to be held on May 13, 2002. During the public meeting, an agenda item was addressed concerning the acquisition of a drainage easement from a property owner. The property owner appeared at the public meeting, and after a brief discussion, the Board asked Mr. Howard to discuss the issue with the property owner individually in order to determine whether they could avoid an eminent domain proceeding. Mr. Howard did meet with the property owner and it appears as if there will be no eminent domain proceeding. For this reason, there was no need to hold the scheduled executive session. Mr. Howard contends that there was no ODL violation presented with respect to the Drainage Board's May 13th meeting.

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 Drainage Board is a public agency and a governing body subject to the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b).

An executive session is defined as a meeting from which the public is lawfully excluded but for which the governing body may invite persons necessary to the purpose of the executive session. Ind. Code §5-14-1.5-2(f). Notice of the date, time and place for a meeting or executive session 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). In addition, for executive session notices, the governing body must indicate the purpose or purposes for which the meeting will be held under Indiana Code section 5-14-1.5-6.1(b). There is nothing in the ODL that prohibits a governing body from canceling a scheduled executive session.

Under the facts presented, it appears that your complaint is directed at the fact that the Drainage Board scheduled an executive session but did not actually hold that executive session. Under the ODL, the Drainage Board was required to provide proper notice of the planned executive session under Indiana Code section 5-14-1.5-5. Nothing in your complaint indicates that there was any problem with the notice of the scheduled executive session, only that you believe that the governing body was required to hold that executive session if it was scheduled. For these reasons, it is my opinion that the Drainage Board did not violate the ODL by canceling their executive session on May 13, 2002.

CONCLUSION

It is my opinion that the Hamilton County Drainage Board did not violate the ODL by canceling a properly scheduled executive session on May 13, 2002.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Michael Howard, Attorney for the HCDB w/o enclosure
