

October 1, 2002

Ms. Donna Marsh  
3030 W. Private Rd. 395 North  
North Vernon, IN 47265

Re: Advisory Opinion 02-FC-42; Alleged Violation of the Open Door Law by the Jennings Northwest Regional Utility.

Dear Ms. Marsh:

This is in response to your formal complaint, which was received on September 3, 2002. You have alleged that the Jennings Northwest Regional Utility Board ("Utility Board") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the Utility Board violated the ODL by failing to post notice of its meeting held on August 13, 2002 and by holding its meetings at a private, gated community with a guard posted at the entrance to the community. Ms. Mary Ann Gay, attorney for the Utility Board, provided a written response to your complaint. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the August 13th meeting was a "meeting" of the Utility Board as defined under the ODL and that the failure to post notice of this meeting violated the ODL. Furthermore, it is my opinion that it is not a violation of the ODL for the Utility Board to meet in a private, gated community with a guard posted at the entrance so long as the public is not prevented from entering the meeting location.

## BACKGROUND

In your complaint, you allege that the Utility Board failed to post notice of its August 13, 2002 meeting. You further stated that the Utility Board held its meeting at a private, gated community with a guard posted at the entrance, which according to your complaint is not freely open to public access. You contend that many residents in the Utility Board's district find it intimidating to enter the gated community, and therefore they choose not to attend the meetings.

In her response, Ms. Gay stated that a decision had been made that she and Mr. Dave Brinkman, District Treasurer would meet with the Country Squires Lake Community Association to explain a recent rate increase and to answer questions. This is the meeting that took place on August 13, 2002. Ms. Gay also stated that the Utility Board did not deliberate, receive information, or take any action at the meeting, so there was no violation of the ODL. Ms. Gay contends that members of the Utility Board attended only in support of her efforts to address any concerns the homeowner's association might have had about the rate increase. Ms. Gay did concede that four of the seven members of the Utility Board attended a portion of the meeting. However, she advised that the Utility Board did not take official action, and that

the four Utility Board members were there only by chance and did not intend to avoid the requirements of the ODL.

## 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 Utility Board is a governing body subject to the ODL. Ind. Code §§ 5-14-1.5-2(b).

A meeting for the purposes of the ODL is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code §5-14-1.5-2 (c). There are three elements to this definition: a majority, official action and public business. If all three elements are met, the requirements of the ODL apply, including providing notice of the meeting and preparing memoranda. See, Ind. Code §§5-14-1.5-4 and 5.

The August 13th meeting, first, must have included a majority of the Utility Board. Ms. Gay conceded in her response that the Utility Board consists of seven members, and that near the end of the August 13th meeting four members of the Utility Board were present. Therefore, it is my opinion that a majority of the Utility Board was present during the August 13th meeting. It should be noted that according to Ms. Gay a majority of the Utility Board was present at the meeting by "mere chance," and there was no intent by the Utility Board to violate the ODL.

The action taken at the August 13th meeting must also have been "official action" by the Utility Board in order to be subject to the requirements of the ODL. Official action is defined under the ODL to include receiving information, deliberating and taking final action, or a vote on a matter. Ind. Code §5-14-1.5-2 (d). Ms. Gay stated in her response that the meeting was held so that she could explain the utility rate increase and to answer any questions the homeowner's association had. It is my opinion that those Utility Board members in attendance did receive information, at a minimum, and consequently took official action at the August 13th meeting.

The third element for the purposes of a meeting under the ODL is whether the issues involved were the public business of the Utility Board. Public business is defined in the ODL to mean "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). According to the information provided in your complaint and Ms. Gay's response, it is clear that the utility rate increase is public business of the Utility Board.

It is my opinion that a majority of the members of the Utility Board took official action on public business at the August 13th meeting and consequently, notice should have been provided under Indiana Code section 5-14-1.5-5. The Utility Board's failure to do so violated the ODL. While it appears that the attendance of a majority of the members was not planned, it is still incumbent upon a governing body to

ensure that they comply with the requirements of the ODL.

You further complained that the August 13th meeting was held in a gated community, with a guard posted at the entrance. You contend that some residents were intimidated by the location of the meeting and chose not to attend. The ODL places one restriction upon governing bodies when selecting locations, the meeting location must be accessible to people with disabilities. Ind. Code § 5-14-1.5-8. However, it is my opinion that the governing body should also ensure that no barriers exist that would prevent access to the meeting location such as locked entrance doors at the meeting site or payment of fees to enter the facility. It is my opinion that it is not a violation of the ODL to hold a meeting in a gated community so long as entry into the gated community was not restricted so as to prevent the public from accessing the meeting location.

## CONCLUSION

It is my opinion that the Jennings Northwest Regional Utility Board violated the Open Door Law when a majority of the members attended the August 13, 2002 meeting and took official action on their public business without posting notice of the meeting. However, it is also my opinion that it is not a violation of the Open Door Law for a governing body to hold a meeting at a gated community so long as the public is not prevented from accessing the meeting location.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Mary Ann Gay, Attorney