

September 26, 2002

Mr. J. Michael Loomis
323 West Berry Street
Fort Wayne, IN 46802

Re: *Advisory Opinion 02-FC-48*; Alleged Violation of the Indiana Open Door Law by the Fort Wayne-Allen County Airport Authority.

Dear Mr. Loomis:

This is in response to your formal complaint, which was received on September 19, 2002. You have alleged that the Fort Wayne-Allen County Airport Authority Board ("Board") violated the Indiana Open Door Law ("ODL") by failing to provide you with specific notice of the Smith Field Closure Committee's ("Committee's") August 21st and September 10th meetings. Mr. C.T. "Skip" Miller, Executive Director for the Airports, responded in writing to your complaint and a copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Board did not violate the ODL with respect to posting of the notice of the Committee on September 10, 2002.

BACKGROUND

According to your complaint, on August 21, 2002, the Committee met without giving sufficient and timely notice of that meeting. You had notified the Board on September 6th that you are representing Smith Airfield Forever, Inc. and had requested a meeting with the Board president and attorney. You indicate that the Committee met a second time, on September 10th, without notice to those persons, like yourself, who had specifically notified them that you had an interest in the activity of the Board and this Committee. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Miller stated that it is his position that there were no violations of the ODL with respect to the Committee's meetings of August 21st and September 10th. In July 2002, the presiding officer of the Board, Mr. Michael Gouloff, appointed a committee of three (3) persons to meet with staff of the Airport Authority regarding a proposed closure plan. On August 21, 2002, a meeting of the Committee was scheduled for the conference room at the Baker & Daniels law firm offices in Fort Wayne. Only one member of the committee, however, showed up for that meeting, so there was no "meeting" as defined by the ODL. Mr. Miller did not state whether or not notice had been posted for the August 21st meeting forty-eight (48) hours in advance, but he did indicate that memoranda were prepared and attached to his response.

On September 10th, another meeting of the committee was planned for the Baker & Daniels location.

Notice of this meeting was posted at the principal office for the Committee, and at the building where the meeting was to be held and provided to news media that had made requests for notice of such meetings under the ODL. Notice was, according to an affidavit provided in Mr. Miller's response, provided directly to WPTA Television Channel 21. Memoranda of this meeting were also kept as required under the ODL.

Mr. Miller also acknowledged that you had contacted Mr. Thomas Logan, an attorney who generally represents the Fort Wayne-Allen County Airport Authority. It is Mr. Miller's position, however, that your contacts to Mr. Logan, by telephone or by letters dated September 10th and 16th, did not constitute the written notices from news media that is contemplated under the ODL. Further, Mr. Miller stated that your letters would not have required them to provide you with specific notice, but in any event neither of your letters specifically ask that you be present at any future meetings of the Board or the Committee.

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). In addition, the Committee, which was appointed by the presiding officer of the Board on July 22, 2002 is also a "governing body" under the ODL. Ind. Code §5-14-1.5-2(b)(3).

A meeting 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). Meetings of a governing body must be held openly, with the exception of executive sessions, including affording the public the right to attend, observe and record these meetings. Ind. Code §5-14-1.5-3(a). Further, if the ODL applies to a meeting, the Committee must have posted notice in accordance with Indiana Code section 5-14-1.5-5.

Under Indiana Code section 5-14-1.5-5, the Committee would be obligated to post notice outside their principal office or meeting location at least forty-eight (48) hours before the time of any meeting. Ind. Code §5-14-1.5-5(b)(1). In addition, the Committee was required to provide notice to "all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body." Ind. Code §5-14-1.5-5(b)(2).

In your complaint, you allege that the Committee's held their meetings of August 21st and September 10th in violation of the notice requirements of the ODL. There is no indication in your complaint or Mr. Miller's Response that notice was posted for the August 21st meeting. Under Indiana Code sections 5-14-1.5-5(a) and (b), notice of the time, date and place of a public meeting must be given at least forty-eight (48) hours in advance of the meeting by posting for the public and by providing specific notice to news media that had requested such notice. In response to your complaint, Mr. Miller stated that only one (1) of the three (3) Committee members showed up at the August 21st meeting, so this did not constitute a

meeting subject to the notice requirements of the ODL.

It appears from the information provided, however, that the lack of a majority of the Committee being present at the August 21st meeting was not planned. From Mr. Miller's response, the entire Committee was expected to attend the meeting-making this a meeting of a majority of the members of the Committee and subject to the requirements of the ODL. Arguably, it was not known forty-eight (48) hours prior to that meeting that only one (1) member of the Committee was going to show up. It is my opinion that the Committee should have provided the required notice under the ODL, but because only one (1) member of the Committee actually attended, it is also my opinion that the August 21st meeting ultimately did not constitute a "meeting" under the ODL. Technically then, the ODL does not require notice when less than a majority of the members of the Committee meet. If, however, just one (1) other committee member had attended the August 21st meeting, my opinion would be different. I caution the Board and the Committee in the future to be vigilant about the requirements of the ODL-the requirements for providing notice are not burdensome

With respect to the September 10th meeting, it appears that notice was not only posted outside the principal office for the Committee, but also at the meeting location. In addition, Mr. Miller provided an affidavit from Mr. Keith Spittler, Assistant Secretary for the Board, indicating that specific notice was provided to WPTA Television Channel 21, apparently the only news media that had requested such notice.. In addition, memoranda of this meeting were created as required under Indiana Code section 5-14-1.5-4(b). It is my opinion, therefore, that the notice provided for the September 10, 2002 meeting complied with the requirements of the ODL.

You raised in your complaint, however, the issue of whether the Board or Committee was somehow obligated to provide specific notice to you because of your contact to Mr. Logan on September 6th by telephone and in the two letters you provided dated September 10th and September 16th. The ODL does not require a governing body to provide specific notice upon request of an individual or organization, other than as required for news media, that make a request under Indiana Code section 5-14-1.5-5(b)(2). While the Board and Committee may do so, the failure to do so did not violate the ODL.

CONCLUSION

In conclusion, it is my opinion that the Fort Wayne-Allen County Airport Authority Board and Smith Field Closure Committee did not violate the notice requirements of the Open Door Law with respect to Committee meetings scheduled for August 21 and September 10, 2002.

Sincerely,

Anne Mullin O'Connor

Enclosures cc: Mr.C.T. "Skip" Miller, Executive Director of Airports
