

March 26, 2003

Warren A. Auxier
P.O. Box 215
Hanover, IN 47243

Re: *Advisory Opinion 03-FC-16*; Alleged Violation of the Indiana Open Door Law by the Board of the Southwestern-Jefferson County Consolidated School Corporation.

Dear Mr. Auxier:

This is in response to your formal complaint, which was received on March 20, 2003. You have alleged that the Board of the Southwestern-Jefferson County Consolidated School Corporation ("School Board") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically, you claim that the School Board violated the ODL by taking final action on the superintendent's contract at an executive session. Mr. Gary K. Kemper, Attorney for the School 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 School Board did not hold a meeting in violation of the ODL with respect to the extension of the superintendent's contract.

BACKGROUND

In your complaint, you allege that on December 16, 2002, the School Board took final action on changes to the employment contract of the superintendent in an executive session. You searched agendas, memoranda and minutes of the School Board and found no record of this action having taken place in a public meeting. You learned of this action only after making a public records request and reviewing the documents produced to you on March 17, 2003. You then filed your formal complaint with this Office.

In his response, Mr. Kemper stated that no action was taken by the School Board on December 16, 2002. Apparently, by its own terms, the superintendent's contract would be automatically extended from an end date of 2005 to 2006 unless the School Board had notified him in writing by December 15, 2002 that the agreement would not be extended. Mr. Kemper stated that since no action had been taken on or before December 15th with respect to the contract, the Board was only signing a memorandum to that effect on December 16th. In addition, Mr. Kemper stated that this was signed after the public meeting on

that night prior to the start of the scheduled executive session and was not discussed in the executive session.

You followed up your complaint on March 25th with an additional letter outlining your position that the School Board did more than just renew the same terms of the superintendent's contract when it signed the memorandum dated December 16, 2002, in particular the term of the contract and his salary. You also asked questions about the meaning of the contract language. I sent your inquiry to the superintendent, Dr. Daniel Schroeder, for review this morning ¹ and he contacted me by telephone. Dr. Schroeder referred to School Board policy 4.03 as authority for the manner in which his contract has been handled since the signing of his original contract in 1999. You may wish to review that policy. These additional questions raised today, however, are outside of the purpose and scope of the formal complaint process for this Office. This Opinion will only address the alleged violation of the ODL by the School Board on December 16, 2002.

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 School 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). Notice of the date, time and place of meetings must be posted and these meetings must be open for the public to attend, observe and record. Ind. Code §§ 5-14-1.5-3 and 5-14-1.5-5. A record of the meeting, or memoranda, must also be created within a reasonable period of time after the meeting ends. Ind. Code §5-14-1.5-4(c).

Governing bodies may also conduct executive sessions, which are meetings from which the public may be excluded, under the limited circumstances outlined at Indiana Code section 5-14-1.5-6.1(b). Notice must be provided for an executive session under Indiana Code section 5-14-1.5-5 as well as a record of the meeting, or memoranda. Ind. Code §§5-14-1.5-4(b) and 5-14-1.5-6.1(d).

If a governing body fails to comply with the requirements of the ODL, any person may file an action in a court of competent jurisdiction concerning the alleged violation. Ind. Code §5-14-1.5-7(a). A variety of remedies are available under the ODL, including declaratory judgment, injunctive relief, and in certain circumstances, a declaration by the court that a policy, decision or final action is void. Id.

According to your complaint, you learned on March 17, 2003 that the School Board had signed a memorandum extending the superintendent's contract by one year to the year 2006. It is your opinion that some discussion of this memorandum and the issue of extending the superintendent's contract must have happened outside of a public meeting of the School Board, whether in executive session or

otherwise. Mr. Kemper stated in his written response that this memorandum was signed after the public meeting on December 16th and was not acted upon or discussed in the executive session that followed. Dr. Schroeder confirmed this today by telephone and indicated that it is a common practice after a public meeting for the School Board to sign documents that the superintendent has brought to the meeting, but that are not necessarily discussed or acted upon at that meeting.

From the information provided to me, after December 15, 2002 passed and the School Board had not notified the superintendent that his contract would not be extended, his contract was automatically renewed. There does not appear to be any requirement that the School Board memorialize this in any written fashion, but they did so on December 16, 2003 after the close of their public meeting. You believe that the School Board held a meeting in violation of the ODL in order to discuss this extension because you can find nothing in the public meeting records to indicate it was ever discussed. Nothing in the memorandum signed by the School Board or the language of the contract addendum concerning extensions indicates that a meeting is required for this purpose.² It is my opinion that it is not a violation of the ODL for a governing body to attend to some administrative tasks after the close of a public meeting, so long as the public is not excluded from observing the governing body during that time.³ Based upon the information provided to me, it is my opinion that the School Board did not hold a meeting in violation of the ODL concerning the extension of the superintendent's contract.

CONCLUSION

It is my opinion that, given the information provided to me, the Board of the Southwestern-Jefferson County Consolidated School Corporation did not violate the Open Door Law with respect to the December 2002 extension of the superintendent's contract.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Rees, Attorney

¹ Mr. Kemper is out of his office for the rest of this week.

² As noted above, this Opinion will not address whether or not the School Board renewed the superintendent's contract properly or with changes. This Opinion will only address the alleged violation of the ODL.

³ See, *Advisory Opinion of the Public Access Counselor, 01-FC-57*
