

December 10, 2007

Elizabeth Madden
3046 Brook Hill Court
Georgetown, Indiana 47122

*Re: Formal Complaint 07-FC-348; Alleged Violation of the Open Door Law by the
Georgetown Town Council*

Dear Ms. Madden:

This advisory opinion is in response to your formal complaint alleging the Georgetown Town Council (“Council”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by taking final action in an executive session. I have enclosed a copy of the Council’s response to your complaint for your reference. In my opinion the Council did not violate the Open Door Law.

BACKGROUND

You allege the Council must have held executive sessions to take final action regarding a proposed sewage treatment plant in Georgetown. You do not allege that you learned of a specific date or time an executive session was held without notice to the public. Instead, you allege that final action must have been taken in an executive session because no final action concerning the issue was ever taken at an open meeting. You mailed your complaint on November 17, and I received it on November 19.

The Council responded to your complaint by letter dated November 27 from Town Manager Kenton Griffin. Mr. Griffin asserts that at a special meeting of the Council held on May 4, 2006, Ordinance G-06-26 was passed. Mr. Griffin contends that Ordinance G-06-26 meets all the legal requirements with which the Town must comply to build a sewer treatment plant. The ordinance addressed implementation and authorization to build the plant, a sewer utility bond issue, and bond anticipation notes in advance of the bond issue. Because these issues were all addressed in ordinance G-06-26, the Council contends no further meetings were needed to discuss the issues.

The Council also indicates that a court estopped the Town from building the plant on the property designated for the plant. The ruling was issued on December 1, 2006. Mr. Griffin indicates the Town attorney conducted “a couple of Executive Session meetings” for discussion

of strategy with respect to pending litigation, as allowed by I.C. §5-14-1.5-6.1(b)(2)(B). No decisions were made in those meetings about where to place the plant.

ANALYSIS

It is the intent of the Open Door Law 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. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. §5-14-1.5-3(a). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. §5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. §5-14-1.5-2(g).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). Notice shall be given by posting a copy of the notice at the principal office of the public agency or at the building where the meeting is to be held if no principal office exists and by delivering to the news media who submit an annual request for notices by January 1. I.C. §5-14-1.5-5(b). Public notice of executive sessions must state the subject matter by reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). I.C. §5-14-1.5-6.1(d).

A person or public agency that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after the person receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice. I.C. §5-14-5-7. Here, you have filed a complaint alleging that a secret meeting or meetings must have occurred, but you do not allege a date on which such meeting(s) occurred. It is my understanding you believe a meeting or meetings occurred but have not received notice in fact that a meeting was held. As such, I believe this complaint should have been submitted instead as an informal inquiry. Since there is no difference in effect of a formal advisory opinion versus an informal inquiry opinion (See I.C. §5-14-4-10), I issue the following opinion.

You allege that decisions regarding the plant must have been made in a secret meeting or meetings. The Council contends that final action regarding the plant was taken at an open meeting. Such final action was memorialized in Ordinance G-06-26, passed May 4, 2006. The Council contends that ordinance addressed all the issues related to the plant, and as such no further final action was necessary. In my opinion, this ordinance, passed in an open meeting, is

evidences that final action related to the plant was taken at an open meeting. I see no evidence that any further final action has been taken related to this matter.

The Council further contends it conducted executive sessions related to the litigation about the location of the plant. The Town attorney conducted the sessions, and at least one of the outcomes of the meetings was the decision to ask the attorney to file an appeal from the December 1, 2006 ruling stopping construction of the plant on the selected site. So long as the pending litigation or the initiation of litigation by the Council were the only items discussed, notice was posted 48 hours in advance of each executive session, and the appropriate instance for the executive session (I.C. §5-14-1.5-6.1(b)(2)(B)) was listed on the notice, it is my opinion the Council did not violate the ODL by conducting these executive sessions.

CONCLUSION

For the foregoing reasons, it is my opinion the Council did not violated the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Kenton Griffin, Georgetown Town Manager