



STATE OF INDIANA

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June 3, 2008

Melody Brunson
Editor, Washington Times-Herald
102 East VanTrees Street
Washington, Indiana 47501

*Re: Formal Complaint 08-FC-127; Alleged Violation of the Open Door Law
by the Washington Community School Board*

Dear Ms. Brunson:

This advisory opinion is in response to your formal complaint alleging the Washington Community School Board ("Board") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by failing to provide proper notice for a meeting. I have enclosed a copy of the Board's response to your complaint for your reference. In my opinion the Board did not provide proper notice for the May 8, 2008 meeting and as such violated the Open Door Law.

BACKGROUND

You allege you learned on May 8 of a special meeting of the Board scheduled for 5:00p.m. that evening. You allege that notice was not provided to the newspaper but was posted at the school corporation headquarters. You further allege that on December 31, 2007 the newspaper requested all notices for 2008. You received an acknowledgement of this request from the superintendent on January 3, 2008. You mailed this complaint on May 13, and we received it on May 15.

The Board responded to the complaint by letter dated June 2 from Superintendent William Bruce Hatton. Dr. Hatton contends he learned on May 5 that the girls' basketball coach selection committee had reached a decision regarding a recommendation for a new coach. The committee recommended filling the position as soon as possible to prepare for the summer. On May 6 Dr. Hatton telephoned Board members to determine whether they were available for the meeting on May 8. He followed the calls with a memorandum to the Board indicating the meeting would be held May 8. Dr. Hatton indicates he asked the secretary to prepare the notice he would then deliver to the newspaper. He contends he became busy on May 6 and failed to deliver the notice. On May 7 he was away from the

office. Dr. Hatton indicates that the athletic director telephoned the newspaper at 3:00pm on May 8 to notify the paper of the meeting and announcement. Dr. Hatton indicates it was at that time he realized the notice had not been sent.

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). The Board is a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

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).

You have provided evidence the newspaper requested by January 1 of this year meeting notices for 2008. You allege, and the Board concedes, that notice of the May 8 meeting was not delivered to the newspaper until 3:00pm the day of the meeting, two hours before the meeting was to begin.

The meeting was not a meeting called to deal with an emergency involving actual or threatened injury to person or property or actual or threatened disruption of the governmental activity under the jurisdiction of the agency, so it was not an emergency meeting, for which forty-eight hour notice would not be required. I.C. § 5-14-1.5-5(d). Because the Board did not deliver notice to the newspaper forty-eight hours in advance of the meeting, the Board violated the ODL. Once the Board or superintendent realized notice was not provided, the meeting should have been rescheduled to allow a forty-eight hour notice.

CONCLUSION

For the foregoing reasons, it is my opinion the Board violated the Open Door Law by not providing sufficient notice to the newspaper of the May 8 meeting.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor

cc: William Bruce Hatton, Washington Community Schools