



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 30, 2008

Judy Hemmerling
227 North Vine Street
Thorntown, Indiana 46071

*Re: Formal Complaint 08-FC-244; Alleged Violation of the Open Door Law
by the Colfax-Perry Township Public Library*

Dear Ms. Hemmerling:

This advisory opinion is in response to your formal complaint alleging the Colfax-Perry Township Public Library Board ("Library") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by providing insufficient notice for an executive session. A copy of the Library's response to the complaint is enclosed for your reference. In my opinion the Library violated the ODL if it did not provide notice of the executive session to any news media who requested notice under I.C. § 5-14-1.5-5. Further, the Library violated the ODL if it conducted the executive session during the regular meeting absent statutory authority to do so.

BACKGROUND

You filed a complaint on December 1, 2008 (postmarked November 25), alleging the Library violated the ODL by failing to provide sufficient notice for an October 27 executive session. You indicate the Library adjourned the regular meeting to conduct the executive session and then reconvened the regular meeting to vote on the Library Director's employment status.

The Library responded to the complaint by facsimile transmission dated December 1. The fax is unsigned but appears to have been sent from Alice Bell, Library Board of Trustees President. The Library contends notice of the executive session was posted at the front entrance of the library 48 hours prior to the meeting. The Library provides a copy of the notice of the regular meeting. At the bottom of the notice is the following indication: "Executive Session" and then "Employee Evaluations." The Library indicates the regular monthly Board meeting notice was published in *The Times*.

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).

Regarding notice, the ODL provides the following:

(a) 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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering 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 of the public agency. . .

I.C. § 5-14-1.5-5.

Here, the Library was required to provide notice of the executive session as prescribed by I.C. § 5-14-1.5-5. While it is apparent the Library provided notice of the regular meeting to the newspaper, I have no indication the Library provided (at least 48 hours prior to the meeting) notice of the executive session to the news media who requested such notice. If the Library did not provide notice to the news media, the Library violated the ODL (specifically, I.C. § 5-14-1.5-5(b)(2)) even though the notice was posted at the office location in compliance with I.C. § 5-14-1.5-5(b)(1).

Regarding the substance of the notice, I would note that the executive session is a separate meeting and is not part of the regular meeting. As such, it is my opinion that in the future the Library should indicate the date, time and location of the executive session on the notice as well as the date, time and location of the regular meeting. The two cannot occur at the same time. The Library may not conduct an executive session during a meeting except as otherwise permitted by statute, nor may the Library recess and

reconvene a regular meeting for the purpose of conducting an executive session during the meeting. *See* I.C. § 5-14-1.5-6.1(e). If the Library did, as you indicate, adjourn the regular meeting for the executive session and then reconvene the regular meeting after the executive session and did so without separate statutory authority, the Library violated I.C. § 5-14-1.5-6.1(e).

CONCLUSION

For the foregoing reasons, it is my opinion the Library violated the ODL if it did not provide notice of the executive session to any news media who requested notice under I.C. § 5-14-1.5-5. Further, the Library violated the ODL if it conducted the executive session during the regular meeting absent statutory authority to do so.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Alice Bell, Colfax-Perry Township Public Library