



STATE OF INDIANA

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April 13, 2009

Tom DeArk
PO Box 2062
Clarksville, Indiana 47131

Re: Informal inquiry 09-INF-11 regarding the Town of Clarksville Town Council

Dear Mr. DeArk:

This is in response to your informal inquiry dated February 16, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write regarding the Town of Clarksville Town Council ("Council"). You pose five questions, essentially inquiring whether the Council violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) and, if so, what can be done to enjoin the Council from committing future violations.

BACKGROUND

You indicate that on November 21, 2008 the Council held a public hearing for the proposed 2009 budget. You allege the gathering was advertised as a meeting even though quorum was not present.

You submit the following questions:

1. Was this a "meeting" or a "gathering"?
2. Is the act of conducting a public hearing considered "official action"?
3. Is a "meeting" required to conduct a public hearing, or can a public hearing be legally conducted at a "gathering" or "convening" of a minority of the town council?
4. Has the Clarksville Town Council violated the ODL by conducting a public hearing outside of a "meeting"?
5. If a violation has occurred, what can be done to enjoin the Clarksville Town Council from committing future violations?

My office provided the Council the opportunity to respond to the allegations. The Council responded to the inquiry by undated letter received on March 9 from Clarksville Town Attorney Christopher Sturgeon. The Council contends there was no violation of

the ODL because no meeting occurred. There was no meeting because a quorum of the Council was not present. The Council suggests you may be confusing a hearing on the budget with a meeting. The public hearing held on November 21 was held pursuant to I.C. § 6-1.1-17-3, which requires a town to hold a public hearing on its proposed budget. Further, the Council contends that the hearing was open to the public and that you attended and spoke.

ANALYSIS

The ODL requires that a meeting of a governing body of a public agency must be open so members of the public may observe and record. Ind. Code § 5-14-1.5-3(a). A “meeting” is a “gathering of a 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” is receiving information, deliberating, making recommendations, establishing policy, making decisions, or taking final action (i.e. voting). I.C. § 5-14-1.5-2(d).

You inquire whether the November 21 event was a meeting or a gathering. In my opinion, it was a “public hearing,” as required by I.C. § 6-1.1-17-3. While I.C. § 6-1.1-17-3 requires a political subdivision to hold a public hearing on its estimated budget, I find nothing in Ind. Code 6-1.1-17 which requires a majority of the members of a governing body to be in attendance at the public hearing. In other words, nothing in the statute requires the public hearing to be a meeting for the purposes of the ODL. If the meeting had been attended by a majority of the members of the governing body, it would have been a meeting for the purposes of the ODL since a majority of the members of the governing body would have gathered to take official action on public business. See I.C. § 5-14-1.5-2(c).

Here, though, the hearing was not a meeting for the purposes of the ODL. As such, the requirements of the ODL are not implicated. It is also important to understand that nothing in the ODL requires a governing body to meet in order to take “official action.” Instead, the ODL requires that when a majority of the members of a governing body do gather for the purpose of taking official action on public business, that gathering is a meeting and must be open so the public may observe and record, unless another provision allows the meeting to be closed to the public. I.C. § 5-14-1.5-3.

There was no gathering of a majority of the governing body. As such, there was no meeting. And if there was no meeting, the ODL was not implicated by the Council’s actions. The ODL does not provide guidelines for taking actions when there is no meeting. I find no authority to require the Town’s hearing on its proposed budget to be attended by a majority of the members of the Town Council.

Your final question is contingent upon the finding of an ODL violation. You inquire about enjoining the Council from committing future violations. This office does not have the power to enjoin the Council from taking any action. For an injunction, you would need to go to any court of competent jurisdiction. See I.C. § 5-14-1.5-7. Here, though, it is my opinion there has been no violation.

CONCLUSION

For the foregoing reasons, it is my opinion the Council has not violated the ODL.

Best regards,

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

Heather Willis Neal
Public Access Counselor

Cc: Christopher Sturgeon, Clarksville Town Attorney