



STATE OF INDIANA

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September 22, 2011

Ms. Michelle L. Reller
503 Pleasant View Drive, #44
Huntingburg, Indiana 47542

Re: Formal Complaint 11-FC-223; Alleged Violation of the Open Door Law by the City of Jasper; Converted to Informal Inquiry 11-INF-52

Dear Ms. Reller:

This advisory opinion is in response to your formal complaint alleging the City of Jasper ("City") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Sandra Hemmerlein, City Attorney, responded on behalf of the City. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on August 5, 2011, the City held a meeting at 4 p.m. at the Jasper City Hall. You provide that "Strassenfest" a local annual event, was being held at the same time in downtown Jasper and the City Square had been blocked off for the event. Due to pulmonary hypertension, you have difficulty breathing when attempting to walk any distances. You initially attempted to park in the handicapped parking area located in the City Hall Parking Lot ("Lot"), but were unable due to all of the spots were occupied. You eventually were able to find a parking spot in a local business lot. You allege that the City violated the requirement that a public agency may not hold a meeting at a location that is not accessible to an individual with a disability by holding the meeting at a time when it was aware of the increased traffic in the downtown area.

In response to your formal complaint, the City denied the allegation that the meeting was held at a location that was not accessible to an individual with a disability. The City advised that in regards to the handicapped parking provided by the City for its meetings, the American with Disabilities Act Accessibility Guidelines for Building and Facilities, found under 2010 ADA Standards for Accessible Design, 2010 Standards for State and Local Government Facilities, requires that "where parking spaces are provided" such spaces "shall be provided in accordance with Table 208.2." (<http://www.ada.gov/regs2010/2010ADASTandards/2010ADAstandards.html>). Table

208.2 provides that where the total number of parking spaces provided in a parking facility is between 1 and 25, one of those spaces must be a handicapped accessible parking space. 28 C.F.R. 36, Appendix A, 2004 ADAAG 208.1 and 208.2 (<http://www.ada.gov/reg3a.html>).

The City provided that the Lot contains eighteen (18) spaces, one of which is identified as a handicapped accessible parking space in accordance with the ADA. The City maintains that “Strassenfest” did not cause the public to be denied access to the Lot nor did it affect accessibility to City Hall. The City further advised that you were in attendance at the meeting, as such the fact that the parking lot was full did not deny you access.

ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

A person denied the right to attend any public meeting of a public agency in violation of I.C. § 5-14-1.5 or denied any other right conferred by I.C. § 5-14-1.5 may file a formal complaint with the public access counselor. *See* I.C. § 5-14-5-6. You were in attendance at the meeting held on August 5, 2011. Because you were not denied access to the meeting, you lack standing to file a complaint with this office. *See Opinions of the Public Access Counselor 00-FC-11, 03-FC-32; 8-FC-168*. However, you are entitled to make an informal inquiry about the state's public access laws. The substance of your complaint, therefore, will be addressed by this Office as an informal inquiry, which I have enclosed for your review. *See* I.C. § 5-14-4-10(5).

You allege that the Commissioners violated the ODL by holding a meeting in a location not accessible to an individual with a disability. The ODL provides the following in regards to accessibility to individuals with disabilities:

Sec 8. (a) This section applies only to the following public agencies:

(1) A public agency described in section 2(a)(1) of this chapter.

(2) A public agency:

(A) described in section 2(a)(5) of this chapter;
and

(B) created to advise the governing body of a public agency described in section 2(a)(1) of this chapter.

(b) As used in this section, “accessible” means the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities (56 Fed. Reg. 35605 (1991)).

(c) As used in this section, “individual with a disability” means an individual who has a temporary or permanent physical disability.

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability.

As an initial matter, it must be determined whether Section 8 of the ODL applies to the City, as the statute specifically provides that it is only applicable to certain public agencies. I.C. § 5-14-1.5-2(a)(1) provides that a public agency means:

“Any board, commission, department, agency, authority, or entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.”

I have nothing before me that would indicate that the City would qualify as a “public agency” pursuant to section 2(a)(1) as it is not exercising an executive, administrative, or legislative power of the state. Thus, a determination must be made in regards to whether the City qualifies as a “public agency” pursuant to section (2)(a)(5) and was created to advise the governing body of a public agency described in section (2)(a)(1).

I.C. § 5-14-1.5(2)(a)(5) provides that a public agency means:

“Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.”

Here again, I have nothing before me to show that the City would qualify as a public agency pursuant to the ODL in accordance with section 2(a)(5). The City generally qualifies as a public agency pursuant to I.C. § 5-14-1.5-2(a)(1)(2), which provides that a public agency means:

“Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.”

Because the City is not a public agency subject to section 8 of the ODL, it is my opinion that the Commissioners have not violated section 8 of the ODL. *See Opinion of the Public Access Counselor 09-FC-235.*

As previous public counselors have opined, inclusiveness is consistent with the policy of the ODL. *See Opinions of the Public Access Counselor 02-FC-42; 07-FC-49; 09-FC-235.* As such, I will address the substantive portions of your informal inquiry. You do not allege that the City held the meeting in an actual facility that was not accessible by individuals with a disability, nor do you provide that the City failed to physically provide handicapped accessible parking spots in the City Hall Parking Lot. You allege that due to the meeting being held at the same time as “Stassenfest” it limited your ability to access the handicapped parking spots in the Lot.

Initially, I would note the City has provided detailed information that the Lot is in compliance with the standards established by the Americans with Disabilities Act. Notwithstanding the City holding the meeting at the same time as “Stassenfest”, the inability to access the Lot’s handicapped parking spot could arise anytime an individual attempted to use the Lot and said spot was already occupied. However, in the future if you become aware that the City is holding a meeting at the same time that the Lot may be abnormally congested, I would encourage you to contact the City prior to the meeting so that it may have an opportunity to accommodate you. At the same time, I would encourage the City to make every effort to comply with any such a request that it would receive prior to holding a public meeting. *See Opinion of the Public Access Counselor 07-FC-49.*

CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized and cursive.

Joseph B. Hoage
Public Access Counselor

cc: Sandra Hemmerlein