

February 24, 2005

Amy L. Cueller  
BOSE MCKINNEY & EVANS  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, IN 46204

*Re: Informal Inquiry Response; Alleged Violation of the Open Door Law by the City of Greendale*

Dear Ms. Cueller:

You have requested an informal opinion from the Office of the Public Access Counselor. Pursuant to Ind.Code 5-14-4-10, I am issuing this letter in response to your request. You have indicated that you have not yet filed a lawsuit with respect to this specific matter. Therefore, I may issue an advisory opinion in this matter of the City of Greendale's compliance with the Open Door Law. *See* Ind. Code 5-14-4-10(6).

The City of Greendale is a public agency subject to the Open Door Law. IC 5-14-1.5-2(a)(2). Its City Council is a governing body of a public agency. IC 5-14-1.5-2(b). The Greendale Board of Public Works is also a governing body. IC 5-14-1.5-2(b). Except as provided in section 6.1 of the Open Door Law, all meetings of the majority of the governing body of a public agency must be open at all times so that members of the public may observe and record them. IC 5-14-1.5-3(a). An executive session is a meeting from which the public may be excluded. An executive session may be held only in the circumstances listed at IC 5-14-1.5-6.1(b).

A governing body must post notice of a meeting or executive session at least 48 hours in advance of the meeting, excluding Saturdays, Sundays, and legal holidays. IC 5-14-1.5-5(a). The notice of an executive session is subject to special notice requirements. In the notice of an executive session, a governing body must include the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under IC 5-14-1.5-6.1. IC 5-14-1.5-6.1(d). Also, a governing body must keep memoranda of the executive session as the executive session progresses. The memoranda must include: 1) the date, time and place

of the meeting; 2) the members of the governing body who are present or absent; and 3) identify the specific subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. IC 5-14-1.5-4; IC 5-14-1.5-6.1(d). The memoranda must also certify that no other subject matter was discussed in the executive session. *Id.*

You have indicated to me that certain executive session notices of the Greendale City Council were deficient with respect to the lack of a specific reference to the enumerated instance or instances for which executive sessions may be held. In particular, the following executive sessions are at issue:

- February 25, 2003, “to discuss Valley Rural Utilities Contract.”
- August 13, 2003, “Personnel Issues; Grievance; Draft 2004 Salary Ordinance; VRUC.”
- September 10, 2003, “Utility Rate Discussion”
- April 21, 2004, “to discuss strategy with respect to initiation of litigation as provided in IC 5-14-1.5-6.1(b)(2)(B).”
- June 16, 2004, “Executive Session” (no explanation)
- November 10, 2004, “Contract Negotiations.”

With the exception of the April 21, 2004 executive session notice, the other notices are deficient in that they do not state the subject matter by reference to the enumerated instance or instances for which an executive session may be held, as required by IC 5-14-1.5-6.1(d). In addition, it is necessary to include the statutory citation in an executive session notice.

With respect to the deficient notices, it appears that, except for “personnel issues”, the other reasons for the executive session do not appear to fall within any of the permissible instances for meeting in executive session. IC 5-14-1.5-6.1(b). “Personnel issues” encompass at least three discrete executive session instances, and my office has often held that a notice reciting “personnel issues” is not an adequate notice of an executive session.

You have presented me with a copy of an e-mail from Clayton Miller, counsel for Greendale, in which he indicates that the City’s Clerk-Treasurer does not take minutes of executive session proceedings, nor are those sessions recorded in any fashion. Any failure to maintain memoranda that comply with the requirements of IC 5-14-1.5-6.1(d) is a violation of the Open Door Law.

You have also indicated that there were actions taken by Greendale to terminate its contract for sewer service with Valley Rural Utility Company in September 2004. No memoranda or meeting notice disclosed any discussion or vote to take this action. This raises the question whether such discussions took place in an executive session or in a meeting that was not properly noticed and the public invited. Likewise, the Board of Works’ action to approve intervention in a CTA proceeding was not preceded by a public meeting approving that August 27, 2004 action, although the Board of Works did vote to approve intervention in a *subsequent* meeting, on October 13, 2004. Any gathering of a majority of the City Council or Board of Works for purposes of taking official action on the bodies’ public business constituted a meeting for which notice should have been given. If the City or Board of Works met on these matters outside of a properly noticed meeting or a proper executive session, this would have been a violation of the Open Door Law.

Please let me know if you have any questions regarding this opinion.

Sincerely,

Karen Davis  
Public Access Counselor