

January 22, 2008

Mary Elgin
Calumet Township Trustee
35 East 5th Avenue
Gary, Indiana 46402

Re: Your informal inquiry regarding the Calumet Township Board of Lake County

Dear Ms. Elgin:

This is in response to your informal inquiries dated March 6, 2007 and June 28, 2007. I apologize for the delay in the response. I took office July 1 of this year and found a backlog of informal inquiries. I am currently endeavoring to address the backlog and issue opinions in response to the inquiries, pursuant to I.C. §5-14-4-10(5).

BACKGROUND

You make several complaints regarding the Calumet Township Board of Lake County (“Board”) and its alleged violations of the Indiana Open Door Law (“ODL”)(Ind. Code 5-14-1.5) and the Access to Public Records Act (“APRA”)(Ind. Code 5-14-3).

First, in your March 6 letter, you allege that the Board at its February 22, 2007 meeting authorized Chairperson Clorius Lay to take action with respect to a resolution in the absence of the other two Board members. You allege this is a violation of the ODL.

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. I.C. §5-14-1.5-1. 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. I.C. §5-14-1.5-3(a).

Regarding your allegation that the Board’s action on February 22, 2007 to allow Mr. Lay to make decisions on behalf of the Board, this matter is outside the scope of the ODL. While it is the intent of ODL that the official action of public agencies be conducted and taken openly, the ODL is triggered when a meeting, or a gathering of a majority of the governing body of a public agency to take official action on public business, occurs. See I.C. §5-14-1.5-2(c) defining

“meeting.” The ODL does not address the authority or lack of authority of a governing body to designate a person to act on its behalf.

In your March 6 letter you also allege that Mr. Lay and Alex Cherry, another member of the Board, held a meeting conducted secretly and without notice. As evidence of this meeting, you provide a copy of a letter from Mr. Lay wherein he indicates, “[i]mmediately following the Board meeting on February 22, 2007, Mr. Alex Cherry suggested that the Township offer the vehicle to the Gary Community School Corporation . . .” You allege that since Mr. Lay and Mr. Cherry had this discussion without notice, it violated the ODL.

Mr. Lay responded to your complaint by letter dated April 2, 2007, wherein he indicated that he did not meet with Mr. Cherry regarding the vehicle. A meeting occurs when a majority of the governing body of a public agency gathers for the purpose of taking official action on public business. I.C. §5-14-1.5-2(c). You allege that since Mr. Lay and Mr. Cherry discussed the vehicle, they held a meeting. It is my understanding this conversation occurred at the end of the February 22, 2007 Board meeting. I caution Mr. Lay and Mr. Cherry against taking official action on public business outside of a properly noticed meeting. Here, if the meeting had adjourned and the two did deliberate or make recommendations regarding the vehicle, they may have taken official action. See I.C. §5-14-1.5-2(d), defining “official action.” That the two had a brief discussion directly following a public meeting, and presumably had the discussion in public, provides some indication they did not intend to avoid the requirements of the ODL.

Finally, in your June 28 letter, you allege violations of the APRA related to the minutes of the Board meetings. Mr. Lay has indicated by letter dated January 6, 2008 that “[i]ssues regarding minutes of Calumet Township are presently pending before the Lake County Superior Court . . .” Pursuant to I.C. §5-14-4-10(6), I am precluded from issuing an opinion concerning a specific matter with respect to which a lawsuit has been filed under Ind. Code 5-15-1.5 or 5-15-3. As such, I will not issue an opinion with respect to the APRA complaint.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Clorius Lay, Chair, Calumet Township Board