

February 15, 2005 Opinion Regarding Whether the Anderson Township Volunteer Fire Department is a Public Agency under the Access to Public Records Act

February 15, 2005

Mr. Steve Kil
10955 W. 93rd Avenue
St. John, IN 46373

Re: Informal Inquiry Response regarding Anderson Township Volunteer Fire Department

Dear Mr. Kil:

My former staff attorney, Lea Ellingwood, informed me that you wished to receive a copy of the informal opinion that I rendered to Jim Anderson regarding the inclusion of volunteer fire departments in the definition of "public agency" under the Open Door Law and Access to Public Records Act. I enclose the text of an electronic mail message that I sent Mr. Anderson on February 15, 2005 below:

"Dear Jim Anderson:

You have asked several questions regarding the inclusion of volunteer fire departments under the Open Door Law and Access to Public Records Act. The definition of "public agency" in those laws are largely the same: under the Open Door Law, "public agency" is (2) 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.** IC 5-14-1.5-2(a)(2). Under the APRA, a "public agency" is "any (2) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town...; or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power." IC 5-14-3-2.

In the case of *Ayres v. Indian Heights Volunteer Fire Department, Inc.* 493 N.E.2d 1229 (Ind. 1986), the Indiana Supreme Court, construing the Indiana Tort Claim Act, held that a volunteer fire department of a township is an instrumentality of local government regardless of which of the five ways that a township may arrange to provide local fire service under IC 36-8-13 is utilized by the township. Hence, although you have not told me under what arrangements Anderson Township operates the volunteer fire department, I am assuming for purposes of this opinion that Anderson Township in Perry County is operating the volunteer fire department under the authority

of IC 36-8-13. Under *the* Ayres holding, I believe that the volunteer fire department operated by the township pursuant to a contract or otherwise, is subject to the APRA and the ODL.

To the extent that the Anderson Township Fire Department has a Board of Directors, meetings of a majority of the Board of Directors would be subject to notice and memoranda requirements, because under the Open Door Law, "governing body" is defined in part as "two or more individuals who are the board, commission, council, **or other body of a public agency** which takes official action on public business."

Note that not all meetings of members of the volunteer fire department must be open to the public; only meetings of a majority of a governing body, like the board of directors, must be open.

Also, you hint at concerns with respect to the authority of the volunteer fire department to dismiss members at will without offering due process. That issue is beyond my purview.

However, as to whether records concerning the dismissal of a member of the fire department are available for inspection and copying, no exemption exists that would protect those records, to my knowledge.

Please let me know if you have other questions regarding this. I am copying Laura Steele of the South Bend Tribune on this issue because she has expressed an interest in this opinion.

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

Sincerely,

Karen Davis
Public Access Counselor