

August 21, 1998

Mr. Michael Marturello
Post Office Box 180
Angola, Indiana 46703

Re: PAC Opinion 98-2; Executive sessions and delays of public meetings.

Dear Mr. Marturello:

You have asked whether the Fremont School Board violates the Indiana Open Door Law ("Law") when it conducts executive sessions before the scheduled public meetings and the executive sessions typically delay the start of the public meetings by up to 2 hours. I did contact the School Board President, over 4 weeks ago, and have not received a response. Given there has been ample opportunity for a response; I am issuing this opinion. For the reasons set forth below, it is my opinion that executive sessions that unreasonably delay the conduct of public meetings violate the notice requirements of the Law.

Background

On June 29, 1998, you contacted the Fremont School Board concerning the conduct of their executive sessions. You pointed to the June 15, 1998, meeting at which the executive session lasted 2 hours, delaying the start time for the public meeting. You have alleged that this is a common occurrence and such delays frustrate the public, who leave after waiting for some time, and are essentially deprived of the opportunity to attend the meetings. There being no response to my letter to the School Board President, the facts you provided provide the sole basis for this opinion.

Analysis

The intent and purpose of the Indiana Open Door Law ("Law") is that "official action of public agencies be taken openly, unless otherwise provided by statute, in order that the people may be fully informed." IND. CODE \S 5-14-1.5-1. The statutory exceptions are known as executive sessions, meetings from which the public is legitimately excluded for specific business of a governing body.

Executive sessions are permissible in the circumstances outlined in Indiana Code 5-14-1.5-6.1. Notice must be provided of an executive session in the same manner as notice is given for public meetings. IND. CODE \S 5-14-1.5-5(a). Further, Indiana Code 5-14-1.5-5(h) provides that

(n)otice has not been given in accordance with this section if a governing body of a public

agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe and record the meeting.

There is no case law interpreting this statutory provision, so we must turn to the rules of statutory construction for guidance.

"Generally, when construing a statute, the interpreting body attempts to give words their plain and ordinary meanings." *Indiana Wholesale Wine v. State of Indiana, Alcoholic Beverage Commission*, _____ N.E.2d _____ (Ind. 1998), *citations omitted*. If the language of a statute is clear and unambiguous, Indiana courts have held that it is not subject to judicial interpretation. *Town of Merrillville v. Merrillville Conservancy District*, 649 N.E.2d 645, 649 (Ind. App. 1995), *citations omitted*.

Applying these principles of statutory construction, it is clear that a governing body has not complied with the notice requirements of the Law when the actual meeting time departs so much from the scheduled time as to frustrate the ability of people to attend, observe and record the proceedings. Delaying public meetings, which are typically held in the evenings, by 2 hours, is an unreasonable departure from the time scheduled for the public meeting.

If a governing body has difficulty concluding executive session business within the time allotted, it does have options. The governing body may schedule executive sessions to begin after the close of public meetings or schedule an executive session on a day other than the public meeting date.

Conclusion

It is my opinion that executive sessions that unreasonably delay the start time of public meetings violate the notice requirements of the Indiana Open Door Law.

Sincerely,

Anne Mullin O'Connor