

July 9, 1999

Mr. Jack A. Ripley
P.O. Box 587
Parker City, Indiana 47368-0587

Re: PAC Opinion 99-6: Conduct of an election of town board president under the Indiana Open Door Law.

Dear Mr. Ripley:

This is in response to your letter of June 4, 1999, requesting an advisory opinion as to whether the Parker City Town Board ("Board") violated the Indiana Open Door Law, Indiana Code §§ 5-14-1.5-1, et seq. Specifically, you have asked whether board members can select a new president in a non-public meeting. Ms. Rebecca S. Bruce, attorney for the Board, responded to your concerns in a letter dated June 17, 1999. A copy of her letter is enclosed for your reference. For the reasons set forth below, it is my opinion that the selection of a new town board president must take place at a meeting that is open to the public under the Indiana Open Door Law.

BACKGROUND

In your letter, you stated that in May of 1999, Mr. Michael Ball, the duly elected president of the Parker City Town Board resigned from the Board. You attended a public meeting of the Board on June 3, 1999 and learned at the beginning of the meeting that another member, Mr. James Trautman had been selected as the new president of the Board in a non-public meeting held prior to the public meeting. When you questioned his selection in a non-public meeting, you stated that the attorney for the Board informed you that the procedures followed by the Board to select its new president were appropriate.

In her response, Board attorney Rebecca S. Bruce stated that the "Board's members voiced their desire to vote in" Mr. Trautman as president in a non-public meeting prior to the June 3rd public meeting. When it became clear that your objection was that the vote on the new president should have taken place at a public meeting, Mr. Trautman agreed and stated that he would act only in the capacity as "Acting President." Mr. Trautman then announced that the actual vote would take place at the next public meeting in July. The Board's position is that there was no violation of the Indiana Open Door Law since they plan to conduct an actual vote would occur at a future public meeting.

ANALYSIS

According to the facts presented, a non-public meeting was held to select a new Board president. Under Indiana Code section 36-5-2-7, a town legislative body "shall select one (1) of its members to be its president for a definite term, which may not exceed his term of office as a member of the legislative body." The president serves as the town executive. Ind. Code α 36-5-2-2. The selection of a president is clearly public business, so the question remains whether the non-public meeting at which the selection of a new president was discussed was proper under the Indiana Open Door Law.

In general, meetings of governing bodies of public agencies are to be conducted openly "for the purpose of permitting members of the public to observe and record them." Ind. Code α 5-14-1.5-3 (a). Governing bodies, such as town boards, are entities that are comprised of two or more individuals who take official action upon public business. Ind. Code α 5-14-1.5-2(b). A meeting, for the purposes of the Law, occurs when a majority of the members of a governing body gather to take official action on public business, which includes, among other things, making decisions and taking final action, such as a vote on any motion. Ind. Code α 5-14-1.5-2(c), (d) and (g).

There are exceptions to the general rule of openness under the Indiana Open Door Law, known as "executive sessions," that permit governing bodies to meet and exclude the public. Indiana Code section 5-14-1.5-6.1 outlines the instances when a governing body may conduct an executive session, except that the governing body may include any persons necessary to the purposes of the executive session. Ind. Code α 5-14-1.5-2(f). Since an executive session is the only type of meeting from which the public may be properly excluded¹, we must determine whether the Board conducted its non-public meeting in accordance with the Indiana Open Door Law.

Under Indiana Code section 5-14-1.5-6.1(b), an executive session may be conducted by the governing body of a public agency only in specific instances, including, but not limited to: the discussion of strategy with respect to collective bargaining or the purchase of real property up to the time that a contract or option to purchase is executed; to receive information about and interview prospective employees; and to discuss job performance evaluations of individual employees. None of the exceptions listed under Indiana Code 5-14-1.5-6.1(b) would permit a town board to select its president outside of a public meeting.

Further, the Board would have been required to provide public notice of any executive session in accordance with Indiana Code section 5-14-1.5-5. There is no indication that the public was notified, as required, of an executive session to select a new president for the Board. Under the Indiana Open Door Law, final action, in other words, the discussion or determination to name Mr. Trautman as president, should have taken place at a public meeting. Ind. Code α 5-14-1.5-6.1 (c).

Since the executive session provisions do not apply in this case, the Board should have conducted their discussion or determination to make Mr. Trautman the new board president at a meeting that was open to the public and otherwise complied with the Indiana Open Door Law. The Board's agreement to conduct final action at the July public meeting does not cure the violation that

occurred in the conduct of a non-public meeting prior to the June 3, 1999 public meeting. See, Ind. Code \textasciix 5-14-1.5-7(c).

CONCLUSION

It is my opinion that the selection of a town board president must take place at a meeting that is open to the public and in all other ways conforms to the requirements of the Indiana Open Door Law.

Sincerely,

Anne Mullin O'Connor

cc: James G. Trautman, Acting President
Rebecca S. Bruce
Enclosure

¹ Town boards may conduct administrative function meetings under Indiana Code 5-14-1.5-5(f) (2) without providing notice of the meetings, but the public is not excluded from such meetings.