

January 28, 2008

Jeff Eakins, Editor
Knightstown Banner, LLC
24 North Washington Street
PO Box 116
Knightstown, Indiana 46148

Re: Formal Complaint 08-FC-17; Alleged Violation of the Open Door Law by the Charles A. Beard Memorial School Corporation Board

Dear Mr. Eakins:

This advisory opinion is in response to your formal complaint alleging the Charles A. Beard Memorial School Corporation Board (“Corporation”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by taking final action on personnel matters by reference to agenda number or item alone. I have enclosed a copy of the Corporation’s response to your complaint for your reference. It is my opinion the Corporation’s Board did not violate the ODL because it did not take final action by reference to agenda number or item alone.

BACKGROUND

In your complaint, filed on behalf of Knightstown Banner, LLC (“Banner”), you allege the Corporation’s Board violated the ODL at the November 20, 2007 meeting when the Board took final action on agenda item III(C). You allege the Board President indicated that “personnel recommendations” was a “consent agenda item,” and as such the board would “take those all together unless the Board would like to take any one of those separate.” The motion to approve the recommendations was made by moving to approve “1 through 2(f) and also the volunteers,” which were listed on the consent agenda. The names and positions of the employees were not announced. You included an audio file containing this portion of the meeting, and from what I could make out when listening to it, I heard the motion as you describe it. Further, while the Banner had received a copy of the consent agenda the day prior to the meeting, the consent agenda was not made available at the meeting. You allege the Board violated I.C. §5-14-1.5-4(a) by taking final action on an agenda item by reference to only the agenda number.

The Corporation responded by letter dated January 9, 2008 from attorney D. Michael Wallman. Mr. Wallman, citing *Opinion of the Public Access Counselor 04-FC-02*, asserts that

the ODL does not dictate the format for an agenda, if a governing body chooses to utilize an agenda. Mr. Wallman contends the practice of the Board is consistent with the practice of school boards across the state, which as I understand it is to post a meeting agenda at the door prior to the meeting and then include in the Board's packet a group of materials which might include an outline including consent agenda information, among other items. Mr. Wallman contends, then, that the Board's reference to the consent agenda item numbers was not a reference to agenda item number alone because the consent agenda is not actually the meeting agenda. Mr. Wallman argues that if it is my opinion this is a violation of the ODL, which would lead to an interpretation of the ODL which would require the recitation of all information considered by the Board. For example, to approve the minutes of a prior meeting, the Board would be required to read the contents of the minutes aloud. Finally, Mr. Wallman argues that if this were a lawsuit, you would not have standing to file because you received a copy of the board packet materials.

ANALYSIS

It is the intent of the Open Door Law 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 Open Door Law, 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).

A person denied the right to attend any public meeting of a public agency in violation of I.C. 5-14-1.5 or any other right conferred by I.C. 5-14-1.5 or any other statute or rule governing access to public meetings may file a formal complaint with the counselor or may make an informal inquiry. I.C. §5-14-5-6.

While I understand Mr. Wallman's assertion that you would not have standing to file a lawsuit in this matter, anyone who is denied a right conferred by the Open Door Law may file a complaint with the counselor. I.C. §5-14-5-6. Because you allege a provision of the ODL was violated at a meeting you attended, you have standing to file a complaint with the counselor pursuant to I.C. §5-14-5-6.

You allege that the Board took final action which was adopted by reference to agenda number or item alone, which action would be void pursuant to I.C. §5-14-1.5-4(a). A governing body is not required to utilize an agenda, but a governing body who does utilize an agenda must post a copy of the agenda at the entrance to the meeting location prior to the meeting. I.C. §5-14-1.5-4(a). The ODL provides no guidelines for the content or structure of a meeting agenda, and this office has indicated that an agenda can take essentially any form. *Opinion of the Public Access Counselor 04-FC-02.*

Here, the meeting agenda contained this item: "III. C. Personnel Recommendations." When the board took action on this item, the President referred to the "Personnel Recommendations" item and indicated there were several of those contained on the consent agenda. The motion was then made to approve the items as listed on the consent agenda, including the paid positions, the volunteer positions, and the resignations. Mr. Wallman

contends the document to which the motion referred was not the meeting agenda or an agenda at all. Instead, it was a list of documents or materials in the Board packet which the administration prepares for the Board. The document on which the personnel information is listed is not entitled "agenda." It is somewhat confusing that the term "Consent Agenda Items" is listed on this document, but I agree with Mr. Wallman that this is not an agenda. As such, it is my opinion the final action was not taken by reference to agenda number or item alone.

If the Board had approved a motion on item III.C. with no further motion or reference to another document or list of employees, it is my opinion that would have been a final action with reference to agenda number or item alone. But here the Board referred to another document containing a list of the names and positions of those individuals to which the motion applied. This other document is a public record, disclosable to any requester. Further, the document was available to you prior to the meeting. Even if it had not been available prior to the meeting, it is my opinion the final action still would not have violated the ODL.

As Mr. Wallman illustrates, this action is similar to a Board's approval of the minutes of a previous meeting. If a Board took action by voting on "Item IIIA", for instance, that would be a violation of I.C. §5-14-1.5-4(a). But if a Board makes a motion to approve the minutes from the previous meeting, the Board does not violate the ODL when it does not read the minutes at the meeting or indicate the substance of the minutes. In my opinion, the present issue is no different.

I do not find any direct violation of the ODL in the Board's action, and I further do not find any intent to violate the ODL by conducting business secretly, since the document containing the consent agenda items is indeed a public record.

CONCLUSION

For the foregoing reasons, it is my opinion the Corporation's Board did not violate the ODL because it did not take final action by reference to agenda number or item alone.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Jena Schmidt, Charles A. Beard Memorial School Corporation