



STATE OF INDIANA

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September 22, 2014

Mr. Benjamin Conner
302 S. Sycamore St.
Odon, IN 47562

Re: Formal Complaint 14-FC-159; Alleged Violation of the Open Door Law by the Odon Town Council

Dear Mr. Conner,

This advisory opinion is in response to your formal complaint alleging the Odon Town Council ("Council") violated the Open Door Law (ODL), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded to your complaint via Counsel Brandon G. Smith. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 21, 2014.

BACKGROUND

Your complaint dated August 19, 2014, alleges members of the Odon Town Council conducted business in violation of Ind. Code § 5-14-1.5 *et. al.*

On August 11, 2014, you allege the Odon Town Council held an emergency meeting to approve a proposal from a contractor for repairs to a waste water treatment plant. Forty-eight (48)-hours notice was not given for this meeting and you take exception to the Council's labeling of the situation as an "emergency".

The Council responded to your formal complaint arguing the situation was indeed an emergency necessitating a meeting without giving proper notice. Earlier in 2014, the wastewater lift pump for the City of Odon's wastewater treatment facility failed. In the meantime, a temporary pump has been rented until a permanent solution can be found. A contractor placed an attractive bid to replace the pump and other damage to the treatment lines. The Council approved the bid at the emergency meeting.

ANALYSIS

It is the intent of the Open Door Law (ODL) 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. See Ind. Code § 5-14-1.5-1. Accordingly, 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. See Ind. Code § 5-14-1.5-3(a).

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, the time requirements of notice under the Open Door Law shall not apply. See Ind. Code § 5-14-1.5-5(d).

This situation is similar to one recently addressed in *Opinion of the Public Access Counselor 14-FC-159*. The public agency in *14-FC-159* also attempted to stretch the meaning of emergency to fit their perception of the situation. It reads, in part, as follows:

The Board cites former Public Access Counselor Davis' Opinion found at *Advisory Opinion 06-FC-223* to demonstrate the lack of defined interpretation of the word "emergency". While words are often construed given their plain and ordinary meaning in interpreting statutes, one must be careful not to take those meanings out of context – especially when the context is clear and precise. Consider the following from the preamble to the ODL:

In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter 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. **The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.**

Ind. Code § 5-14-1.5-1 (emphasis added).

As I am charged to construe these statutes liberally, I do not hesitate to do so. The entire purpose and intent of the Open Door Law would be critically eroded if its exceptions were also liberally construed. I often employ a reasonableness or common sense standard to interpreting these laws when there is an absence of authority otherwise.

Pursuant to the statute, for an emergency to exist, it must threaten to compromise the integrity of operations of the government for the present or foreseeable future. A hindrance or inconvenience does not rise to that level. Likewise, pending deadlines or opportunities do not constitute emergency circumstances. Tornados, snowstorms, floods,

terrorist attacks – pending or actual catastrophes or crises which are *imminent* are true emergencies. The sky must be falling, so to speak. Indeed, it is a subjective determination and may vary factually on a case-by-case basis. “But you’ll know it when you see it” -as Justice Stewart would say.

The replacement of a working rental pump is not an emergent situation so critical that it cannot wait 48-hours to address. It is clear from the information provided that the remediation was necessary but not so imminent to justify the meeting. The acceptance of the bid could have been tabled for 48-hours in order to provide notice and give the interested public an opportunity to observe the decision.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the Odon Town Council violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Brandon G. Smith, Esq.