

June 4, 2003

John P. Eastes
11428 Grabill Road
P.O. Box 154
Leo, IN 46765-0154

Tom K. Weaver
11724 Ridgecrest Ct.
Leo, IN 46765

Robert A. Grayless
9633 Trading Post Road
Leo, IN 46765

Re: *Advisory Opinion 03-FC-35*: Alleged Violations of the Indiana Open Door Law by the Cedar Creek Township Trustee and Advisory Board.

Dear Messrs. Eastes, Weaver and Grayless:

This is in response to your formal complaints, which were received on May 13, May 19 and May 20, 2003, respectively. You have alleged that the Cedar Creek Township Trustee, Jack V. Bridges, and the Cedar Creek Township Advisory Board ("Trustee" and "Advisory Board") have violated the Indiana Open Door Law, ("ODL"), Indiana Code chapter 5-14-1.5. Specifically, you allege that executive session held by the Advisory Board on April 22, 2003 was not appropriate under the ODL. Trustee Bridges responded in writing to your complaint and copies of the response are enclosed for your reference. For the reasons stated below, it is my opinion that the Advisory Board violated the ODL because the notice was not proper and the purposes for which the meeting were held did not comply with the ODL.

BACKGROUND

According to your complaints, notice and an agenda were issued for the April 22nd executive session of the Advisory Board. While the notice did not state which statutory exception or exceptions formed the basis for this executive session, the agenda listed a number of topics that would be discussed:

Bonds Fund Transfer

Poor Relief Additional Appropriation

EMS Additional Appropriation	Petty Cash Fund
Future Fire Contracts	Change of Office Location
Equipment Repair/Purchase	2004/2003 Budget

Apparently, Mr. Eastes showed up on April 22nd prior to the start of the executive session, but he was not permitted to attend. You then filed your formal complaints with this Office.

In his response to your complaints, Trustee Bridges stated that he had called the State Board of Accounts prior to posting notice of the April 22nd executive session and spoke to a woman named Andrea. Trustee Bridges had a long discussion with Andrea about the planned meeting and the reasons that he believed that the executive session was appropriate under the circumstances. Andrea apparently advised Trustee Bridges to be sure that everything discussed in the executive session was to appear in the advertisement or notice of the meeting. Trustee Bridges complied with this advice and only the items listed were discussed. Trustee Bridges stated also that he did not intend to violate the ODL.

ANALYSIS

The intent and purpose of the Indiana Open Door Law ("ODL") is 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." Ind. Code § 5-14-1.5- 1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Advisory Board is clearly both a public agency and a governing body subject to the requirements of the ODL. Ind. Code §5-14-1.5-2.

Indiana Code section 5-14-1.5-5(a) provides that:

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

(Emphasis added). A notice of an executive session must also state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under Indiana Code section 5-14-1.5-6.1(d).

Clearly, the notice posted by the Trustee did not include all of the information required under Indiana Code section 5-14-1.5-5. The date, time and location were provided as well as a laundry list of topics to be discussed, but the statutory basis for conducting the executive session was not. The Indiana Court of Appeals recently noted that the ODL requires a specific reference to the statutory basis for the executive session, and that a general reference to the subject matter or subject matters to be discussed does not comply with the ODL

The [ODL] further states that "[p]ublic notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b)." I.C. § 5-14-1.5-6.1(d). . . The statute is clear and unambiguous. Indiana Code Section 5-14-1.5-6.1 requires the Board to identify the subject matter by specific reference to subsection (b).

Gary/Chicago Airport Board of Authority v. Maclin, 772 N.E.2d 463, 468 (Ind. App. 2002) [Citations omitted.] The notice of the April 22, 2003 meeting of the Advisory Board, therefore, did not comply with the requirements of the ODL and was not valid.

In addition to the requirements for posting appropriate notice of an executive session, the subject matters discussed must comply with the limited subject matters permitted for discussion in such meetings. Executive session exceptions are to be construed narrowly in light of the public policy of the ODL that the workings of government should be conducted openly except where specifically authorized by statute. *Common Council of the City of Peru v. Peru Daily Tribune, Inc.*, 440 N.E.2d 726, 729 (Ind. App. 1982). The purposes for which executive sessions may be held are limited to the twelve (12) situations listed at Indiana Code section 5-14-1.5-6.1(b), but the notice of the April 22nd executive session does not appear to conform to any of the listed statutory exceptions.

CONCLUSION

It is my opinion that the Cedar Creek Township Trustee and Advisory Board did not comply with the ODL with respect to its April 22, 2003 executive session. The notice of this meeting was not appropriate under Indiana Code section 5-14-1.5-5 and the purposes stated for the executive session were not authorized under Indiana Code section 5-14-1.5-6.1(b).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: The Honorable Jack V. Bridges, CCTT w/o enclosure