



STATE OF INDIANA

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August 29, 2008

Harry Graves
2204 Blue Creek Road
Brookville, Indiana 47012

*Re: Formal Complaint 08-FC-199; Alleged Violation of the Open Door Law
by the Franklin County Board of Commissioners*

Dear Mr. Graves:

This advisory opinion is in response to your formal complaint alleging Franklin County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a private meeting with no notice and without allowing the public to attend. A copy of the Commissioners' response to the complaint is enclosed for your reference. In my opinion the Commissioners violated the ODL by failing to provide sufficient notice for the August 11 executive session.

BACKGROUND

You filed a complaint on August 22, 2008, alleging the Commissioners violated the ODL by failing to provide sufficient notice for an August 11 executive session. You indicate that you contacted this office on August 7 to inquire whether the notice for the August 11 executive session was sufficient. When you learned the notice was not sufficient, you sent copies of the correspondence from my office to the Commissioners. On August 11 you then went to the meeting location and refused to leave. You were asked by the attendees to leave the meeting. Eventually, you left the meeting, escorted by the county sheriff.

You requested priority status for the complaint. Priority status is granted pursuant to 62 IAC 1-1-3(1) when the complainant intends to file an action in court to declare void any policy, decision or final action of a governing body or to seek an injunction that would invalidate any policy, decision, or final action based upon a violation of the Open Door Law. Because you alleged a reason for priority status provided in 62 IAC 1-1-3, I am required to issue an advisory opinion within seven days of receipt of the complaint.

My office sent a copy of the complaint to the Commissioners and invited the Commissioners to respond to the complaint. As of the close of business on August 28, my office has not received a response to the complaint.

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).

Executive sessions, which are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d).

The first issue here is whether the notice for executive session, which contained an indication the meeting was scheduled to address “personnel issues,” was in conformance with the ODL. I addressed this issue earlier this week in response to another complaint you filed against the Commissioners. As I indicated in *Opinion of the Public Access Counselor 196*, it is my opinion that “personnel issues” is not a sufficient reference to the specific statutory instance allowing the executive session. To the extent the Commissioners conduct executive sessions to discuss personnel matters allowed to be discussed in executive session, the Commissioners must cite the specific statutory instance allowing the executive session. To the extent the Commissioners addressed personnel matters not specifically enumerated in I.C. § 5-14-1.5-6.1, the Commissioners should have addressed those matters at a meeting open to the public.

Nothing in the ODL, though, addresses your second issue, which is related to your insistence that you must be allowed to attend the meeting. The recourse provided to you when you believe you have been denied access under the ODL is to file an action in court (*See* I.C. § 5-14-1.5-7) or to file a complaint with this office (*See* I.C. § 5-14-5-6).

CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners violated the ODL by providing insufficient notice for the August 11 executive session.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Tom Wilson, Franklin County Board of Commissioners