



STATE OF INDIANA

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November 1, 2008

Herman Heuss
1045 Caroline Avenue
Union City, Indiana 47390

*Re: Formal Complaint 08-FC-219; Alleged Violation of the Open Door Law
by the Randolph County Board of Commissioners*

Dear Mr. Heuss:

This advisory opinion is in response to your formal complaint alleging Randolph County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by providing insufficient notice for a public meeting. 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 post notice of the meeting.

BACKGROUND

You filed a complaint on October 10, 2008, alleging the Commissioners violated the ODL by failing to provide sufficient notice for an October 8 meeting at which the Commissioners opened construction bids. You requested priority status for the complaint but did not allege any of the circumstances for receiving priority status as provided in 62 IAC 1-1-3, so priority status was not granted.

The Commissioners responded to the complaint by letter dated October 24 from President David Lenkensdofer. The Commissioners contend that notice of the meeting was sent to three newspapers on September 24 and 25. The Commissioners further contend that Mr. Lenkensdofer announced at the October 6, 2008 10:00pm meeting that the meeting to open the construction bids would be held at 4:15pm on October 8. The Commissioners indicate that the county auditor indicated he failed to post notice of the meeting at the Randolph Center for Family Opportunity.

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).

Regarding notice, the ODL provides the following:

(a) 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. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. . .

I.C. § 5-14-1.5-5.

Here, the Commissioners contend notice was sent to three newspapers well in advance of the forty-eight hour requirement. So long as these are the only three news media outlets who had by January 1 of this year requested notices, the Commissioners did not violate subsection (b)(2).

The problem with the October 8 meeting, though, is the failure to post notice of the meeting at the principal office of the Commissioners, or if there is no office, at the building where the meeting was held, as required by I.C. § 5-14-1.5-5(b)(1). Here, the Commissioners indicate that the county auditor did not post the notice at what I assume to be the building where the meeting was held. While announcing the meeting date, time and location of future meetings during public meetings of the Commissioners is certainly a good practice, it does not waive the requirement to physically post notice at the office or building where the meeting is to be held if there is no office. As such, the Commissioners violated the ODL by failing to post notice of the meeting.

Finally, the Commissioners contend you were not in attendance at the October 8 meeting and inquire whether you may file a complaint. A person may file a complaint when he has been denied any right conferred by the ODL. *See* I.C. § 5-14-5-6. Here you allege you have been denied notice of the meeting, a right conferred by I.C. § 5-14-1.5-5. It is my opinion you have grounds to file the complaint, pursuant to I.C. § 5-14-5-6.

CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners violated the ODL by failing to provide appropriate notice for the October 8 meeting.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: David Lenkensdofer, President, Randolph County Board of Commissioners