



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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February 15, 2013

Mr. Louie Batides
11072 Wynbrook Drive
Winfield, Indiana 46307

*Re: Formal Complaint 13-FC-16; Alleged Violation of the Open Door Law by
the Winfield Town Council*

Dear Mr. Batides:

This advisory opinion is in response to your formal complaint alleging the Winfield Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* David M. Austgen, Attorney, responded in writing on behalf of the Council. A copy of the response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that requested to be placed on the agenda to speak at the January 22, 2013 Council meeting. You intended to discuss the Council's lack of enforcement of the Town's Ordinances and Building Codes. After being placed on the agenda, you were informed by Mr. Gerald T. Stierer, Council President, that you would have three minutes to address the Council. You believe that in light of Mr. Stierer not agreeing with your point of view, the Council cut the time allotted for you to speak at the meeting; whereas other citizens have been given as much as ten minutes to address the Council. Although you acknowledge that the ODL does not generally guarantee the right of a citizen to speak at a public meeting, you believe that three minutes is not sufficient amount of time in order for you to address the Council and that the body should be consistent in its approach to allowing for public comment.

In response to your formal complaint, Mr. Austgen advised that your formal complaint was filed following your request to be added to the Council agenda for its January 22, 2013 public meeting in order to discuss concerns previously expressed and responded to by the Town concerning the development of Wynbrook. Your request to be placed on the agenda was acknowledged and granted by the Town and you were provided with further information from Mr. Stierer that a time limitation for expressing your concerns before the Council during the public meeting would be limited to three (3) minutes. Mr. Austgen maintains that you have alleged that the restriction for your speaking time is a violation of the ODL, but have not provided any authority for your

assertion. Mr. Austgen provides that it is well established law in Indiana that the Council, and specifically the Council's President, has the authority and power to manage the agenda of its public meetings, including limiting the speaking time of members of the public. Mr. Austgen also noted that after you were granted a right to speak at the meeting, you voluntarily removed yourself from the agenda.

On January 7, 2013, you filed a request under the Access to Public Records Act ("APRA") for a copy of any rule or ordinance that would allow the Council to limit the speaking time to three (3) minutes. The Town responded pursuant to the requirements of the APRA, a copy of which is enclosed for your reference.

ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 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* I.C. § 5-14-1.5-3(a).

Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *See Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; *see also* I.C. § 5-14-1.5-3 ("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."). "Indiana law does require a governing body to allow public testimony in certain instances (e.g. a hearing on a proposed budget), but as a general rule the ODL does not guarantee the right to speak at a meeting." *See Opinions of the Public Access Counselor 08-FC-149 and 10-FC-240*. Minus a specific legal mandate, a governing body had the authority to determine whether it will receive public comment during a public meeting and if it elects to do so, the procedures that will be followed in carrying out this process. Our office has encouraged governing bodies that elect to receive public comment to adopt a uniform, nondiscriminatory process. As applicable here, it is my opinion that the Council did not violate the ODL by limiting your speaking time to three (3) minutes at the January 22, 2013 public meeting.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Council did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: David M. Austgen