

September 6, 2001

Mr. Dan Derrick  
1110 G Windhaven Circle  
Brownsburg, IN 46112

*Re: Advisory Opinion 01-FC-48; Alleged Violation of the Indiana Open Door Law by the Hendricks County Council.*

Dear Mr. Derrick:

This is written in response to your formal complaint, which was received by this Office on August 27, 2001. You have alleged that the Hendricks County Council (hereinafter "Council") violated the Indiana Open Door Law, Indiana Code chapter 5-14-1.5. Specifically, you were not allowed to videotape a public meeting of the Council held on August 17, 2001. Mr. Larry Hession, President of the Council, responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Council did violate the Open Door Law when they refused to permit you to videotape their August 17<sup>th</sup> meeting.

#### BACKGROUND

According to your complaint, you attended the Council's August 17<sup>th</sup> meeting and videotaped a portion of the meeting and provided a copy with your complaint.<sup>1</sup> At that meeting, the Council discussed a motion to prohibit videotaping of the meeting. You were permitted an opportunity to speak to the Council on this subject and quoted from the Handbook on Public Access, a joint publication of this Office and the Office of the Attorney General, concerning your right to videotape the meeting. Ultimately, the Council voted 6-1 in favor of the motion to prohibit you from videotaping their meeting.

In response to your complaint, President Hession admitted that after receiving your formal complaint, he reviewed the Open Door Law, specifically Indiana Code section 5-14-1.5-3(a) and now agrees that the action of the Council to prohibit you from videotaping their meeting on August 17, 2001 was improper. He further indicated that he believes that the issue may be moot because he was advised that even after the vote to prohibit you from videotaping was taken, you continued to record the meeting. Since the state statute permits you to videotape, then the Council did not need to take any action to sanction it for you.

#### ANALYSIS

The intent and purpose of the 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 Council is a governing body of a public agency subject to the ODL. Ind. Code § 5-14-1.5-2(b)(2).

The general rule is that meetings of governing bodies of public agencies are to be held openly, so that the public may "observe and record them." Ind. Code § 5-14-1.5-3(a). The Indiana Supreme Court has interpreted this provision to mean that governing bodies may not ban the use of cameras and tape recorders at public meetings. *Berry v. Peoples Broadcasting Corp.*, 547 N.E.2d 231, 234 (1989).

While the Open Door Law does not define "record," the trial court interpreted it to mean "the reasonable use of recorders, cameras and any other recognized means of recording."

*Id.* While a governing body may have rules in place regulating the use of cameras and recording devices, it may not ban the use of this equipment under the Open Door Law.

Based upon the information provided to me, it is my opinion that the Council did violate the Open Door Law when it voted to ban your use of a video recorder at its August 17, 2001 meeting. From President Hession's response to this formal complaint, however, it appears that the Council is now aware of the law governing the right of persons who attend their public meetings to record them.

### CONCLUSION

It is my opinion that the Hendricks County Council violated the Indiana Open Door Law when it prohibited the videotaping of its August 17, 2001 public meeting.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: President Larry Hession, HCC

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<sup>1</sup> The discussion of the Council concerning your ability to videotape their meeting was provided in written transcript form and video on CD-ROM. [html](#)>