

September 28, 2001

Ms. Donna Thacker  
3232 Diehl Drive  
Lawrenceburg, IN 47025

Re: Advisory Opinion 01-FC-57; Alleged Violation of the Indiana Open Door Law by the Lawrenceburg Community School Corporation Board of Trustees.

Dear Ms. Thacker:

This letter is in response to your formal complaint, which was received in this Office on September 13, 2001. You have alleged that the Lawrenceburg Community School's Board ("Board") violated the Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. Specifically you have alleged that after the Board's meeting on September 10th, a discussion took place by the Board members who remained in the meeting room that violated the ODL. Mr. Mark Knigga, President of the Board, responded on behalf of the Board and a copy of his response is enclosed for your reference. Ms. Nancy Weldon, also a Board member, provided her own response to your complaint and a copy of her statement is enclosed. For the reasons set forth below, it is my opinion that, to the extent that a majority of the members of the Board discussed or deliberated on matters that constituted the public business of the Board after the adjournment of their September 10th meeting, they did violate the ODL.

### BACKGROUND

According to the facts as you have presented them, the Board met for its regular monthly meeting on September 10, 2001. After the meeting was adjourned, the treasurer announced that the Board members had papers to sign before they left. You left, but stayed for a short while outside of the meeting room when a board member left the meeting room. You then left the premises but learned later that there was a heated discussion by Board members about many matters that were brought before the Board during their public meeting. You allege that this post-meeting discussion constituted an illegal meeting and filed your formal complaint with this Office.

In response to your complaint, Mr. Knigga stated that the Board did hold a regularly scheduled and legally advertised meeting at 7:00 p.m. on September 10th. The meeting was adjourned at 9:03 p.m., but the business manager for the School Corporation stated that Board members needed to sign claims and contracts that were approved during the public meeting. During the public meeting, it was agreed that they would also set the time for a workshop on September 20th, and this was done immediately after the meeting adjourned. He also indicated that there may have been conversations with various staff, the superintendent, the attorney and the business manager for the School Corporation after the meeting.

Further, Mr. Knigga stated that a heated discussion did take place after the Board meeting, but that it

was between Board member Beverly Thomas, and a citizen. Ms. Thomas apparently requested that two other Board members, Ms. Seitz and Ms. Weldon, to witness her conversation with the citizen. Mr. Knigga heard Ms. Thomas become very stern with the citizen and later found out that Ms. Thomas was upset about the citizen's letters to the editor concerning the conduct of the Board during a retreat. He was not sure if other topics were addressed, but stated that if there was a heated discussion after the public meeting, it was not among Board members, but between a Board member and a citizen. It is Mr. Knigga's position that at no time was there any discussion of Board policy after the meeting adjourned, no decisions were made and no final action was taken or discussed.

Ms. Weldon provided additional information in her statement to this Office concerning the events that took place after the adjournment of the public meeting. While Mr. Knigga generally stated that there were conversations taking place in the Board meeting room on various issues, he recalled that these discussions took place between no more than three (3) board members at a time. Ms. Weldon stated that at one point, she and other Board members, (Ms. Dausch, Ms. Weldon, Ms. Dicus and Ms. Seitz) did discuss an issue concerning a Board member lunch held at the elementary school. Later, Ms. Weldon, Ms. Seitz, Ms. Dicus and Superintendent Rudnick also discussed the Verizon wireless phone bill, which was discussed during the public meeting. After this discussion, Ms. Weldon went outside, and then reentered the building to witness a discussion between Board members Knigga, Seitz, Dicus, Thomas and Wood, with the Superintendent and Treasurer, about copy paper and the elementary school. She then reminded the Board members still present, who were all members except Ms. Dausch, about the next Board lunch at the Middle School, and left the building.

## 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 Board is a governing body of a public agency subject to the ODL. Ind. Code § 5-14-1.5-2(b)(2).

A meeting is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code §5-14-1.5-2(c). Meetings of a governing body must be held openly, with the exception of executive sessions, including affording the public the right to attend, observe and record these meetings. Ind. Code §5-14-1.5-3(a). Further, if the ODL applies to a meeting, the Board must have posted notice in accordance with Indiana Code section 5-14-1.5-5.

The determination of whether the Board violated the ODL with respect to the actions that took place after the September 10th meeting are dependent upon three factors. First, a majority of the members must have been present. Secondly, the Board must have taken official action. Finally, the action must have concerned the public business of the Board. A majority of the members of the Board not only constitutes a quorum of the Board, but under the ODL, a majority of the Board may trigger the

requirements of the ODL for notice and conduct of meetings. See, Ind. Code §20-5-3-2(f). In the case of this seven (7) member-Board, a majority is four (4) of its members.

Any of the reported discussions with a citizen about her letters to the editor or conversations between fewer than four (4) Board members and staff, did not trigger the requirements of the ODL and did not violate the ODL. With respect to many of the discussions held, however, it appears that a majority of the Board members may have been present. According to the facts provided by Ms. Weldon, at various times after the September 10th meeting a majority of the Board members were discussing issues in small groups that included at least four (4) Board members. In particular, the discussions of the Board's elementary school lunch<sup>1</sup>, the Verizon wireless phone bill and copy paper at the elementary school would have all involved a majority of the Board members.

These instances that included the presence of four (4) or more Board members at least raise the issue of whether the Board conducted meetings in violation of the ODL. We must look at the second factor identified to make a final determination. In order for the ODL to apply, these groups of a majority of the Board must have been taking official action on public business after the public meeting was adjourned. "Official action" is defined very broadly to include receiving information, deliberating, making recommendations, establishing policy, making decisions or taking final action. Ind. Code §5-14-1.5-2 (d). "Final action" is just one type of official action, but is defined as "a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order." Ind. Code §5-14-1.5-2(g). While I would agree with Mr. Knigga that no final action took place after the adjournment of the September 10th meeting, it is my opinion that official action took place if a majority of the members of the Board were discussing and deliberating on the "public business" of the Board.

The third and final factor for consideration is whether the Board members were discussing public business after the September 10th meeting adjourned. "Public business" for the purposes of the ODL "means any function upon which the public agency is empowered or authorized to take official action." Ind. Code §5-14-1.5-2(e). While the issues may not be most critical, the Board's elementary school lunch, phone bills and copy paper issues are apparently items upon which the Board is empowered to oversee or authorized to discuss, establish policy about or make decisions concerning during the course of their duties as Board members. From the information provided by Mr. Knigga and Ms. Weldon, it appears that some of these topics were even discussed during the public meeting in September or August of 2001. It is my position that these items are the public business of the Board.

It is my opinion that some of the discussions that took place after the September 10th meeting of the Board were conducted in violation of the ODL. The instances in question were identified above and included those times when four (4) or more Board members were present to discuss or deliberate on various items that constituted the public business of the Board.

While the Board's actions in violation of the ODL appear to have taken place in the same meeting room at which they had held their public meeting, the public meeting had been adjourned. Interested persons were not on notice that the Board would be taking official action even after that adjournment. Certainly,

my Opinion is not to suggest it inappropriate for the Board to carry out minor tasks, such as to sign claims and vouchers approved or to check calendars for available dates for a workshop that was to be posted under the ODL after the meeting adjourned. In fact, there appeared to be some public pronouncement that these things would take place after the meeting adjourned so if a member of the public had been interested in observing these events, he or she could have stayed. The Board must be mindful, however, that holding some of the discussions identified in this Opinion after adjournment violated the ODL because there was no notice and it deprived the public of the opportunity to attend, observe and record these discussions and understand their actions as a public body.

## CONCLUSION

In conclusion, it is my opinion that the Board of Trustees of the Lawrenceburg Community School Corporation did violate the Open Door Law when they discussed or deliberated on matters that constituted the public business of the Board after the adjournment of their public meeting on September 10, 2001.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Mark Knigga, President, LCSC  
Ms. Nancy Weldon, Member, LCSC

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1 While there was no explanation of these Board lunches, it is apparent that the Board or at least some of its members meet for lunch at the various school buildings on a regular basis. While not directly at issue in this Opinion, the lunches may also be meetings for the purposes of the ODL. The fact that lunch is served does not, in and of itself, take these gatherings outside of the ODL definition of "meeting." html>