

October 24, 2001

Ms. Sheryl K. Hart
Roanoke News
3499 E 716 N
Huntington, IN 46750

Re: *Advisory Opinion 01-FC-65*;

Alleged Denial of Access to Public Records by the Huntington County Drainage Board.

Dear Ms. Hart:

This is in response to your formal complaint, which was received on October 3, 2001. You have alleged that the Huntington County Drainage Board ("Drainage Board") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Drainage Board denied you access to the memoranda of the Board's meeting held on September 20, 2001. Mr. Robert S. Garrett, Attorney for the Drainage Board, responded in writing to your complaint. A copy of his response and the attachments are enclosed for your reference. For the reasons set forth below, it is my opinion that the Drainage Board denied you access in violation of the APRA by failing to provide you with a copy of memoranda of its September 20, 2001 meeting.

BACKGROUND

According to your complaint, on September 21, 2001 you contacted the Drainage Board's secretary, Ms. Felicia Staley, and requested a copy of the meeting memoranda for the meeting conducted the day before. The secretary advised you that she could not provide a copy because the county surveyor is the spokesman for the Drainage Board. The County Surveyor, Mr. Jay Poe, contacted you later in that day and verbally advised you of what took place at the Drainage Board's September 20th meeting. You again asked for a copy of the memoranda of that meeting, citing to the provisions of Indiana statute that authorized it. You were then told that you could not have the memoranda until the Drainage Board had approved them. Surveyor Poe stated that he would have to speak to Mr. Garrett, their attorney, about this matter. You indicate that you called several times, but you had not received any response as of October 3, 2001. You then filed your formal complaint with this Office.

In his response, Mr. Garrett stated that the only memoranda of the September 20th Drainage Board meeting were a rough draft of meeting minutes that are prepared and subject to the review and approval of the Board. Mr. Garrett noted that Ms. Staley is not the secretary for the Drainage Board and was not present at the September 20th meeting. County Surveyor Poe did speak to you in great detail about the September 20th meeting and told you that draft minutes had been prepared, but would not be made available until the next Drainage Board meeting. According to Mr. Garrett, Surveyor Poe and his Office have no record of your attempts to reach him by telephone after your conversation on September

21, 2001. Mr. Garrett noted that a draft copy of the minutes of the September 20th meeting have now been provided to you as the "memoranda" of that meeting.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Drainage Board is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. The Drainage Board is also a governing body for the purposes of the Open Door Law, Indiana Code chapter 5-14-1.5. Ind. Code §5-14-1.5-2(b).

Accordingly, any person has the right to inspect and copy the public records of the Drainage Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the Open Door Law, public agencies that conduct meetings are required to keep memoranda.

As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.

Indiana Code section 5-14-1.5-4(b). These memoranda are to be available within a "reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings." Ind. Code §5-14-1.5-4(c). Meeting minutes are not required under the Open Door Law, but if created, must be available for public inspection and copying. Id.

In this case, it appears that no separate memoranda were prepared, but draft minutes were prepared. You were denied access to these draft minutes when you spoke to Surveyor Poe by telephone on September 21st. Under the Access to Public Records Act¹, draft or proposed minutes of public meetings created under Indiana Code section 5-14-1.5-4 are disclosable public records. It is my opinion that draft minutes, once prepared by staff or a Board member, are public records that are subject to disclosure prior to the final approval of the governing body. It is also my advice that such draft minutes be marked as draft and subject to final approval of the governing body, in this case the Drainage Board, so that there is no confusion on the part of the recipients as to the finality of such minutes.

There are no special formatting requirements for memoranda, only that they be prepared and

available to the public. So long as the information outlined in Indiana Code section 5-14-1.5-4(b) is included, the governing body could consider draft "minutes" to be their memoranda as well, or prepare a separate document containing only the specific information required under this statutory provision. While I have not received a copy of the draft minutes of the September 20th meeting, it is likely that these draft minutes would satisfy the requirements for memoranda. The failure of the Drainage Board to provide them in response to your September 21st public records request, however, was a denial of access to a public record. This denial is actionable in court under Indiana Code section 5-14-3-9(d). While this does not alter my Opinion, the Drainage Board now appears to have provided you with a copy of the draft meeting minutes of September 20th.

CONCLUSION

It is my opinion that the Huntington County Drainage Board denied you access in violation of the APRA by failing to provide you with a copy of draft meeting minutes or memoranda of its September 20, 2001 meeting. This denial is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Robert S. Garrett, Attorney
Huntington County Drainage Board

¹ See also PAC Advisory Opinions 98-8 and 99-2.