

August 27, 1998

Mr. Don Mottley  
Save Our Rivers  
6222 Yankeetown Highway  
Boonville, Indiana 47601-8279

*Re: PAC Opinion 98-3; Meeting notice requirements.*

Dear Mr. Mottley:

You have asked whether the Posey County Council violated the Indiana Open Door Law in the conduct of meetings concerning an application for tax abatement filed by ConAgra, Inc. Specifically, you suggested that the Council failed to provide adequate notice of the following: a "meeting" with ConAgra that was referenced in the Council's minutes of May 12, 1998 and a special meeting held on June 22, 1998. The Council, through their attorney, Beth McFadin Higgins, responded to your concerns and I have attached a copy of her response for your information. For the reasons set forth below, it is my opinion that the "meeting" held with ConAgra prior to the May 12, 1998, public meeting of the Council was an on-site inspection, which is exempt from the requirements of the Indiana Open Door Law, including the provision of notice. It is also my opinion that the Council provided adequate notice for the special meeting held on June 22, 1998.

#### *Background*

On May 12, 1998, the Posey County Council held its regularly scheduled meeting. At that meeting, Council President William Cox asked a committee to give its on-site inspection report. Councilor Williams responded that "they did meet with the people of ConAgra." According to Ms. Higgins, at that same meeting, representatives of ConAgra presented information to the full Council.

Notice of the public hearing on the Resolution concerning the tax abatement was printed in both the Posey County News and the Mt. Vernon Democrat notifying the public that the Council would hear all "remonstrances and objections from interested persons on June 9, 1998." At the June 9, 1998, meeting, the Council failed to unanimously adopt the Resolution concerning ConAgra. While not required, the Council scheduled a special meeting to conduct a second reading and vote on the Resolution. On June 17, 1998, notice was provided to the same two newspapers that published the notice of the public hearing and this notice was posted at the Council meeting room.

## *Analysis*

The Indiana Open Door Law ("Law") provides that "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. A county council is a public agency and a governing body subject to the Law. IND. CODE §§ 5-14-1.5-2(a)(2) and (b). The question is whether the failure to provide notice of the on-site inspection and the notice provided of the special meeting held June 22, 1998, violated the Law.

### *The On-Site Inspection*

For the purposes of the Law, a "meeting" is  
a gathering of a majority of the governing body of a public agency for the purpose  
of taking official action upon public business. It does not include:

\* \* \*

(2) any on-site inspection of any project or program.

Indiana Code 5-14-1.5-2(c). Notice must be provided of meetings of a governing body of a public agency under Indiana Code 5-14-1.5-5(a). An on-site inspection, however is not a meeting under the Law and therefore, notice is not required.

In this case, the Council contends that the committee was appointed to conduct an on-site inspection, however, the event was characterized as a meeting in the minutes and statements of Councilor Williams. This reference in the minutes could lead someone to believe that the committee did have a meeting with ConAgra, Inc., but there is no evidence from the remainder of the minutes of the May 12, 1998, Council meeting that the committee did anything other than the on-site inspection. Failure to give notice of the on-site inspection is not a violation of the Law, but in the future, the Council should make every effort to ensure that such events are more accurately communicated in its meetings and the minutes.

### *The Special Meeting*

As noted above, notice must be provided of meetings of a governing body of a public agency under Indiana Code 5-14-1.5-5(a), including special meetings like the one conducted by the Council on June 22, 1998. Notice of the date, time and place of any such meeting must be posted at the principal office or meeting location of the governing body and sent, via United States mail, to any news media who asked for any such notices by January 1, 1998. IND. CODE § 5-14-1.5-5(b).

In this case, the Council posted notice of the special meeting, including the date, time, and place of the meeting on June 17, 1998. As was done with the June 9, 1998, public hearing, copies of the notice were also delivered to the Posey County News and the Mt. Vernon Democrat<sup>1</sup>. There is no obligation on the part of the newspapers to print such notices, although they often are published. The Council did comply with the notice requirements of the Law with respect to the special meeting.

*Conclusion*

It is my opinion that an on-site inspection conducted by a committee of the Posey County Council was not a meeting under the Indiana Open Door Law and was not subject to the notice requirements of the Law. The council must make every effort to ensure that such events are accurately described in their meetings and minutes. It is also my opinion that a special meeting for which notice was posted outside the meeting location and provided to news media that requested such notices was properly held under the Open Door Law.

Sincerely,

Anne Mullin O'Connor

Enclosure

CC: BETH MCFADIN HIGGINS, ATTORNEY FOR THE POSEY COUNTY COUNCIL

<sup>1</sup> The June 9, 1998, notices were published in the legal notice section of these newspapers. Under the Law, if notice by publication is required by statute, ordinance, rule or regulation, the notice requirements under Indiana Code 5-14-1.5-5 do not apply. IND. CODE  $\alpha$  5-14-1.5-5(e).