

February 6, 2008

Jeffrey Price
15 South Wabash Street
Peru, Indiana 46970

Re: Your informal inquiry

Dear Mr. Price:

This is in response to your informal inquiry dated January 23, 2008, which I received on January 25. Pursuant to Ind. Code §5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of Gary Grant, who was terminated as an employee of the Peru Community School Corporation (“School”). The termination occurred during the November 26, 2007 meeting of the School’s Board of Trustees, and you indicate no reason was given for Mr. Grant’s termination and no questions were asked about the matter. Your inquiry is whether a public agency must provide some minimal reason to support its termination of an employee.

It is the intent of the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) 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. I.C. §5-14-1.5-1. 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. I.C. §5-14-1.5-3(a).

While the intent of the ODL is that the action of public agencies be conducted and taken openly, *see* I.C. § 5-14-1.5-1, the ODL does not address in detail what must be discussed at public meetings prior to a vote or other action by the governing body.

Certain personnel matters may be discussed by the governing body in executive session. See I.C. §§ 5-14-1.5-6.1(b)(5), (6), and (10). A final action (i.e. vote, *see* I.C. § 5-14-1.5-2(g)) may not take place in an executive session. I.C. §5-14-1.5-6.1(c). The Indiana Court of Appeals has said, though, that the governing body may make *decisions* in executive session so long as the final action is taken at a public meeting. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 71 (Ind. Ct. App. 2001).

On this issue, the court further said,

While we are required to liberally construe the Open Door statute to give effect to the legislature's intention that the business of government be conducted publicly, *see* I.C. § 5-14-1.5-1, we should also give deference to the legislature's determination that public discussion of an employee's job performance does not so advance the goal of open government that it warrants encroaching upon the privacy rights of individual employees.
Id. at 73.

Based on the court's decision in *Baker* as well as the ODL's lack of requirement regarding the substance of discussions, it is my opinion the School's Board of Trustees did not violate the ODL when it terminated Mr. Grant with little discussion in the public meeting.

I would note, however, that pursuant to the Access to Public Records Act ("APRA")(Ind. Code 5-14-3), Mr. Grant should be granted access, upon his request to the School, to the contents of his personnel file maintained by the School. I.C. § 5-14-3-4(b)(8).

Best regards,



Heather Willis Neal
Public Access Counselor