

April 1, 2004

Mr. George Piper
Noblesville Daily Times
152 South Ninth Street
Noblesville, Indiana 46060

*Re: Formal Complaint 04-FC-35;
Alleged Violations of the Open Door Law by the Town of Westfield and the
Westfield-Washington Plan Commission*

Dear Mr. Piper:

This is in response to your formal complaint alleging “notice” violations of the Indiana Open Door Law (Open Door Law) by the Town Council for the Town of Westfield (Council) and the Westfield-Washington Plan Commission (Commission). For the reasons set forth below, I agree that both governing bodies committed technical violations of the notice requirements in that statute. I offer no opinion on the issue of whether the meetings held in violation of the notice provisions as alleged were otherwise in violation of the Open Door Law.

BACKGROUND

Your complaint alleges that the Town Council conducted a “special meeting” on February 2, 2004, and posted notice on that same day. The purpose of the meeting was to discuss whether it was necessary to hire an attorney independent of the Town’s attorney to represent the Westfield-Washington Plan Commission. You allege that your newspaper did not receive notice of the meeting, although you previously requested to be notified about all meetings of that governing body for 2004.

Your complaint also challenges a February 23, 2004, meeting of the Commission. This meeting too was alleged to be a “special meeting” of the governing body called to discuss that governing body’s need for an attorney. The meeting was held on Monday, February 23, 2004, but your complaint alleges that you did not receive notice of the meeting until 3:54 p.m. on Friday, February 20, 2004, less than 48 hours, excluding the intervening weekend, before the meeting. Again, you previously requested to be notified about all meetings of that governing body for 2004.

You brought your complaint against these governing bodies on March 3, 2004, within 30 days of the alleged violations. In your complaint you state that “[w]hile you [do not] believe the town is intentionally shutting out the media, they do appear to have not followed the letter or spirit of the law.” For this, you filed the instant complaint seeking a formal opinion from this office.

This office sent the presiding officer of each governing body a copy of your complaint and supporting documents and invited a response to the allegations, if warranted.¹ No response has been forthcoming.

ANALYSIS

The intent and purpose of the Open Door Law 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.” IC 5-14-1.5-1. Toward that end, except under very limited circumstances, all meetings of the governing body of a public agency must be open for the purpose of permitting members of the public to observe and record the meetings. IC 5-14-1.5-3(a). A public agency is therefore required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. IC 5-14-1.5-5(a). This notice must be posted outside the principal office or meeting location, and also provided to any news media that has, by January 1 of any calendar year, provided a written request to receive such notices. IC 5-14-1.5-5(b). The notice requirement applies also to those limited circumstances when a governing body is permitted to meet in executive session; that is, in private. IC 5-14-1.5-5(a). In the event of an emergency involving an actual or threatened injury to a person or property, or actual or threatened disruption of governmental activity, the governing body may meet without regard to the 48-hour rule, but the meeting notices must still be posted and the media must receive the same notice as is given to the members of the governing body. IC 5-14-1.5-5(d).

Your allegation that you previously requested notice of all meetings of both governing bodies in compliance with Indiana Code 5-14-1.5-5(b) is unchallenged in this matter. Accordingly, I assume for the purposes of this opinion that you were entitled to be notified regarding each of these special meetings. Further, there is no suggestion in the complaint and supporting documents that the meetings were called to address an “emergency” condition as defined in Indiana Code 5-14-1.5-5(d). Indeed, in a newspaper story regarding the February 2, 2004, meeting of the Town Council, attached in support of your complaint, one council member was quoted as stating that the special meeting was called because the Town Council “thought [it] should get [the issue] done and put in bed before the next plan commission meeting.” Accordingly, I further assume for the purpose of this opinion that the 48-hour notice requirement applied regarding the notice you were entitled to for both meetings.

¹ Copies were sent by facsimile on March 16, 2004, and this office confirmed transmission and receipt.

Your complaint alleges that you received no notice of the February 2, 2004, special meeting of the Town Council. Your complaint further alleges that the omission was acknowledged by and apologized for by a member of the Town Council who characterized the omission as an “oversight.” Your assertions are unchallenged in this matter; therefore, it is my opinion that the Town Council’s failure to provide you with any notice of the meeting violated Indiana Code 5-14-1.5-5.

Your complaint alleges that you received notice of the February 23, 2004, meeting of the Commission, but that the notice was not delivered at least 48 hours prior to the meeting. Specifically, you allege that the notice was sent to you late in the afternoon on Friday, February 20, 2004, and the meeting occurred on the following business day. Your assertion is unchallenged in this matter; therefore, it is my opinion that the Commission’s failure to provide you with at least 48 hours notice, excluding the intervening weekend, violated Indiana Code 5-14-1.5-5.

The complaint and supporting documents do not otherwise challenge the validity of the meetings or provide any information regarding the public nature of the meetings or the opportunity that was or was not given for the public to “observe and record” the official action that was taken in those meetings. *See* IC 5-14-1.5-3(a). Accordingly, while I find that the meetings were in technical violation of the notice provisions of the Open Door Law, I offer no opinion on whether the violation warrants any remedy or whether the meetings were otherwise in violation of that statute. That is to say, a court reviewing this matter on the facts presented or even later developed might not find a violation warranting remedial action if the violation can be characterized as “technical,” and the meeting was in substantial compliance with the law. *See Town of Merrillville v. Blanco*, 687 N.E.2d 191 (Ind. Ct. App. 1998); *Riggin v. Board of Trustees of Ball State University*, 489 N.E.2d 616 (Ind. Ct. App. 1988).

CONCLUSION

For the reasons set forth above, I find that the Town Council and the Commission committed technical violations of the notice requirements of the Open Door Law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Teresa Otis Skelton
Ms. Ginny Kelleher