

April 1, 2005

Sent Via Facsimile

Kenneth P. delaBastide
The Herald Bulletin
P.O. Box 1090
Anderson, IN 46015

Re: Formal Complaint 05-FC-44; Alleged Violation of the Open Door Law by the Anderson Board of Aviation Commissioners

Dear Mr. delaBastide:

This is in response to your formal complaint alleging that the Anderson Board of Aviation Commissioners (“Commissioners”) violated the Open Door Law by failing to post notice of the March 1st meeting at least 48 hours in advance of the meeting. I find that the Commissioner’s failure to post notice was a violation of the Open Door Law.

BACKGROUND

In your formal complaint, you stated that the March 1, 2005 meeting of the Commissioners was held at the airport, and public notice was not posted at the site until Monday, February 28. You also stated that the Commissioners have no principal office in the City Building, where the attorney for the Commissioners stated the notice had been posted on February 25.

I sent a copy of your complaint to the Commissioners. Commissioner attorney Thomas M. Beeman and President of the Commissioners Pamela Smith submitted a joint written response, which I enclose for your reference. The Commissioners do not mention any posting at the City Building, but admit that the notice was placed on the counter in the office of the airport manager which is directly next to the conference room where the board holds its meetings. The notice was placed on the counter well 48 hours prior to the meeting, according to the Commissioners. Once the secretary realized that the notice had not been put up on the wall, she

put it up on the wall outside the conference room, but not within 48 hours prior to the meeting. The Commissioners have taken steps to ensure that this oversight is not repeated.

ANALYSIS

It is the intent of the Open Door Law 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. The purposes of the Open Door Law are remedial, and its provisions are to be liberally construed with the view of carrying out its policy. IC 5-14-1.5-1.

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting shall be given at least forty-eight hours before the meeting, excluding Saturdays, Sundays, and legal holidays. IC 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency by “posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.” IC 5-14-1.5-5(b).

Although you state that the attorney for the Commissioners told you there was a posted notice at the City Building, no such assertion is included in the Commissioners’ response to your complaint. Rather, the Commissioners admit that the notice was placed on the counter at the building where the meeting was held. The Open Door Law does not prescribe where in the building the notice must be placed, but does require that the governing body comply by “posting” the notice.

The words “posting” or “post” are not defined in the Open Door Law. Generally, when construing a statute, words are given their plain and ordinary meaning. *Indiana Wholesale Wine v. State of Indiana, Alcoholic Beverage Commission*, 695 N.E.2d 99, 103 (Ind. 1998). The plain meaning of “post” as a verb is “to affix (a public notice or bulletin) to a post, wall or the like.” RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY 1033 (2001).

In my opinion, laying notice of a public meeting on a counter does not fulfill the requirement that notice of a meeting be posted. Further, posting it on the wall outside the meeting room less than 48 hours prior to the meeting was remedial but still a technical violation of the Open Door Law. Under these circumstances, a court would determine whether the actions of the Commissioners were in “substantial compliance” with the Open Door Law. “Substantial compliance” includes: (1) the extent to which the violation denied or impaired access to a meeting; and (2) the extent to which the public knowledge or understanding of the public business conducted was impeded. IC 5-14-1.5-7(d); *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (Ind. Ct. App. 1998).

I have no facts regarding how many individuals were present at the meeting or whether anyone from the public viewed the notice on the counter. Therefore, I offer no opinion regarding whether the Commissioners were in substantial compliance with the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that Anderson Board of Aviation Commissioners did not meet the requirements for posting notice in the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Thomas Beeman