

November 13, 2006

Ian M. Steele
221 Pokagon Trail
Michiana Shores, IN 46360

Re: Formal Complaint 06-FC-176; Alleged Violation of the Open Door Law by the Michiana Shores Planning Commission

Dear Mr. Steele:

This is in response to your formal complaint alleging that Michiana Shores Planning Commission (“Commission”) violated the Open Door Law by banning your use of a camera to record a meeting on October 3, 2006. I find that Commission may not ban your use of a camera, but may establish reasonable restrictions on the use of cameras.

BACKGROUND

You allege in your formal complaint that at the October 3, 2006 meeting of the Commission, you took your personal camera to record images of the officers at the meeting. Prior to the meeting being called to order, you took two images, one of the Commission President and one of the Clerk-Treasurer who happened to be in the same room. Once the meeting was called to order, one of the Commission members sought to adjourn the meeting because you had a camera. Four members of the Commission asked that you leave the meeting if you did not cease taking pictures. One of the Commissioners told you not to bring your camera to future meetings. You remained in the meeting but did not take additional pictures, believing that you would have been ejected.

You enclosed a copy of an announcement that you allege was sent to members of the community by Joseph Kellerman, President of the Commission. This statement described your use of the camera at the October 3 meeting and stated that your use of the flash was distracting, as was other disruptive behavior that you and others had engaged in. Mr. Kellerman stated that you began snapping photographs without first asking permission of the Commission, which was not objectionable of itself, but the flash of your professional camera was distracting.

I sent a copy of your complaint to the Commission. President Kellerman explained that you had taken two photographs to which the Commission did not object. The main objection was your use of the large flash from your professional style camera. The Town Hall is adequately lit and when the Town films its meetings, no flash is used. Mr. Kellerman stated that your use of the camera was to disrupt and harass the Commission members, and you were asked to refrain from taking photographs only because of the flash.

ANALYSIS

It is the intent of the Open Door Law 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. Ind. Code 5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, 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. IC 5-14-1.5-3(a). It is well-settled that a governing body of a public agency may not ban the use of recording devices, including cameras, during a public meeting. *Berry v. Peoples Broadcasting Corp.*, 547 N.E.2d 231 (Ind. 1989). In *Berry*, the Indiana Supreme Court found the trial court's interpretation of the verb "record" was sound: "the reasonable use of recorders, cameras, and any other recognized means of recording." *Id.* at 234. Significantly, the trial court had found that the use by the media of one stationary camera and a splitter box were a standard method of pooling video and audio equipment.

It is my opinion that the Commission could not ban your use of the camera on October 3, or deny you the right in the future to use your camera to record the Commission's meetings. However, the Commission is not required to accommodate your use of a professional flash during the meeting, where the flash is of a size that it is distracting to the Commission. I have often stated to public agencies that reasonable restrictions on the use of video cameras, including a request that the cameras remain stationary so as to not distract the governing body from its activity, is not a violation of the Open Door Law. Hence, the Commission should have asked you to desist from using your flash, or to take photographs from a stationary place, but should not have demanded that you stop using your camera altogether.

CONCLUSION

For the foregoing reasons, it is my opinion that the Michiana Shores Planning Commission could not ban your use of a camera during the meeting, but may require that you desist from using the flash throughout the meeting.

Sincerely,

Karen Davis
Public Access Counselor

cc: Joseph Kellerman