

July 5, 2007

R. Michael Johnson
38 North Washington Street
Bloomfield, Indiana 47424

Re: Formal Complaint 07-FC-152; Alleged Violation of the Open Door Law by the Bloomfield Town Council

Dear Mr. Sellers:

This is in response to your formal complaint alleging the Town Council of Bloomfield ("Council"), violated the Open Door Law (Ind. Code 5-14-1.5) by holding meetings May 1, 2006, May 2, 2007, and June 6, 2007 with no public notice. A copy of the Council's response to your complaint is enclosed for your reference. I find that the complaint regarding the May 1, 2006 and May 2, 2007 meetings were not timely filed. I further find that as it relates to the June 6, 2007 meeting, the Council did violate the notice requirement of the Open Door Law but did not further violate the statute.

BACKGROUND

Your complaint, filed on June 6, 2007, alleges that on May 1, 2006, May 2, 2007, and June 6, 2007 prior to properly noticed Council meetings, the Council members met and/or conducted business. You allege that on May 1, 2006, Council members met in a private office area in the Town Hall six minutes prior to the scheduled meeting to discuss a change in Town Marshal. You further allege that on May 2, 2007, the Council assembled in the regular meeting room and began discussing business ten minutes before the scheduled start time for the meeting. Finally, you allege that on June 6, 2007, the Council again assembled in their regular meeting room seventeen minutes prior to the scheduled start time of the meeting and began reviewing paperwork and discussing a grant proposal.

The Council responded to your complaint on June 21, 2007. According to the response, Council President Eric Harrah recalls the meeting you reference of May 1, 2007 as having been attended only by former Marshal Richardson and himself. Regarding the May 2, 2007 and June

6, 2007 meetings, the Council indicated that it is standard practice for its members to arrive to meetings early to review correspondence and other materials presented for consideration. This was done in the public meeting room where regular meetings are conducted, and at no time was the public asked to vacate the room.

The Council further indicates in its response that to avoid confusion in the future, the Town Council will notify the public that it will conduct a “work session” meeting in advance of the stated meeting time of regular Town Council meetings.

ANALYSIS

Ind. Code 5-14-5-7 provides that “a person or a public agency that chooses to file a formal complaint with the counselor [regarding alleged violations of the Open Door Law or Access to Public Records Act] must file the complaint not later than thirty (30) days after:

(1) the denial; or

(2) the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice.”

Your complaints allege violations of the Open Door Law stemming from three separate meetings of the Town Council. Because they occurred more than thirty days prior to your complaint filing on June 6, 2007, your complaints regarding the meetings on May 1, 2006 and May 2, 2007 were not timely filed. As such, this formal opinion will address only the June 6, 2007 meeting. By way of incorporating an informal opinion, for which there is no time restriction, I will say my findings regarding those meetings would be similar to my finding regarding the June 6, 2007 meeting.

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. IC 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). 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 (excluding Saturdays, Sundays, and legal holidays) before the meeting. IC 5-14-1.5-5(a).

Your complaint alleges the seventeen minutes the Council worked prior to the scheduled 7:00pm start time of the June 6, 2007 meeting constitutes an improper meeting. Pursuant to the foregoing provisions of the Open Door Law, all meetings of the Council must be open to the public at all times, and proper notice must be given. The Council did provide proper notice regarding the regularly scheduled meeting at 7:00pm but did not provide notice it would begin a working session seventeen minutes prior to the start of that meeting. The Council did not conduct this meeting in private or ask any public who had assembled to leave the room. It is my opinion the Council intended to comply with the spirit of the law, to conduct action openly in order that people may be fully informed. But the Council failed to comply with the letter of the law as it relates to public notice by beginning their work before the posted time. The Council has indicated it will remedy this defect by publishing notice of any future working sessions prior to regularly scheduled meetings.

You ask this office to compel the Council to cease and desist the practice of conducting business before the scheduled start time of meetings. The office of the Public Access Counselor does not have the authority to compel a public agency to cease and desist its activity but rather has the authority to issue advisory opinions regarding violations of the Open Door Law and the Access to Public Records Act. IC 5-14-5-9 and IC 5-14-4-10.

CONCLUSION

For the foregoing reasons, I find that the Bloomfield Town Council violated the notice provision of the Open Door Law but did not otherwise violate the statute.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Eric Harrah, Bloomfield Town Council