

August 10, 2007

Jeff LaShure
8494 North Market
Stinesville, Indiana 47464

*Re: Formal Complaint 07-FC-205; Alleged Violation of the Open Door Law by the
Stinesville Town Board*

Dear Mr. LaShure:

This is in response to your formal complaint alleging the Stinesville Town Board (“Board”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5). I find that the Stinesville Town Board violated the Open Door Law.

BACKGROUND

You filed a complaint with this office on July 12, 2007 (postmarked July 9), alleging the Board violated the Open Door Law on May 8, 2007 and June 19, 2007. You allege that on May 8 the Board held a meeting with notice posted that the meeting was open to the public. You were asked by the Board to leave before the meeting began. You later learned the discussion at the meeting involved you. You further indicate the matter was not on the agenda. You also allege that on June 19, the Board held an executive session, for which the posted notice read: “Town Board Executive Meeting 7:00 PM 6-19-07 Town Hall Working Wages and Budget for 2008.” You attempted to attend the meeting, believing you had a right to do so as a department head. You were asked to leave the meeting. You later learned the fire chief appeared at the meeting and was allowed to discuss with the Board his concerns regarding you.

The Board was sent a copy of your complaint and a notice of formal complaint on July 13 but did not provide a response to your complaint.

ANALYSIS

It is the intent of the ODL 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 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. I.C. §5-14-1.5-3(a).

The Board is clearly a public agency under I.C. §5-14-1.5-2(a), and the meeting at issue was a meeting of the governing body under I.C. §5-14-1.5-2(b) and (c).

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. I.C. §5-14-1.5-5(a).

A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. I.C. §5-14-1.5-4(a).

A person filing a complaint with the public access counselor must do so within thirty days of denial of access to the open meeting or thirty days after receiving notice that a meeting was held by a public agency if it was conducted secretly or without notice. I.C. §5-14-5-7. Because you appeared to attend the May 8 meeting, your complaint regarding that meeting is not timely. Your complaint regarding the June 19 meeting is timely filed. As such, my opinion regarding the May 8 meeting is informal while my opinion regarding June 19 meeting is a formal opinion. Both types of opinions are advisory in nature and thus have the same effect.

At the May 8 meeting, you allege you were denied access to the open meeting of the Board. It is my opinion this action by the Board expressly violates I.C. §5-14-1.5-3(a), which provides that meetings shall be open to the public. The ODL does not allow the exclusion of certain members of the public. Regarding the content of the meeting, the ODL contains a list of instances for which an executive session may be held but does not require an executive session to be held for particular reasons. If the Board discusses records classified as confidential by state or federal statute, the Board may and should do so in an executive session. I do not have enough facts regarding the particular content of the meeting to say whether the Board should have discussed the matter at an executive session in this circumstance.

Regarding the June 19 meeting, you allege this was posted as an executive session. I will note the notice of the executive session should have listed the specific instance enumerated in statute for which the executive session was conducted. "Working Wages and Budget for 2008" is not one of the enumerated instances in I.C. §5-14-1.5-6.1 unless authorized by federal or state statute. If that is the case, the notice of the executive session should have listed the ODL provision allowing it as well as the state or federal statute allowing it. It is my opinion the Board violated the ODL by conducting an executive session to discuss matters not expressly enumerated as reasons for holding an executive session.

If the executive session were allowed by statute, the Board would have the authority to exclude you from the meeting, regardless of your position as a department head. The Board may admit those persons necessary to carry out its purpose, but is not required to admit anyone else. I.C. §5-14-1.5-2(f).

CONCLUSION

For the foregoing reasons, I find that the Stinesville Town Board violated the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Andrea Asher, Stinesville Town Board