

February 1, 2000

Mr. Richard E. Frost
507 Stonehedge Drive
Carmel, Indiana 46032-7400

Re: Advisory Opinion 00-FC- 3; *Alleged Violation of the Indiana Open Door Law by the Carmel City Council..*

Dear Mr. Frost:

This is in response to your formal complaint, which was received on January 5, 2000. You have alleged that the Carmel City Council ("Council") has violated the Indiana Open Door Law, Indiana Code chapter 5-14-1.5. Specifically, you claim that a quorum of the Council met in person or by telephone to discuss three ordinances and a resolution introduced at their January 3, 2000 meeting. Ms. Sue A. Beesley, attorney for the Council, responded to your complaint in a letter dated January 12, 2000. A copy of her response is enclosed for your reference. It is my opinion that there is no evidence to indicate that a majority of the members of the Council violated the Open Door Law by meeting prior to their January 3rd meeting to act upon the ordinances or resolution in question.

BACKGROUND

According to your complaint, you believe that a majority, or quorum, of the members of the Council met, without complying with the Open Door Law, to discuss proposed ordinances and a resolution, which were introduced at the Council's meeting on January 3, 2000. You speculate that this quorum either met with an attorney, or some were present with the attorney and others participated by telephone, and drafted these documents. While you do not have any evidence that such a meeting actually occurred, you suspect that this must have taken place in order for the Council to be able to have prepared and taken action on these matters at their first meeting of the year.

In her response to your complaint, Ms. Beesley has stated that no such meeting of the majority of the members of the Council occurred, and therefore, there was no violation of the Open Door Law. She further stated that her law firm, which has been retained by the Council to provide legal services, drafted proposed ordinances and resolutions at the request of one member of the Council. There was a meeting with that Council member, but no other Council members were present.

ANALYSIS

The intent and purpose of the Indiana 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." Ind. Code § 5-14-1.5- 1. Indiana Code section 5-14-1.5-3(a) provides, in pertinent part, that:

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.

A meeting is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code §5-14-1.5-2(c). Clearly, the Council is a governing body of a public agency and any gatherings of a majority of its members would constitute a meeting subject to the requirements of the Open Door Law. Ind. Code §§5-14-1.5-2(a) and (b).

If four (4) members of a seven (7) member governing body of a public agency meet to discuss public business, such as proposed ordinances and resolutions to be acted upon by the governing body, this gathering would be governed by the requirements of the Open Door Law. You speculate that a majority of the Council members must have met, with or without their attorney, possibly with some members participating by telephone, to discuss these matters. If a majority of the Council were present at such a meeting with or without their attorney, I agree that this would have triggered the requirements of the Open Door Law.

You admit in your complaint that you have no evidence to prove that a meeting was held in violation of the Open Door Law. The fact that documents were prepared in advance of the governing body's first public meeting of the year does not mean that the Open Door Law was violated-this is a common practice of many legislative bodies. Based upon the information provided to me, it is my opinion that there is no evidence to indicate that a majority of the members of the Council met in violation of the Open Door Law with respect to the proposed ordinances and resolution acted upon at their meeting on January 3, 2000.

CONCLUSION

It is my opinion that there is no evidence to indicate that a majority of the members of the Carmel City Council met in violation of the Indiana Open Door Law prior to its January 3, 2000 meeting to discuss ordinances and a resolution acted upon at that meeting.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: : Ms. Sue A. Beesley, Attorney
Carmel City Council
