

September 9, 2004

Mr. Samuel L. Shaw
628 I Street
Bedford, IN 47421

*Re: Formal Complaint 04-FC-135; Alleged Violation of the Open Door Law by the
City of Bedford Fire Department, Bedford Fire Pension Board*

Dear Mr. Shaw:

This is in response to your formal complaint alleging that the City of Bedford Fire Department, Bedford Fire Pension Board (“Board”) violated the Open Door Law (“ODL”), I.C. §5-14-1.5. Specifically, you allege that the Board failed to post notice of the public meeting held July 9, 2004. For the following reasons, I find that the City of Bedford Fire Department, Bedford Fire Pension Board did not violate the Open Door Law.

BACKGROUND

You allege that on July 9, 2004, the Board held a public meeting without posting notice forty-eight (48) hours in advance of that meeting. You state that you saw no posted notice of the meeting at the Fire Department, but admit that your failure to see any notice may be due, in part, to a verbal no trespass order which prohibits you from going on the Fire Department’s properties. You state that the only notice of the meeting was the radio announcement that you heard twenty-three (23) hours before the meeting. You then filed a formal complaint with this office.

I received your formal complaint on August 10, 2004, and forwarded a copy to the Bedford Fire Department, Bedford Fire Pension Board. Mr. James G. Pittman, attorney for the City of Bedford, responded, a copy of which is enclosed for your reference. Mr. Pittman states that notice of the meeting was given on July 6, 2004. In support thereof, he has provided a copy of that notice to this office. During a telephone conversation with this office, Mr. Jack Stigall verified that notice of the meeting was posted at the three different fire stations. Mr. Pittman acknowledges that the no trespass order, issued by the Bedford Police Department against you, prohibits you from going on the Fire Department’s properties where the meeting was to be held, but he states that it does not prohibit you from attending public meetings held at such locations.

ANALYSIS

The Board is a governing body of a public agency for purposes of the Open Door Law. With limited exception, all meetings of the governing body of a public agency must be open for the purpose of permitting members of the public to observe and record the meetings. I.C. §5-14-1.5-3(a). 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." I.C. §5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." I.C. §5-14-1.5-2(e). "Official action" is broadly defined to include receiving information, deliberating, making recommendations, establishing policy, making decisions, and taking a vote. I.C. §5-14-1.5-2(d).

A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. I.C. §5-14-1.5-5(a). The notice must be posted at the principal office of the public agency at issue, or if no principal office exists, at the location where the meeting is to be held. I.C. §5-14-1.5-5(b).

You allege that the Board failed to post notice of the July 9 meeting. The Board has the burden of proving that notice was provided. The Board has provided a copy of the notice of that meeting and has verified during a telephone conversation with this office that the same notice was physically posted at the Fire Department and given to the radio station on the date of the notice, July 6, more than forty-eight (48) hours before the meeting occurred. Furthermore, it appears that not only did the Board post notice, but that the notice complies with the requirements set forth in I.C. §5-14-1.5-5. Therefore, I find that the Board did not fail to provide the required notice, and therefore, did not violate the Open Door Law as you allege in your complaint.

You do not raise any issue with regard to your right to attend the meeting of the Pension Board held on Fire Department property, where you are apparently subject to a verbal no trespass order issued by the Bedford Police Department. I offer no opinion with respect to whether this order is a denial under the Open Door Law to attend meetings, but note that Mr. Pittman states that the order does not restrict you from attending public meetings on Fire Department properties.

CONCLUSION

For the foregoing reasons, I find that the Bedford Fire Pension Board did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. James G. Pittman: w/o enclosures