

August 20, 2004

Mr. Christopher Larson
140 Thornbush Drive
West Lafayette, IN 47906

*Re: Advisory Opinion 04-FC-142; Alleged Violation of the Open Door Law by the
Kankakee-Iroquois Regional Planning Commission*

Dear Mr. Larson:

This is in response to your formal complaint alleging the Kankakee-Iroquois Regional Planning Commission ("K-IRPC") violated the Open Door Law ("ODL"), I.C. §5-14-1.5, by failing to provide proper notice of executive sessions and public meetings. Specifically, you allege that the notice of the executive session scheduled for July 22, 2004 did not specifically reference the instance under which the executive session was allowed, and that the notices for the July 29, 2004 and August 12, 2004 public meetings included personal personnel matters. The K-IRPC has responded to your complaint, a copy of which is enclosed for your reference.

BACKGROUND

On July 20, 2004, the Kankakee-Iroquois Regional Planning Commission posted a notice for the meeting to be held on July 22, 2004. That notice stated that a special K-IRPC Executive Board Meeting had been called to "review and discuss current critical issues affecting the K-IRPC agency." The notice stated that the Executive Board's agenda was as follows: 1) overview of current agency status; 2) open discussion with K-IRPC staff members; 3) closed Executive Board Session; 4) Adjourn.

Listed on the agenda for the notice of the July 29, 2004 meeting is "discussion and action on the Executive Board's unanimous recommendation to immediately terminate employment of Christopher A. Larson as Executive Director of K-IRPC should he voluntarily refuse to submit his written resignation." Listed on the agenda for the notice of the August 12, 2004 meeting is "action on proposed termination of employment of Christopher A. Larson as Executive Director of K-IRPC."

You submitted your formal complaint to our office on August 13, 2004, and you requested priority status. Therefore, we are issuing this advisory opinion within 7 days of our

receipt of your complaint. I forwarded a copy of your complaint to the K-IRPC, and I received a written response from Mr. Greg Utkin, attorney for K-IRPC.

ANALYSIS

The Kankakee-Iroquois Regional Planning Commission is a public agency for purposes of the Open Door Law. I.C. §5-14-1.5-2. The general rule of the Open Door Law is that all meetings of the governing body of a public agency are to be conducted openly for the purpose of permitting the public to attend and observe them. The exception to this rule is the executive session, which is defined as a meeting from which the public is excluded. I.C. §5-14-1.5-2(f). Executive sessions are governed by I.C. §5-14-1.5-6.1, and may only be conducted under the very limited circumstances listed in that statute.

The Open Door Law requires public agencies to post notice of both public meetings and executive sessions. Specifically, I.C. §5-14-1.5-5(a) provides:

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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

In addition to date, time, and place, the content of a notice for an executive session must also include a citation to the specific “enumerated” section of the Indiana Code that permits the governing body to meet in executive session. I.C. §5-14-1.5-6.1(d).

The notice posted for the July 22, 2004 meeting lists the date, time, and place of the meeting, and in that respect complies with the Open Door Law public meeting notice requirements. However, agenda item number 3, “Closed Executive Board Session,” of that notice also appears to include notice of an executive session. Although we received two letters from Mr. Utkin and discussed this complaint with K-IRPC representatives over the telephone it was not entirely clear what happened during the meeting. We learned that no members of the public were present at the public portion of the meeting. We also learned that you did not appear during any portion of the meeting.

If the K-IRPC intended to convene an executive session for a discussion regarding your employment, and in fact did discuss your employment, even in your absence, then it is my opinion that an executive session would have taken place although no formalities of adjournment would have been necessary in the absence of attendance by members of the public.

If an executive session were held after the July 22, 2004 open meeting, then the notice was insufficient because it did not enumerate the specific instances for which the executive session could be held.

You also allege that the agenda item in the notice of the July 29, 2004 and August 12, 2004 public meetings that named you in connection with the discussion of the termination of

your employment was a violation of the Open Door Law. Nothing in the Open Door Law prohibits a governing body from posting an agenda that includes information of a private or personal nature. I find no violation of the Open Door Law in connection with the agenda items.

CONCLUSION

For the reasons set forth above, I find that if the Kankakee-Iroquois Regional Planning Commission actually discussed matters that it intended to discuss in a planned “closed executive board session,” then it violated the Open Door Law by not posting proper notice. I also find that the Commission did not violate the Open Door Law by including personal personnel information among the agenda items in the notice of the public meetings held on July 29, 2004 and August 12, 2004.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Herbert Arihood; w/out enclosures