

October 6, 2004

Ms. Mary E. Oberthur
225 West 246th Street
Sheridan, IN 46069-9312

Re: Formal Complaint 04-FC-156; Alleged Violation of the Open Door Law by the Marion-Adams School Corporation

Dear Ms. Oberthur:

This is in response to your formal complaint alleging that the Marion-Adams School Corporation (“School”) violated the Open Door Law by interfering with a budget hearing and cutting short public comment on the budget. For the following reasons, I find that the Marion-Adams School Corporation did not violate the Open Door Law.

BACKGROUND

On August 23, 2004, the Marion Adams School Corporation held a special meeting during which the public hearing required pursuant to I.C. §6-1.1-17-3 was conducted.¹ You allege that the School allowed that hearing to be interrupted and public discussion be cut short by authorizing Cinergy to cut the power to the hearing room to perform routine, non-emergency maintenance. You allege that when the power was cut off, the meeting was brought to a close.

You submitted a formal complaint, which was received by this office on September 7, 2004. I forwarded a copy of your complaint to the School; Dr. Patrick Mark, Superintendent, responded. I have enclosed a copy of his response for your reference. During a telephone conversation with this office, Dr. Mark states that he was not aware that the power would be cut off until right before the meeting and that once he became aware, he announced it at the special meeting. He further states that everyone had the opportunity to comment on the budget during the public comment portion of the hearing, and that the public comment portion of the hearing had concluded before the electricity went out. According to Dr. Mark, the power outage did not affect the public meeting or the public hearing on the budget.

¹ The School was required to hold a public hearing for taxpayers after formulating the estimated budget and its proposed tax rates and tax levy. I.C. §6-1.1-17-3(a).

ANALYSIS

The Marion-Adams School Corporation is a public agency and the School Board is a governing body subject to the Open Door Law. I.C. §5-14-1.5-2. This office has stated that there is no requirement in the Open Door Law that attendees at a public meeting be provided the opportunity to speak at the regular business meetings of public agencies. *Opinion of the Public Access Counselor 99-2*. However, when a public agency is required to conduct a public hearing under any statute, the opportunity to speak for those limited purposes must be provided. *Id.* According to Dr. Mark's response, the public hearing portion of the meeting held on August 23 was required pursuant to I.C. §6-1.1-17-3. "Indiana Code §6-1.1-17-3 requires officers of a political subdivision, such as the School, to hold a public hearing prior to approving its budget, tax rate, and tax levy." *Brademas v. South Bend Community School Corporation* 783 N.E.2d 745 (2003 Ind. App.). "Taxpayers have a statutory right to speak at these public hearings." *Brademas*, citing *State Bd. Of Tax Comm'rs v. State ex. rel. City of Indianapolis*, 153 N.E. 404 (1926).

You allege that the budget hearing was interrupted and public comment was cut short by the power outage. According to Dr. Mark, public comments on the budget were made during the public hearing portion of the meeting, and no restriction was put on the ability to speak during the public comment portion of the hearing. He further alleges that once the public comment portion of the meeting had ended and discussion turned to personnel matters, the public hearing was adjourned and the special meeting reconvened. In support thereof, Dr. Mark has provided this office with a copy of the unofficial minutes for the August 23 meeting.

The facts regarding the timing of the public hearing and the interruption in electricity are in dispute. While Dr. Mark states that the power was interrupted well after the public hearing was held in its entirety, the minutes do not reflect when the power outage occurred at all. Furthermore, the minutes reflect that the meeting ended at 10:30, while you state that the meeting ended at 10:10. In any case, you had the right to speak at the public hearing, and if the electricity went off during the public hearing portion of the August 23 meeting, such an interruption may be a violation of I.C. §6-1.1-17-3 if it affected the public's right to offer comments on the budget, tax rate, and tax levies. However, if Dr. Mark is correct, and the public hearing portion of the meeting adjourned before the electricity went out, there is no violation of the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that the Marion-Adams School Corporation did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Dr. Patrick Mark