

May 12, 2004

Ms. Joanne Kubesch
1325 South Frances Slocum Trail
Peru, Indiana 46970

*Re: Formal Complaint 04-FC-68: Alleged Violation of the Open Door Law
by the Maconaquah School Corporation*

Dear Ms. Kubesch:

This is in response to your formal complaint alleging that the governing body for the Maconaquah School Corporation (Corporation) violated the Indiana Open Door Law (Open Door Law) (Ind. Code §5-14-1.5) by meeting without providing notice to all members of the governing body and by meeting without providing the public with an opportunity to observe and record its meetings. The Corporation has submitted a response to your complaint, and that response is enclosed for your reference. The Corporation does not respond to your factual averments but instead generally denies that it has violated the law.

BACKGROUND

On April 12, 2004, this office received your formal complaint alleging various violations of the Indiana Open Door Law.¹ Specifically, you allege that the Corporation met on March 17, 2004, and the doors to the meeting room were locked. You further allege that “a portion of [the] Board” met on March 31, 2004, without notifying all of the members of the Board, and that a “small group” of the Board met again in early April, 2004. The Corporation does not dispute or otherwise seek to characterize these factual averments, but instead merely denies in conclusory fashion that it has violated the law.

ANALYSIS

The intent and purpose of the 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.” IC 5-14-1.5-1. Toward that end, and except for limited circumstances not alleged to be applicable here, all meetings of the governing bodies of public

¹ Your complaint also alleged a violation of the Indiana Access to Public Records Act (IC 5-14-3) for the reason that the Corporation did not respond to a list of questions you posed to the Corporation at a March 17, 2004, meeting of the governing body. On April 16, 2004, I advised you and the Corporation that your complaint alleging a denial of records was insufficient on its face for the reason that the statute does not require a public agency to answer questions, but rather only governs the denial of access to “public records.” See IC 5-14-3-2 (defining public record); IC 5-14-3-3. Your complaint does not allege the denial of access to any *record*.

agencies must be open at all times for the purpose of permitting members of the public to observe and record them. IC 5-14-1.5-3(a). A “meeting” is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. IC 5-14-1.5-2(c). The Open Door Law requires that governing bodies provide public notice of the date, time and place of any meetings, and that such notice be given forth-eight (48) hours in advance of the meeting. IC 5-14-1.5-5(a).

Your complaint alleges that the Corporation met on March 17, 2004, and that the doors to the meeting room were locked. The Corporation does not dispute this factual averment, and if true, it is my opinion that the Corporation violated the Open Door Law by meeting in a circumstance that would have precluded any member of the public from having the opportunity to observe and record the meeting. That said, it seems clear from your complaint that *you* were not precluded from attending the meeting at issue. Indeed, your complaint asserts that you attended that meeting and that you sat uncomfortably for three hours in the meeting and listened to the discussion of the School Board regarding several matters. You further allege that it was during that meeting that you posed a list of questions to the Corporation. Based on the allegations of your complaint, I cannot find the Corporation violated your right to observe and record the March 17, 2004, meeting of its governing body.

Your complaint also alleges that small groups of the Corporation’s governing body met on March 31, 2004, and in early April 2004, without notifying all of the members of the governing body. To the extent that this allegation challenges how the members of a governing body communicate with one another, it does not raise an issue under the Open Door Law. It may well be that the governing body or the presiding officer of the governing body is in violation of other statutes governing the conduct of a School Board, or that it is violating its own policies and procedures regarding internal communications. However, as long as the governing body is meeting the notice requirements (posting 48 hours in advance and providing the media with 48-hour notice of its meetings), it is complying with the only notice required under the Open Door Law.

Your allegations nonetheless raise the possibility that a majority of the School Board, or a majority of smaller governing bodies (*e.g.*, committees) established by the School Board or by its presiding officer is meeting without complying with the notice requirements of the Open Door Law. If a majority of the governing body is gathering together to take official action on public business, regardless of whether it is doing so without contacting other members of the governing body, it must nonetheless post notice of its meetings 48 hours prior to the meeting and permit the public to observe and record its meetings. IC 5-14-1.5-3(a); IC 5-14-1.5-5. If a group of the School Board that does not constitute the majority of the School Board is gathering together, it is not a “meeting” of the School Board as “meeting” is defined under the Open Door Law, and the notice and public observance requirements do not apply. However, if the smaller group is a committee of the School Board established by the School Board or by the presiding officer of the School Board, the smaller group is itself a “governing body” subject to all of the requirements of the Open Door Law.

Your complaint does not allege facts or make allegations sufficient for me to determine whether the smaller groups you complain about constitute a majority of the School Board or of

any committee established by the School Board or its presiding officer. Neither does the School Board's response inform that question. Accordingly, I offer no finding here on whether the meetings of March 31, 2004, and in early April 2004, violate the Open Door Law, but rather defer that question to the courts for resolution in any action you bring against the Corporation under Indiana Code 5-14-1.5-7. If you prevail in any such action, you will be entitled to your attorney fees and the reasonable costs of litigation. IC 5-14-1.5-7(f).

CONCLUSION

For the reasons set forth above, I find that the Corporation did not violate the Open Door Law in that it did not deny you access to the March 17, 2004, meeting. However, if the Corporation locked the doors to the meeting room and otherwise precluded anyone from attending that meeting, its conduct violated the Open Door Law. I further find that the Corporation did not violate the Open Door Law with regard to your allegations challenging the gatherings of small groups of the School Board. If evidence is established to show that a *majority of the School Board* or a *majority of any governing body established by the School Board or its presiding officer* gathered together without posting notice as required by the statute, that governing body would be in violation of the Open Door Law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Carl Humbarger