

June 2, 2004

Ms. Sheryl K. Hart
Roanoke News
3499 East 716 North
Huntington, Indiana 46750-9634

*Re: Formal Complaint 04-FC-91: Alleged Violation of the Open Door Law
by the Town of Roanoke*

Dear Ms. Hart:

This is in response to your formal complaint alleging that the Town of Roanoke (Town) violated the Indiana Open Door Law (Open Door Law) (Ind. Code §5-14-1.5) when it noticed a special meeting scheduled for June 8, 2004, and failed to request or otherwise ensure publication of a legal notice of the meeting in your newspaper. For the reasons set forth below, I find that the Town did not violate the Open Door Law or any other public access laws regarding notice of the June 8, 2004, meeting.

BACKGROUND

On Monday, June 1, 2004, a constituent contacted this office with an informal inquiry challenging the validity of a June 8, 2004, special meeting scheduled by the Town of Roanoke. The Town Council is the fiscal body for the local library board, and the Town was planning to meet to hold a public hearing to reject or approve a proposal by the local library board for a capital project. According to the constituent, the scheduled meeting would violate the law for two reasons. First, the constituent alleged that the library board did not transmit the proposal to the Town within the time required by Indiana statute. Second, the constituent alleged that the Town did not publish an advertisement of the meeting in two newspapers, also, the constituent believed, in violation of the law.

The latter concern was brought up less than an hour later in an informal inquiry made by the Town's attorney. The attorney called this office independent and unaware of the constituent's earlier call, and sought to confirm his understanding that the Town's notice was not defective because it appeared in only one newspaper.

Your formal complaint followed both of these inquiries. You acknowledge that you received notice of the June 8, 2004, meeting, but assert that you did not get a request to publish that notice. Indeed, the notice contains no such request. The complaint sought "priority status"

and expedited review pursuant to 62 IAC 1-1-3. Although the complaint does not articulate the specific criteria pursuant to which priority status is sought, it is presumed to be based on subsection 2 of that code seeking to invalidate a meeting for which notice has been posted but the meeting has not yet occurred. *See* 62 IAC 1-1-3(2).

I offer the following as my advisory opinion on the complaint and my informal inquiry response to the inquiries from the constituent and the Town's attorney.¹

ANALYSIS

For the reasons set forth below, it is my opinion that the June 8, 2004, special meeting was properly noticed and is not otherwise invalid based on allegations that the Town did not receive the proposal in a timely manner. It is my further opinion that the publication provisions do not apply to the June 8, 2004, special meeting, and that proper notice was provided under the notice provisions of the Indiana Open Door Law.

I begin with the claim raised in the informal inquiry that the library board did not timely submit its proposal to the Town Council, although I immediately doubt that the governing statute is a "public access law" that falls within the jurisdiction for an opinion of the Public Access Counselor. *See* IC 5-14-4-3(3). Indiana Code 20-14-13 addresses the procedure for recommendation and approval of a library capital projects fund. A library board may establish a capital projects fund for various purposes. IC 20-14-13-4. However, any such plan requires approval from the applicable fiscal body. IC 20-14-13-5. While the statute sets out various alternatives for identifying the appropriate fiscal body based on the location of the library board, the parties all seem to agree (and I offer no contrary view here) that the Town Council for the Town of Roanoke is the proper fiscal body in the present matter.

The appropriate procedure requires the library board to hold a public hearing on any proposal, pass a resolution on the project, and transmit the resolution to the fiscal body for rejection or approval. IC 20-14-13-5. Any hearing held by the library board on a funding project for which funds are sought in a given year must occur before May 15, 2004, of that year. IC 20-14-13-5. The public hearing set by the library board must be preceded by publication of the proposal and by publication of the notice of hearing in accordance with the publication procedures set out in Indiana Code 5-3-1-2(b), which requires publication one time at least 10 days prior to the hearing. IC 20-14-13-5(c).

No complaint is brought here against the library board for any alleged violation of these provisions. Rather, the complaint is that the Town Council, the fiscal body, cannot approve or reject the resolution because it did not receive the resolution in a timely manner under the statute.

¹ Indiana Code 5-14-5-8 requires that I immediately forward a copy of any properly filed formal complaint to the public agency that is subject to the complaint. I do so with this opinion. Generally the complaint is forwarded to the public agency before an opinion is composed in order that the agency be afforded an opportunity to respond and to facilitate resolution of the complaint. While the Town may certainly prepare and file a response to the complaint, its response is unnecessary to resolution based on a plain reading of the statutes at issue and the facts asserted in the complaint and as part of the attendant informal inquiries.

Indeed, the statute requires that the library board transmit the resolution to the fiscal body within a specific time. The constituent in the informal inquiry alleges that that transmission must occur within four days of passage of the resolution, but I can find no authority for that claim. In fact, the statute cited by the constituent plainly states that the library board must transmit the resolution to the fiscal body within ten (10) days of passage. IC 20-14-13-6(a). The constituent alleged that the library board passed the resolution on May 10, 2004, and that the Town received it sometime before May 18, 2004. That's only eight days and well within the statutory time frame, but if that were not enough the Town attorney avers that the Town received the resolution on May 15, 2004. Even better. In my opinion, for whatever it is worth in this dispute (*see* IC 5-14-4-3(3)), the library board timely transmitted the resolution to the Town as fiscal body under the terms of the statute. Even if this were not the case, I do not think any defect in the timing of the transmission would invalidate any subsequent meeting by the Town Council or otherwise impede public access to that meeting, and any sanction or resolution for that defect is more appropriately raised with and addressed by the Indiana Department of Local Government Finance in final review and assessment based on whatever was ultimately passed (*see* IC 20-14-13-7), or perhaps by the Indiana State Board of Accounts in any subsequent audit.

The second issue in this general matter, raised both by your formal complaint and the informal inquiries, deals with the propriety of the notice. 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, 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). There is no requirement under the Open Door Law that the notice be *published* in a media source or otherwise widely disseminated. IC 5-14-1.5-5. Rather, the governing body is required only to provide notice to the media outlets that request it (it is up to them to publish or not publish the information), and to "post" the notice at the principal office of the public agency or at the building where the meeting is to be held. IC 5-14-1.5-5(b). Of course, other statutes may require something more by way of notice for certain events, such as publication, and when they do the notice provisions of the Open Door Law do not apply. IC 5-14-1.5-5(e); *see* IC 5-3-1-2(a).

While the issue of "publication" is certainly more closely a "public access" issue falling within the jurisdiction of this office, I again can find no fault with the Town based on the plain language of the governing statutes. As noted above, the library board in the first instance was required to hold a public hearing on any proposed resolution for a capital funding project, and that hearing required not mere notice (posting under the notice provisions of the Open Door Law), but notice in the form of publication one time at least 10 days before the library board's hearing in a qualified newspaper (possibly two depending on whether two qualified newspapers as defined by Indiana Code 5-3-1-0.4 and 5-3-1-0.6 exist within the Town). *See* IC 20-14-13-5(c). Once the library board passes any resolution following that procedure, it must transmit the resolution to the appropriate fiscal body for approval. Indiana Code 20-14-13-6(b) governs the procedure for the fiscal body. However, where section 5 of the capital projects fund statute governing procedures before the library board requires *publication* of notice of the *library board's* public hearing under Indiana Code 5-3-1, section 6 of the capital projects fund statute

governing procedures before the fiscal body clearly does not. That statute provides simply that the fiscal body shall hold a public hearing within 30 days after receiving the resolution and must reject or approve the resolution before August 1 of the year that the plan is received. IC 20-14-13-6(b). There is no publication requirement for this hearing under section 6 of the statute, or any other law relied on by the parties or brought to the attention of this office, and as such the publication provisions of Indiana Code 5-3-1 do not apply. *See* 5-3-1-2(a) (“This section applies only when notice of an event is required to be given by publication in accordance with IC 5-3-1”). Because there is no publication requirement for the June 8, 2004, special meeting of the fiscal body, the notice provisions of the Indiana Open Door Law apply, and all that is required under that statute is that the governing body post notice of its meeting 48 hours in advance of the meeting, and that it within the same time provide that notice to media who previously requested notice of meetings. IC 5-14-1.5-5(b).

Now, it may well be that the General Assembly intended that the publication requirements it applied to the public hearings of the library board also apply to the public hearings held by the fiscal body to approve or reject the library board’s proposal. However, I doubt the publication requirement was intended to apply to the fiscal body. If the absence of the requirement in section 6 of this relatively short chapter were not enough -- and principles of statutory construction suggest that it should be -- the legislature similarly omitted it in another section of the statute where it talked about subsequent approval by and procedures within the Department of Local Government Finance. *See* IC 20-14-13-7. There, the General Assembly characterized the procedures leading up to the approval process as requiring the Department of Local Government Finance to review whether *the library board properly advertised its hearing under section 5(c)* (requiring “publication”), and whether the fiscal body approved the resolution (without any mention of publication). IC 20-14-13-7. The General Assembly then specifically inserted and imposed additional publication requirements after the fiscal body has approved the plan, but prior to and as part of the subsequent and final approval process by the Indiana Department of Local Government Finance. IC 20-14-13-7. Based on the foregoing, it is clear to me that the legislature did not intend for the publication requirement to apply to the hearing of the fiscal body in this context. In any event, if I am wrong and that was the General Assembly’s intent, it is for that state governing body to correct the omission with legislation, not for this office to legislate the requirement in an advisory opinion.²

No claim is made here that the timing or the content of the notice provided by the Town for its June 8, 2004, meeting violates the notice provisions of the Open Door Law. Based on the allegations of your complaint and the facts as presented in the informal inquiries, I find that the notice was timely under the Open Door Law. Moreover, I have reviewed the content of that notice and find it sufficient under the statute in that it sets forth the date, time and location of the meeting.

I offer the following additional comments. As set forth above, I do not believe that the June 8, 2004, meeting would be invalid for the reasons alleged. That said, I note that the Town

² Because I do not find the publication requirements applicable, I do not address whether they were violated in this instance where publication occurred in only one newspaper within the jurisdiction.

has 30 days from the date it received the resolution (to June 14, 2004, *if the facts alleged are correct*), to hold its hearing. IC 20-14-13-6(b). The Town can hold its hearing as presently scheduled, or it can reschedule the hearing and make some additional effort to publish notice of the hearing in more than one newspaper. There seems ample time, but that decision is for the Town's governing body and not the Public Access Counselor.

CONCLUSION

For the reasons set forth above, I find that the Town did not violate the Open Door Law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Michael Hartburg
Mr. Brian Secor