

August 30, 2004

Sheryl K. Hart
The Roanoke News
3499 East 716 North
Huntington, IN 46750

*Re: Formal Complaint 04-FC-128; Alleged Violation of the Open Door Law by the
Roanoke Town Council*

Dear Ms. Hart:

This is in response to your formal complaint alleging that the Roanoke Town Council violated the Open Door Law when Town Council President Edward Coy removed Brian Secor as Chair of the Roanoke Flood Committee ("Flood Committee"). I find that the Open Door Law was violated when Town Council President Coy removed took official action without the formalities of a public meeting.

BACKGROUND

Several members of the public became aware that Roanoke Town Council President Edward Coy had removed Brian Secor as Chairman of the Flood Committee. Mr. Secor received a letter dated July 23, 2004 from President Coy in which Mr. Secor was told that effective July 20, 2004, he was being terminated as Chairman of the Flood Committee by President Coy. The record also contains a news release dated July 23 announcing that Mr. Secor was no longer Chairman of the Flood Committee. The minutes of the August 3, 2004 Town Council meeting show that President Coy read a statement removing Mr. Secor, and stating that President Coy had support for his decision from members of the community and the majority of the Town Council members individually. President Coy then asked the Council to vote as a show of support for his exercise of discretion in removing Mr. Secor. The motion passed by a vote of 4-1.

You and two other members of the public filed complaints.¹ We received your complaint on July 30. I provided a copy of the three complaints to the Roanoke Town Council. Town Council Attorney Michael Hartburg responded on behalf of the Town Council; his response is attached for your reference. Mr. Hartburg stated that because former Town Council President Lee Keefer had announced the formation of the Flood Committee and Mr. Secor's appointment as Chair of the Committee without calling for a vote, then President Coy would also be able to proceed in the same manner.

ANALYSIS

The purpose of the Open Door Law is stated as:

It is the intent of this chapter 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. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.

Ind.Code 5-14-1.5-1.

The issue presented by these facts is whether the removal of Mr. Secor, which no one disputes occurred on or before July 23, was in violation of the Open Door Law. The crux of the Town Council's response is that President Coy had discretion to remove Mr. Secor from the Flood Committee. However, the Town Council has not shown that there was a public meeting in which the Town Council had voted to give President Coy the discretion to remove Mr. Secor from the Flood Committee (or some broader grant of discretion that would include such an official action). The Town Council's response that the original appointment of Mr. Secor was taken without a vote, implying that he may be removed without a vote of Council, provides scant justification for President Coy's removal of Mr. Secor prior to any meeting. In fact, the Council could have met in public to deliberate and decide to remove Mr. Secor without a formal vote, so long as the action was taken in a public meeting. Because President Coy took official action outside of a public meeting, without duly constituted discretion to do so granted to Coy by the Council in a prior public meeting, the Town Council violated the Open Door Law.

I also comment on the record of the August 3 meeting minutes that were supplied by the Town Council. Although not yet approved, those minutes imply that President Coy spoke with Council members individually to ascertain whether each supported the action. However, this person-by-person communication does not satisfy the spirit of the Open Door Law that any official action be taken in an open meeting, even if such individual communications are not technically a meeting because no gathering of a majority of the Town Council took place. Of course, if a majority of the Town Council did gather to take official action with regard to Mr. Secor without posting notice and holding a meeting to which the public was invited, that would have constituted a violation of the Open Door Law.

¹ See advisory opinions 04-FC-130 and 04-FC-131 regarding this same action by the Roanoke Town Council.

CONCLUSION

For the foregoing reasons, I find that the Roanoke Town Council violated the Open Door Law when Town Council President Edward Coy removed Brian Secor prior to any public meeting and without having received from the Council, in a public meeting, delegated discretion or authority to take such an action.

Sincerely,

Karen Davis
Public Access Counselor

cc: Michael Hartburg