

July 5, 2005

Sent Via Facsimile

Mr. Daniel J. Stockman
The Journal Gazette
600 W. Main Street
Fort Wayne, IN 46802

Re: Formal Complaint 05-FC-110; Alleged Violation of the Open Door Law by the Fort Wayne-Allen County Department of Health

Dear Mr. Stockman:

This is in response to your formal complaint alleging that the Fort Wayne-Allen County Department of Health (“Department”) violated the Open Door Law (“ODL”) by failing to send the *Journal Gazette* a notice of a special meeting of the Health Board. I find that the Department was in technical violation of the Open Door Law.

BACKGROUND

The *Journal Gazette* sent a notice to the Department on December 13, 2004 requesting that the Department send notice of all meetings, including executive sessions, for the calendar year 2005. You stipulated the address to which notices should be sent, and a telephone number for emergency meetings for which you would receive the same notice as that sent to members of the governing body.

You complain that the Department’s Board of Health met on May 16, 2005 without notifying the newspaper, and that the newspaper just learned of the meeting on May 20, 2005. You claim that the Department violated the notice provisions of IC 5-14-1.5-5(b)(2) and the notice provisions of IC 5-14-1.5(d)(1) for emergency meetings.

The Department responded to your complaint, a copy of which is attached for your reference. Assistant Allen County Attorney Craig R. Finlayson admitted the oversight and told me that a new staff person had erroneously believed that notice of only regular meetings are

required to be sent to the media. The Department has taken steps to train on this requirement and does not believe the mistake is likely to occur again. Mr. Finlayson also stated that the emergency meeting notice requirements are inapplicable because the Board did not claim to be meeting in an emergency; in fact, the notice was duly posted at the meeting place at least 48 hours in advance of the meeting.

ANALYSIS

Except for executive sessions, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. Ind. Code 5-14-1.5-3(a). Notice of the date, time, and place of a meeting or executive session must be posted at least 48 hours in advance of the meeting, not including Saturdays, Sundays, and legal holidays. IC 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency by posting a copy of the notice at the agency's principal office or, if no such office exists, at the building where the meeting is to be held; and by delivering notice to all news media who request it by January 1 for that year's meetings. IC 5-14-1.5-5(b)(2). Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. IC 5-14-1.5-5(c).

The Department has admitted that it did not deliver notice to the *Journal Gazette* of the May 16 special meeting, through oversight of the public agency and without intent to conceal the meeting. This was a technical violation of the Open Door Law.

The Indiana General Assembly and the Indiana Court of Appeals have recognized that a notice that does not meet all of the technical requirements may still be valid under a substantial compliance approach. In *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (Ind. Ct. App. 1997), the Indiana Court of Appeals reviewed an issue concerning that Town's police commission. In that case, the Court determined that the Town clearly violated the technical requirements of the ODL by failing to post notice of a hearing at least forty-eight (48) hours in advance. *Id.* at 196. The Court analyzed this technical violation in light the decision in *Riggin v. Board of Trustees of Ball State University*, 489 N.E.2d 616 (Ind. Ct. App. 1986) and subsequent changes to the Open Door Law by the Indiana General Assembly. Under the ODL, a court will review a governing body's notice under standards identified at Indiana Code section 5-14-1.5-7(d), including the extent to which the violation "denied or impaired access to any meetings that the public has a right to observe and record." Ind. Code §5-14-1.5-7(d)(1).

In this case, the Department may have met the substantial compliance standard because it posted notice of the special meeting at least 48 hours in advance. This fact tends to diminish the extent to which the violation denied or impaired access to the public meeting.

The Department did not violate the Open Door Law's requirement concerning notice to media of an emergency meeting, since the notice was posted at least 48 hours in advance of the meeting. The Department makes no claim to the May 16 meeting being an emergency.

CONCLUSION

For the foregoing reasons, I find that the Fort Wayne-Allen County Department of Health technically violated the Open Door Law but nevertheless may have substantially complied by posting notice of its special meeting.

Sincerely,

Karen Davis
Public Access Counselor

cc: Craig R. Finlayson