

November 21, 2005

Sent Via Facsimile

Mr. Rodger J. Birchfield
7047 E. Landersdale
Camby, IN 46113

*Re: Formal Complaint 05-FC-223; Alleged Violation of the Open Door Law by the
Madison Township Board*

Dear Mr. Birchfield:

This is in response to your formal complaint alleging that the Madison Township Board (“Board”) violated the Open Door Law by deciding the budget in advance of the meeting and failing to allow or consider discussion from members of the public on the budget.

BACKGROUND

You filed your formal complaint against the Board on October 20, 2005. You are the Trustee of Madison Township in Morgan County. You allege that at a September 20 meeting of the Board concerning the 2006 budget, two members of the Board appeared to have “decided in advance what they were going to do.” This was apparent, you contend, because during the line by line review of the budget, the Chairman of the Board Ms. Virginia Perry would announce the budget classification and ask for approval or disapproval by the Board. In each case, Board member Tom Whitley would approve or disapprove and Ms. Perry would echo his vote. The third board member, Ms. Betty Need, would sometimes vote with the other members, but other times “simply sat silent.” You also contend, I believe, that the Board violated state law by not allowing public input on the budget, which is required by IC 36-6-6-6. You contend that Ms. Perry read and relied on erroneous guidance of the Department of Local Government Finance that states that adoption of the budget must be at a public meeting, but taxpayers do not have the right to testify or comment on the township board’s actions. You allege that at least four taxpayers who attended the September 20 meeting did not receive any explanation for the budget

appropriations that were proposed by the Board. You requested that Board members Perry and Whitley should be sanctioned and the budget proposed by the Trustee (you) be reinstated.

I sent a copy of your complaint to the Board Chairman Ms. Perry. I have attached a copy of the Board response for your reference. The Board denies refusing public comment at the September 20 meeting. The Board stated that although the township attorney advised Ms. Perry on September 27 that the guidance issued by the Department of Local Government Finance was not consistent with the requirements of state law, "at no time did the chairman use the Township Budget Manual guidelines to avoid answering questions of the taxpayers or anyone else." Also, the Board denied meeting in advance of the September 20 budget meeting to discuss the budget. Rather, the Board members each received a copy of the 2006 budget prior to the adoption meeting to review and make independent judgments concerning expenditures for 2006. All Board members had their own marked copies in front of them to refer to as each item was discussed. At no time were any decisions made by the Board prior to the adoption meeting.

ANALYSIS

Except as provided in Ind. Code 5-14-1.5-6.1, 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. IC 5-14-3-3(a). A "meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. IC 5-14-1.5-2(c). A gathering of two or more members of the township board for the purpose of taking official action upon the budget would constitute a meeting. If two or more members met to receive information, deliberate, or take any other official action on the budget outside a public meeting, the Board would have violated the Open Door Law. I do not have before me irrefutable evidence that such a meeting occurred. However, I am not a fact-finder. I can only issue guidance on facts that are not in dispute, or, where facts are in dispute, I make a determination on hypothetical facts. I cannot make a categorical conclusion on disputed facts regarding whether a public agency violated the Open Door Law. If you believe that two or more members of the Board met outside the September 20 public meeting, you may file an action in court under IC 5-14-1.5-7(a) alleging a violation of the Open Door Law.

Under Ind. Code 36-6-6-6, a taxpayer of the township may appear at any meeting of the legislative body and be heard as to: 1) an estimate of expenditures; 2) a proposed levy of taxes; 3) the approval of the executive's annual report; or 4) any other matter being considered by the legislative body. The township board is the legislative body of the township. IC 36-6-6-2(c).

The Open Door Law does not confer a right on a taxpayer or any other member of the public to be heard at a public meeting, as my office has stated many times. However, if another statute applies to a meeting, members of the public may well have such a right. This appears to be the case for meetings of a township board. Again, the township disputes your version of events at the meeting. Because only a court can determine facts in a disputed matter, I leave you to your remedies under IC 5-14-1.5-7. Also, I do not have authority to sanction members of a governing body or reinstate the Madison Township budget as proposed by the Trustee. *See* IC 5-14-4.

CONCLUSION

For the foregoing reasons, I do not find that the Madison Township Board violated the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Virginia Perry