

March 1, 2005

Mr. James E. Alexander  
1223 Wells Drive  
Madison, Indiana 47250

*Re: Formal Complaint 05-FC-26; Alleged Violation of the Open Door Law by the  
Jefferson County Commissioners*

Dear Mr. Alexander:

This is in response to your formal complaint alleging that the Jefferson County Commissioners (“Commissioners”) violated the Open Door Law (“ODL”) by taking official action outside of a public meeting. I find that the Commissioners did not violate the Open Door Law.

#### BACKGROUND

The Commissioners met at a public meeting on January 7, 2005 and voted not to renew the contract with SIS/WIS to provide the county with 9-1-1 coordinator services. The contract term was through calendar year 2004. You allege that a decision was made some time prior to the January 7 public meeting to not renew the contract. You base this allegation on the fact that only a partial payment was made following SIS/WIS’s claim for full payment for the month of January 2005. This partial payment was made in a check dated January 7 by the county auditor’s office. The check was printed on January 6, as evidenced by a check register report dated January 6, 2005 showing the check to SIS/WIS for the partial payment.

You filed your formal complaint with my office on January 31, 2005. In your complaint, you ask that I impose a number of remedies, including a ruling that the action of the Commissioners was illegal, reinstating the service contract, and enforcing the payment terms of the contract.

The Commissioners submitted a written response to your complaint, a copy of which is enclosed for your reference. Mr. Michael A. Frazier, President of the Board of Commissioners stated that no decision was made prior to the January 7 public meeting to not renew the contract. Commissioner Frazier admitted to personally not favoring renewal of the already-expired contract, but anticipated discussion and a final decision only at the January 7 public meeting. Because Mr. Frazier had asked SIS/WIS to continue performing until the Commissioners could

discuss the contract at the January 7 meeting, Mr. Frazier alone instructed the auditor to not pay the full January payment, instead approving only a partial payment for the period of January 1 and January 7. Had the Commissioners voted to offer a new contract to SIS/WIS at the January 7 meeting, additional payment would have been made.

#### ANALYSIS

It is the intent of the Open Door Law 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. Ind.Code 5-14-1.5-1. Hence, all meetings of a governing body of a public agency 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 defined as a gathering of a majority of a governing body for the purpose of taking official action on public business. IC 5-14-1.5-2(c).

You allege that the Commissioners must have met prior to the January 7 public meeting because the auditor issued a partial payment to SIS/WIS, which included services through January 7. It appeared to you that the payment for services through January 7 made it a foregone conclusion that the Commissioners would vote to not renew the SIS/WIS contract, and indeed that is what eventually occurred. The Commissioners deny any such meeting.

The evidence of partial payment occurring prior to the January 7 meeting admits of more than a single inference that a meeting took place. Instead, the President of the Board of Commissioners, having received a claim for services in January, instructed the auditor to pay only through January 7, when he anticipated that the Commissioners would take action on the contract either to renew or not renew it. If it in fact the Commissioners did meet prior to January 7, it would have been a violation of the Open Door Law. But I cannot find from the evidence before me that such a meeting occurred.

Because I do not find a violation of the Open Door Law, your request for a remedy such as reinstatement of the SIS/WIS contract is not granted. However, please note that the Office of the Public Access Counselor issues advisory opinions on the public access laws. IC 5-14-4. The enabling statute for my office does not confer any authority on my office to impose the relief you request, even if a violation of the Open Door Law had occurred.

#### CONCLUSION

For the foregoing reasons, I find that the Jefferson County Commissioners did not violate the Open Door Law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Michael A. Frazier