

February 4, 2005

Sent Via Facsimile

Mr. Andre F. Joseph
6031 Melton Road
Portage, IN 46368

*Re: Formal Complaint 05-FC-5; Alleged Violation of the Open Door Law by the
Indiana Port Commission*

Dear Mr. Joseph:

This is in response to your formal complaint alleging that the Indiana Port Commission (“Commission”) violated the Open Door Law by failing to post notice at least 48 hours in advance of a meeting. I find that the Commission did not violate the Open Door Law.

BACKGROUND

The Indiana Port Commission held an executive session and public meeting on Monday, December 27, 2004. The executive session notice stated that the session would begin at noon on December 27, in the ISTA Center, 150 West Market Street, in Indianapolis. The notice stated that the public meeting would begin at 1:00 p.m. in the same location. You stated in your formal complaint that the Port Commission failed to provide 48 hours’ notice of the public meeting and executive session, because of legal holidays and weekends intervening between the posting of the notice and the date of the meeting. You do not specify when you believe the notice was posted.

I sent a copy of your complaint to the Commission. Responding by letter was Mr. William T. Niemier, Chief Counsel of the Commission. In his response, he states that he personally posted the notice of the meeting and executive session at 10:05 a.m. on Wednesday, December 22, 2004, at the front glass door of the Commission’s central office at 150 West Market Street, Suite 100. He stated that for the executive session, 49 hours and 55 minutes had transpired between the time the notice was posted and the executive session at noon on Monday, not counting Friday, December 24 (a legal holiday under state statute) and Saturday and Sunday.

Therefore, he argues, the notice was posted timely. I have enclosed a copy of the Commission's response for your reference.

ANALYSIS

The Open Door Law prescribes specific requirements for posting notice of a meeting or executive session by a governing body of a public agency. Public notice of the date, time and place of a meeting or executive session shall be given at least forty-eight (48) hours before the meeting, excluding Saturdays, Sundays, and legal holidays. Ind.Code 5-14-1.5-5(a). Public notice shall be given by the governing body by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. IC 5-14-1.5-5(b). In addition, a state agency (as defined in Indiana Code 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the intelenet commission under Indiana Code 5-21-2.

You have not complained that the notice was not posted at the correct location, and indeed I observe that the notice was posted at the Commission's principal office in Indianapolis, which is also the place where the meeting was held. You also do not allege that the Commission did not meet the requirement that it post notice on the internet, as a state agency like the Commission is required to do. *See* IC 4-13-1-1. Mr. Niemier stated that the notice was posted on AccessIndiana, the computer gateway administered by the intelenet commission.

You allege that the notice was not posted timely, because you believe that the Commission did not count weekends and state holidays properly. A list of legal holidays within the state of Indiana "for all purposes" is at Indiana Code 1-1-9-1. It includes in relevant part Christmas Day, December 25. IC 1-1-9-1(a). When any of the listed legal holidays falls on Saturday, the preceding Friday shall be the legal holiday. IC 1-1-9-1(b). I note that in 2004, December 25 fell on a Saturday. Therefore the legal holiday was Friday, December 24. Also, according to IC 1-1-9-1, Sunday is a legal holiday. Hence, the days of Friday, December 24, Saturday, December 25, and Sunday, December 26 (the latter both a legal holiday and a day that may not be counted toward the 48-hour notice requirement) should not be counted toward the 48 hour notice requirement. Please note that Monday, December 27 was a day that many state offices were closed. Although in common parlance, Monday, December 27 was a "state holiday" because it was declared as a day off for state employees by the executive, it was not a "legal holiday" as that term is defined in statute. Therefore, the time from midnight on Monday morning until noon on Monday could be counted toward the 48 hour notice requirement.

Accordingly, the Commission is correct that it gave at least 48 hours' notice prior to the noon executive session as well as the 1:00 p.m. public meeting on Monday, December 27. I also note that according to Mr. Niemier, the offices of the Commission at 150 West Market Street were open to the public on Thursday, December 23 for viewing the notice.

Finally, although you do not raise this issue, you are apparently on an electronic mailing list that the Commission voluntarily maintains for purposes of sending notice of its meetings to addressees. The Commission admits that it failed to send the notice of the December 27 meeting to you and other addressees on the mailing list inadvertently. Because this notice is voluntary

and not required by the Open Door Law, it was not a violation of the Open Door Law when the Commission failed to send notice of its December 27 meeting to you via electronic mail.

CONCLUSION

For the reasons stated above, I find that the Indiana Port Commission did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. William T. Niemier