

April 22, 2005

Scott J. McCartney  
890 S. Lincoln Street  
Martinsville, IN 46151

*Re: Formal Complaint 05-FC-55; Alleged Violation of the Open Door Law by the  
Metropolitan School District of Martinsville*

Dear Mr. McCartney:

This is in response to your formal complaint alleging that the Metropolitan School District of Martinsville ("School") violated the Open Door Law by holding an executive session without proper notice.

#### BACKGROUND

According to your complaint, the School held an executive session on March 17, 2005, and failed to advertise the session in the newspaper.<sup>1</sup> You state that you believe that if the notice was posted at the administration building, it was not posted properly. You do not state the basis for this allegation. You also allege that the newspaper has carried advertisements for the School's executive sessions in the past, and the newspaper notices state only that the executive session was on personnel issues. Consequently, you allege that the notice is too vague.

Having sent the School a copy of your complaint, I received a response from Susan E. Traynor, attorney for the School. I enclose her letter for your reference. Ms. Traynor avers that the February 24, 2005 notice was posted at the School's central administration building on February 17, 2005. The March 17, 2005 notice was posted at the same location on March 10, 2005. Ms. Traynor enclosed copies of the notices that were actually posted on those days. She also indicated that seven media who had requested the notices were mailed the respective notices

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<sup>1</sup> You also allege the same violation regarding a February 24, 2005 executive session, but your complaint filed on March 23, 2005 was not timely with respect to this meeting. Ind. Code 5-14-5-7. However, the basis for your complaint is the same as for the March 17, 2005 meeting, so you may deem this formal advisory opinion as fulfilling the informal inquiry response with respect to the February 24, 2005 meeting.

on the same dates that they were posted at the administration building. She also indicated that the notices were proper because they stated the date, time, and location of the executive sessions.

Ms. Traynor pointed out that the notices contained the required information for executive sessions under the statute, although she conceded that each notice omitted the precise reference to the statute as required by the Open Door Law. She argued that even with this omission, the School was still in substantial compliance with the Open Door Law.

## ANALYSIS

It is the public policy of the State of Indiana that 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. An executive session is a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. IC 5-14-1.5-2(f). Public notice of the date, time and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. 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 principal office or at the building where the meeting is to be held. IC 5-14-1.5-5(b). A public agency is also required to deliver notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year. Such notice to media may be accomplished by means of U.S. Mail. IC 5-14-1.5-(b)(2).

To the extent that you allege that the School failed to comply with the Open Door Law because it did not advertise the February 24 and March 17 executive sessions in the newspaper, your complaint is not well taken. Although the School must provide its notice to the media in compliance with IC 5-14-1.5-5(b)(2), there is no requirement that the media publish the notice at all, much less 48 hours in advance of the meeting.

Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b) of the Open Door Law. IC 5-14-1.5-6.1(d). The enclosed notices list "Executive Session: 5-14-1.5-6.1 – To Discuss job performance evaluation of individual employees." As Ms. Traynor states, the notices of the executive sessions state the subject matter by specific reference to the enumerated instance for which executive session may be held under IC 5-14-1.5-6.1(b), except that the citation is incomplete. The executive session notices should have included the full citation to the specific instance under discussion thus: "IC 5-14-1.5-6.1(b)(9) – to discuss a job performance evaluation of an individual employee." Similar to past opinions of this office, I believe that the School was in substantial compliance with the Open Door Law in spite of the technical violation. *See, Turner v. Town of Speedway*, 528 N.E. 2d 858 (Ind. Ct. App. 1988). "Substantial compliance" includes: (1) the extent to which the violation denied or impaired access to a meeting; and (2) *the extent to which the public knowledge or understanding of the public business conducted was impeded.* (Emphasis added.) *Town of Merrillville v. Blanco*, 687 N.E. 2d 191 (Ind. App. 1998). Because the narrative was virtually the same as the narrative of

the exception in the statute, and the statutory citation was present except for the precise instance, I do not believe that the public's knowledge or understanding of the School's business was impeded.

However, I do note that the School's notice is deficient under the Open Door Law for a reason that you do not raise in your complaint. Under the Open Door Law, the notice of a meeting or an executive session must state the time as well as the date and place of the meeting or executive session. The six to seven-page notices contain on the first page the time for the start of the public meeting. On the last page, the executive session is listed after adjournment of the meeting. The notice does not specify a time for the executive session. Although the School could post one notice for both the executive session and the meeting, it should have specified a time for the executive session. *See, Opinion of the Public Access Counselor 99-FC-04.* Again, this omission was but a technical violation, since the public may be excluded from a properly held executive session; therefore, omitting the time that the executive session was to start would not have impaired the public's right to observe a meeting. IC 5-14-1.5-7(d)(1). Nevertheless, I advise the School to ensure its future notices are consistent with the guidance contained in this advisory opinion.

#### CONCLUSION

For the foregoing reasons, I find that the Metropolitan School District of Martinsville did not meet the technical requirements of the Open Door Law, but was in substantial compliance with the Open Door Law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Susan E. Traynor