

May 16, 2005

Mr. Anthony G. Zappia
118 N. Gibson Avenue
Indianapolis, IN 46219

*Re: Formal Complaint 05-FC-68; Alleged Violation of the Open Door Law by the
Hancock County Council and the Hancock County Sheriff's Department*

Dear Mr. Zappia:

This is in response to your formal complaint alleging that the Hancock County Council ("Council") and the Hancock County Sheriff's Department ("Sheriff") violated the Open Door Law by denying you access to meetings of the Council.

BACKGROUND

I derive the facts regarding your visits to the Council meetings solely from your version of events contained in your complaint and a conversation with you when you filed your complaint. The gist of your complaint is that you were denied the right to attend the April 13, 2005 meeting of the Council. Prior to that, at a March 9, 2005 meeting, you were asked by the council members to identify yourself and state the purpose of your visit. After responding that you were a citizen of Indiana, the Council told you that you would be welcome to come back. At the April 13 meeting of the Council, Hancock County Sheriff Nick Gulley, accompanied by an armed officer, confronted you. You claim that Sheriff Gulley demanded that you state the purpose for your visit, since you are an Indianapolis resident seeking to attend a Hancock County Council meeting. You state that he conceded that you had not violated any laws, but made intimidating statements to you that he would "be all over you."

You then state that "when you left the Courthouse Annex," Sheriff Gulley and the officer followed you to the street. You allege that Sheriff Gulley made it clear that he would continue to harass you any time that you came to Greenfield. After you phoned your attorney, the Sheriff and the officer retreated. Although your complaint does not directly state that you left the Courthouse Annex before the meeting was concluded, I take it from your conversation with me prior to filing your complaint that you left before the meeting was over.

You claim that Sheriff Gulley, at the behest of the Hancock County Council, has violated your rights by creating a hostile environment that effectively denies you access to all public forums in Hancock County.

I sent a copy of your complaint, including this version of the facts, to the Hancock County Council. In response, Hancock County Attorney Ray Richardson sent the following message:

“I have asked the Hancock County Sheriff for his response to the complaint. He replied that it is his responsibility and within his authority to attend public meetings and assure the enforcement of all relevant state and local laws, and that he intends to continue doing that.”

I have attached a copy of this message for your reference. The Council has not separately responded to your complaint.

ANALYSIS

The intent and purpose of the Indiana Open Door Law is 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. Indiana Code section 5-14-1.5-3(a) provides, in pertinent part, that:

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.

The right of any member of the public to observe and record a meeting under the Open Door Law is not expressly limited to residents of the geographic area in which the governing body has responsibility, and I will read no such limitation into the law, given the statement of purpose of the Open Door Law. The issue raised by your complaint is whether your right to attend meetings of the Council has been denied by the Council or the Sheriff, acting at the Council's behest.

The response of the County Attorney Richardson does not deny the factual matters contained in your allegations. In fact, the response appears to promise similar treatment of you at any public meetings that you attend. Yet, neither the Council nor the Sheriff has alleged that you had created any disturbance at the meeting or had threatened to disrupt the meeting. There is no question that you believed that you were not welcome at the meeting. One issue is whether an average person with normal sensibilities would have felt compelled to leave the meeting under the circumstances, and you admit that you were not specifically asked to leave.

I find that a member of the public who is singled out for intimidating or threatening treatment by law enforcement at the behest of the governing body holding the meeting, may, by competent evidence, establish a denial of the right to attend, observe, and record a meeting in

violation of the Open Door Law. Whether the action of the Sheriff rose to this level, whether the Sheriff acted at the behest or direction of the Council, and whether there was cause for the Sheriff to persuade you to leave, are facts that would require sworn testimony and other evidence that this office does not collect or evaluate. I specifically decline to find that your rights were denied under the Open Door Law by the Sheriff's actions. I find only that an individual could be deprived of his or her right to attend meetings under the Open Door Law if the person is harassed or intimidated without cause into leaving the meeting, even though the meeting is otherwise open to other members of the public.

One remedy available to you is to file an action in any court of competent jurisdiction to enjoin continuing, threatened, or future violations of the Open Door Law, under IC 5-14-1.5-7(a).

Sincerely,

Karen Davis
Public Access Counselor

cc: Ray Richardson