



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

October 22, 2009

Mr. Ed Burgin  
125 N. Walnut St.  
Atlanta, IN 46031

*Re: Formal Complaint 09-FC-215; Alleged Violation of the Open  
Door Law by the Town of Atlanta*

Dear Mr. Burgin:

This advisory opinion is in response to your formal complaint alleging the Town of Atlanta ("Town") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, by failing to "fully inform" you and other residents of the Town regarding the purchase of a new fire truck. For the following reasons, my opinion is that the Town did not violate the ODL because it satisfied its obligations under the ODL by voting on the purchase at a meeting that was open to the public. Moreover, your complaint is untimely<sup>1</sup> under I.C. § 5-14-5-7(a)(2), which requires a complaint such as this to be submitted within thirty (30) days of the meeting that allegedly violated the ODL.

## BACKGROUND

In your complaint, you allege that on August 25, 2009, the Town held a public meeting at which a member of the public accused the Town of illegally selling the Town's old fire truck. You state that the Town held a meeting in November of 2007 at which the Town Council voted to purchase a new fire truck. Thereafter, "one of the old fire trucks was missing." It appears that you believe the sale of the old fire truck was not discussed at a public meeting and that it should have been.

Clerk-Treasurer Robyn Emmert's response for the Town is enclosed for your review. In it, Ms. Emmert states that the Town Council voted to both purchase the new truck and sell the old truck at the meeting in November of 2007. Moreover, Ms. Emmert produced minutes from an August 5, 2009, meeting of the Town Council at which the Council discussed the fact that they already agreed that the Town would sell three vehicles from the fire department to pay for the new fire truck.

<sup>1</sup> It appears that you entered a date on the complaint form that did not correspond with the applicable public meeting. Although I am not required to address the merits of your complaint in a formal opinion due to your failure to submit a timely complaint, I offer the following analysis.

## ANALYSIS

It is the intent of the ODL 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. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL, 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. I.C. § 5-14-1.5-3(a).

Here, you concede the fact that the Town did hold a public meeting in November of 2007 and voted on the purchase of a new fire truck. Ms. Emmert states that “the council, in a public meeting, approved the purchase [of the new fire truck] agreeing that the old truck would be sold.” The ODL does not guarantee citizens the right to be “fully informed.” It requires only that a final action be taken at a meeting open to the public. I.C. § 5-14-1.5-6.1(c). “Final action” means a vote by a governing body on a motion, proposal, resolution, rule, regulation, ordinance or order. I.C. § 5-14-1.5-2(g). Thus, if the Town voted in November of 2007 to sell the old fire trucks, the Town satisfied its obligations under the ODL.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Town did not violate the ODL.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Robyn Emmert, Clerk-Treasurer, Town of Atlanta