



STATE OF INDIANA

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May 9, 2011

Mr. Marcus Harden
1087 Lincoln Quad
Terre Haute, IN 47089

Re: Formal Complaint 11-FC-94; Alleged Violation of the Open Door Law by the Gary Public Transportation Corporation

Dear Mr. Harden:

This advisory opinion is in response to your formal complaint alleging the Gary Public Transportation Corporation ("GPTC") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The GPTC's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that the GPTC violated the ODL by denying you access to its April 7, 2011, public meeting (the "Meeting"). In response to your complaint, GPTC General Manager Daryl Lampkins states that you have been banned from the Metro Center because you are considered a "security threat." Lampkins claims that staff informed you that your actions were "unacceptable and would not be tolerated," but on March 17, 2011, you appeared at the GPTC offices at the Metro Center and again "became very disruptive to the GPTC staff and was witnessed by security personnel." He further claims that you "threaten[ed] the security staff and [were] removed from the building. At that point it was deemed necessary to ban [you] from returning to the Metro Center."

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, there is no indication that the GPTC's April 7th meeting was not open to the "public" even though you were excluded from the meeting due to the restriction upon your entering the Metro Center. In the absence of the Metro Center excluding you due to what it considers a "security threat," nothing in the facts indicates that you would have any difficulty accessing the GPTC's meeting. Indeed, based on the information before me, it seems that your ability to access public meetings on Metro Center property is hindered only by the Metro Center's security order banning you from the facility. When presented with similar circumstances in the past, the public access counselor has determined that it is not appropriate for our office to opine as to the validity or invalidity of verbal or written no trespass orders, assuming that those orders are not issued solely to deprive certain individuals from attending otherwise public meetings without a reasonable basis for such deprivation. *See, e.g., Op. of the Public Access Counselor 05-FC-120.* Counselor Davis explained the reasoning for such a position in her a 2005 opinion:

Although you may raise the public's right to attend a meeting, I cannot say that the Town violated the Open Door Law by removing you or anyone else who threatens to disrupt the conduct of a meeting. In so stating, I am not judging the merits of the Town's actions with respect to your removal from the meeting. I am merely stating that the Open Door Law is not at issue here, where your inability to observe the meeting was not due to the meeting being closed to the public or limited in some way so that the public in general could not hear or observe the meeting.

Op. of the Public Access Counselor 05-FC-24. Whether or not you have other grounds to challenge the legality of that no trespass order itself is outside of my advisory authority. I.C. § 5-14-4-10(6). Therefore, I express no opinion on that issue.

CONCLUSION

For the foregoing reasons, it is my opinion that the GPTC did not violate the ODL by excluding you from its April 7th meeting if such exclusion was due to a no trespass order that banned you from the Metro Center.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Daryl E. Lampkins