



STATE OF INDIANA

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June 14, 2016

Ms. Betty Rollins
14121 North 600 East
Elnora, Indiana 47529

Re: Formal Complaint 16-FC-103; Alleged Violation of the Open Door Law by the Town of Elnora Town Council

Dear Ms. Rollins:

This advisory opinion is in response to your formal complaint(s) alleging the Town of Elnora Town Council ("Council") violated the Open Door Law ("ODL"), Indiana Code § 5-14-1.5-1 et. seq. The Commission has responded to your complaint via Mr. Jesse Emmons, Town Council President. His response(s) are enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 6, 2016.

BACKGROUND

Your complaint dated May 6, 2016 alleges the Town of Elnora Town Council violated the Open Door Law by taking official action outside of a public meeting.

On March 14, 2016, you allege the Council voted to send a warning letter to a homeowner whom had failed to keep his property orderly. On March 20, 2016, the Town Marshal notified the Council via email he did not believe the letter was necessary, because the owner had cleared the majority of the property of debris. On April 7, 2016 you contacted the Town Marshal to request he come to your property to remove a sheet of tin which blew onto your land from the neighboring property. The following day, you found another sheet of tin on your property and contacted another Councilwoman to come inspect the problem property. You again contacted the Town Marshal to remove the tin and inquired about the status of the warning letter the Council voted for on March 14, 2016. The Town Marshal then informed you several council members agreed to withhold the letter, because the owners made significant improvements to the property. You then requested a copy of the note written to the Town Marshal from one of the Councilmen stating he saw no need to send the letter, but giving the Town Marshal the discretion to do so if he felt it necessary.

On May 11, 2016 the Council responded to your complaint. The Council states the decision not to send the letter was made by the Town Marshal and was ratified by the Council. Each councilmember individually inspected the property and two (2) of the three (3) members were in agreement the letter was no longer necessary. The response also states no decisions regarding the status of the letter were made in or out of a public meeting, but rather the Town Marshal filed the letter away.

ANALYSIS

It is the intent of the Open Door Law (“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. *See Indiana Code § 5-14-1.5-1*. Accordingly, 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. *See Indiana Code § 5-14-1.5-3(a)*.

A “meeting” is defined as a gathering of a majority of the governing body for the purpose of taking official action on business. *See Indiana Code § 5-14-1.5-2(c)*. “Official action” is very broadly defined by our state legislature to include everything from merely “receiving information” and “deliberating” (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. *See Indiana Code § 5-14-1.5-2(d)*.

While the Council is not prohibited from conducting an on-site inspection through the Town Marshal, all official action is subject to the ODL. Here, it is not evident a meeting was ever held to decide on whether to rescind the letter to the property owner. It appears as if the Council members weighed-in individually giving the Town Marshal the discretion to deliver or withhold the letter.

Ultimately, while this matter was unlikely to greatly impede public access to government business, I recommend the Council make recommendations and address these issues at open public meetings as required by the ODL, in order to keep the public informed and avoid similar problems and confusion in the future.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Elnora Town Council did not violate the Open Door Law.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. Jesse Emmons