



STATE OF INDIANA

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February 23, 2009

John Estridge
Brookville Democrat/American
1104 Franklin Avenue
Brookville, Indiana 47012

*Re: Formal Complaint 09-FC-30; Alleged Violation of the Open Door Law by
the Franklin County Board of Commissioners*

Dear Mr. Estridge:

This advisory opinion is in response to your formal complaint alleging the Franklin County Board of Commissioners ("Commissioners") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a meeting without proper notice. You submitted the complaint via three separate complaint forms, but the complaints have been consolidated into one because they relate to the same issue and same public agency. Enclosed is a copy of the Commissioners' response to the complaint for your reference. It is my opinion the Commissioners have violated the Open Door Law if the highway garage meetings are routinely held in a room too small to accommodate members of the public. Further, it is my opinion the Commissioners have not otherwise violated the ODL.

BACKGROUND

You filed the present complaint on January 26, 2009, alleging that on December 31, 2008 two of the three commissioners met with two other county employees. You allege no notice was provided for the meeting. You further allege that on January 20, two of the three commissioners met in a small office at the county highway garage. You went to the location but were unable to enter the room because the room was too small. You allege this gathering should be held at a public meeting. Finally, you allege that the third commissioner has told you he has attended two or three similar meetings at the highway garage. You further allege the third commissioner indicates the other two commissioners are carrying out more than administrative tasks at these meetings.

The Commissioners responded to the complaint by letter dated February 9 from attorney Eugene Stewart. The Commissioners contend that as it relates to the highway garage meetings, they met under I.C. § 5-14-1.5-5(f)(2), which Mr. Stewart characterizes

as an exception to the “typical open door requirements.” He contends the commissioners involved report that the meetings have been held solely to receive information or recommendations in order to carry out administrative functions or confer with staff members regarding internal management of the unit. Finally, the Commissioners contend your allegations regarding the December 31 meeting are untrue.

My office received a subsequent response dated February 9 from Commissioner Eric Roberts. Mr. Roberts contends that Mr. Wilson, the third commissioner referenced above, knew about the January 20 meeting and has attended more than two or three similar meetings in the past. Mr. Roberts further contends the meeting was held in a break room with two tables and eight or nine chairs. He contends you were not denied access but that you opted to leave shortly after arriving. Mr. Roberts contends this type of meeting is used to discuss projects and work being done by the highway employees in addition to other topics like safety or equipment.

Regarding the allegation pertaining to December 31, Mr. Roberts contends he arrived at the economic development office at about 11:45am, as Commissioner Vonder Meulen and the county employees were finishing their meeting. Mr. Roberts contends he arrived at the office to wish Mr. Stivers luck as he left county employ. Mr. Roberts contends his visit was social in nature and he did not know Mr. Vonder Meulen would be there. Mr. Roberts contends he was there only ten to fifteen minutes, during which time those present engaged in “small talk.”

Finally, Mr. Roberts makes note that my office erroneously dated the notice of formal complaint January 23 when in fact we received your complaint on January 26. The date of the notice should have been January 26, which is the date it was created.

ANALYSIS

It is the intent of the Open Door Law 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 Open Door Law, 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). The Commissioners constitute a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “Public business” means any function upon which the public agency is empowered or authorized to take official action. I.C. § 5-14.1.5-2(e). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a).

The requirements for posting notice do not apply when the executive of a county meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. Administrative functions do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. I.C. § 5-14-1.5-5(f)(2). Even though notice is not required, the “administrative function” meeting must be held in the public, since the notice provision of the ODL is *the only provision* that does not apply to an “administrative function” meeting. I.C. § 5-14-1.5-5(f)(2), emphasis added.

I understand from both your complaint and from the responses that the meetings at the highway garage occur with relative regularity. So long as the Commissioners hold the meetings *solely* to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit, public notice is not required. *See* I.C. § 5-14-1.5-5(f)(2). All other requirements of the ODL apply to these meetings. The meetings should be conducted so the public may observe and record them. You allege the room where the meetings are held is too small for you to observe the meeting. Mr. Roberts does not agree. I have not seen the room but would advise that the Commissioners should consider room size when conducting these meetings. The room should be reasonably large enough to accommodate some members of the public who might attend. This is not to say the room must necessarily be large enough to accommodate an unexpected or unusually large crowd (*See Opinion of the Public Access Counselor 07-FC-220*).

I would urge the Commissioners to be mindful of the subject matter of the administrative function meetings. It appears the meetings at the highway garage have become routine, and I would urge the Commissioners to consider carefully, before every meeting, whether the meeting is being held *solely* to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit, as allowed by I.C. § 5-14-1.5-5(f)(2). If at any point the subject matter reaches beyond administrative function, the meeting should be a properly noticed public meeting.

Regarding the December 31 gathering, the ODL provides that a social or chance gathering not intended to avoid the ODL is not a meeting. *See* I.C. § 5-14-1.5-2(c)(1). Here, Mr. Roberts contends he went to the economic development office for the sole purpose of wishing Mr. Stivers farewell on his last day in the county employ. He contends he did not know Mr. Vonder Meulen was there meeting with Mr. Stivers and

others. Mr. Roberts contends he did not participate in any action or business of the meeting. So long as Mr. Roberts did not engage in any official action related to public business, it is my opinion the gathering was a social and chance gathering which does not violate the ODL. If the two commissioners had taken the opportunity to take official action on public business with the intent to avoid the requirements of the ODL, the gathering would have been a meeting. *See Id.* I see no evidence that happened here.

CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners have violated the Open Door Law if the highway garage meetings are routinely held in a room too small to accommodate members of the public. Further, it is my opinion the Commissioners have not otherwise violated the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Eric Roberts, Franklin County Board of Commissioners
Eugene A. Stewart, Stewart Law Office