



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 14, 2009

Felisha Minnich
4615 Ellenwood Drive
Fort Wayne, Indiana 46806

*Re: Formal Complaint 09-FC-6; Alleged Violation of the Open Door Law by
the City of Elkhart Board of Public Works*

Dear Ms. Minnich:

This advisory opinion is in response to your formal complaint alleging the City of Elkhart Board of Public Works ("Board") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by changing the location of a meeting without providing sufficient notice. A copy of the Board's response to the complaint is enclosed for your reference. In my opinion your complaint is untimely. If it were not untimely, though, it would be my opinion that the Board did not violate the ODL so long as the announcement of the date, time and location of the reconvened meeting was made at the original meeting and recorded in the memoranda and minutes.

BACKGROUND

You filed a complaint on December 15, 2008, alleging the Board violated the ODL by failing to provide sufficient notice when it relocated a November 10 hearing from a meeting location in Goshen to one in Elkhart. You allege that you arrived at 10:45am for the hearing, which was scheduled to begin at 11:00am. You indicate that public notice was posted on the door of the main entrance. You allege that when you learned of the change, you telephoned the Board and asked that the meeting be delayed so you could attend. You allege that when you arrived at the new meeting location, no notice was posted at the new location.

You further allege that you later telephoned the Indiana Department of Labor regarding the issue and learned on November 20 that the Department did not receive notice of the change in location.

The Board responded to the complaint by letter dated December 29 from Amber Bressler of the City of Elkhart Law Department. The Board contends that proper notice was provided for the November 10 meeting. At the beginning of the meeting, a member suggested moving the meeting to Elkhart. The Board contends that all who arrived at the

original location were directed to the new location, the meeting was delayed thirty minutes to allow individuals to travel to the new location, and no business was conducted until all interested parties were present.

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).

I.C. § 5-14-5-7(a)(2) provides that the time for filing a complaint with this office is not later than thirty days after the person filing the complaint receives notice that in fact a meeting was held by a public agency, if the meeting was conducted secretly or without notice. Here, you allege that you were at the appointed meeting location at 10:45am on November 10 and learned at that time the meeting location was changed. Your complaint is that the Board provided insufficient notice for the change. The date you learned of the change of meeting location was November 10. While you learned on November 20 that the Indiana Department of Labor had not received notice of the change, you still knew on November 10 that notice of the change was not posted at the meeting location. As such, your complaint filed on December 15 is untimely under the statute.

If your complaint were not untimely, it would be my opinion the Board did not violate the ODL so long as the announcement of the change was made at the original location and the change was recorded in the memoranda and minutes of the meeting.

Regarding notice, the ODL provides the following:

- (a)** 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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

I.C. § 5-14-1.5-5.

Here, the Board was not required to provide additional notice regarding the change in location. Instead, the Board was required to announce the change at the original meeting location and record the announcement in the meeting memoranda and minutes.

CONCLUSION

For the foregoing reasons, it is my opinion the complaint is untimely.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Amber Bressler, City of Elkhart