



STATE OF INDIANA

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October 21, 2008

T. Tad Bohlsen
4926 East 575 North
Whiteland, Indiana 46194

Re: Informal Inquiry 08-INF-39 regarding Clark-Pleasant Community School Corporation Board of Trustees

Dear Mr. Bohlsen:

This opinion is in response to your informal inquiry dated October 7, 2008. You originally submitted a formal complaint form, alleging the Clark-Pleasant Community School Corporation Board of Trustees ("Board") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5). Because you submitted the complaint at least five months after the action of the Board and at least five months after you learned of the action of the Board, the formal complaint was untimely under I.C. § 5-14-5-7. My office sent the complaint back to you because it was untimely, and you resubmitted the issue as an informal inquiry. Indiana law provides no statutory time for filing informal inquiries. As such, and pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You allege that on April 17, 2008 the Board met in executive session. You further allege that the Board met for its regular meeting on April 22. You allege the Board conducted three votes at the April 22 meeting, all related to a "DLGF denial." You allege that no vote was taken related to an appeal to the Department of Local Government Finance ("DLGF"). But you contend that on May 2 the Board submitted a petition for reconsideration to the DLGF, without having taken a vote authorizing submission of the petition. You inquire whether the Board violated the ODL by submitting the petition for reconsideration without taking a public vote. You include with your inquiry copies of records related to the April 17 and 22 meetings as well as a copy of the petition for reconsideration.

When you filed the original formal complaint, you requested priority status under 62 IAC 1-1-3. Because the formal complaint was not accepted, the issue of priority status has not been addressed. There is no similar status for informal inquiries. Instead, this office endeavors to address informal inquiries as expediently as possible.

The Board responded to the inquiry by letter dated October 21 from attorney Charles Rubright. The Board provides argument that the complaint was untimely and should not receive priority status, two issues I have addressed in this opinion.

The Board further provides a great deal of detail regarding the petition and remonstrance process that is the center of the issue to which you refer. The Board argues, among other things, that the determination whether an act by an agent of the Board is authorized by the Board is outside the purview of this office, that the Board's action at a February 22, 2007 meeting authorized the filing of the petition for reconsideration, and that the petition was also authorized by two actions taken by the Board at the April 22, 2008 meeting of the Board. I am enclosing a copy of the Board's response to the inquiry so you may read the arguments in their entirety.

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).

A final action must 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).

Certainly the ODL is clear in instructing a governing body that any vote of a governing body on a motion, proposal, resolution, rule, regulation, ordinance or order must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c) and I.C. § 5-14-1.5-2(g). Furthermore, the Indiana Court of Appeals has held that the members of a governing body may make decisions in executive session, so long as a vote is not taken in executive session. *See Baker v. Town of Middlebury*, 753 N.E.2d 67 (Ind. Ct. App. 2001).

The ODL is not instructive, though, on the issue of when a governing body is required to take a vote. The ODL contains no list of subject matters or instances when a governing body must take a vote. As such, it is my opinion that absent a specific statute or other authority requiring a vote on this specific matter, the Board did not violate the ODL or any other public access law.

Further, I agree with the Board that it is outside the purview of the public access counselor to determine whether an act by an agent of the Board is authorized by the Board. *See* I.C. § 5-14-4-10, *listing powers and duties of the public access counselor*.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Charles Rubright, Bose McKinney & Evans LLP
Howard Young, President, Clark-Pleasant Community School Corporation Board
of Trustees