



STATE OF INDIANA

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May 13, 2010

Anthony W. Overholt, Esq.
OBO Deborah Wesley
Via Electronic Mail: aoverholt@fbtlaw.com

Re: Informal Inquiry 10-INF-23; New Albany - Floyd County Consolidated School Corporation

Dear Mr. Overholt:

This is in response to your informal inquiry regarding your client, Deborah Wesley, and her allegations regarding the New Albany - Floyd County Consolidated School Corporation (the "Board"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* For purposes of this opinion, I accept the factual allegations in your inquiry as true. However, I note that the public access counselor is not a finder of fact and, as such, I express no opinion regarding the substance of the factual allegations themselves.

In your inquiry, you allege that the Board engaged in a series of meetings in violation of section 3.1 of the ODL. That section of the ODL prohibits members of governing bodies of public agencies from participating in a series of meetings that the ODL defines as "serial meetings." Specifically, the ODL provides:

[T]he governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.

(2) The sum of the number of different members of the governing body attending any of the gatherings equals a quorum of the governing body.

(3) All of the meetings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

I.C. § 5-14-1.5-3.1(a).

Here, you allege that the seven-member School Board engaged in a series of meetings on two occasions: on or about January 28, 2010, and on or about February 28, 2010. During the morning of January 28th, Board President Roger Whaley, Vice-President Lee Ann Wiseheart, and Board member Rebecca Gardenour attended a meeting with Superintendent Bruce Hibbard, Deputy Superintendent Brad Snyder, Bill Briscoe, Rhonda Mull, and Michelle Day. The subject of that meeting was the proposed “Expenditure Reduction Plan” (the “Plan”) and school closings. During the afternoon of the same day, Board members James Zoeller, Neal Smith, and Patricia Badger-Byrd met with Supt. Hibbard, Dep. Supt. Snyder, Mr. Briscoe, Ms. Mull, and Ms. Day concerning the same subjects. Finally, you state that the “seventh and final Board Member, Don Sakel, met separately with the administration on the same topic within a day or two.”

On February 25, 2010, the seven Board members engaged in another series of meetings with Supt. Hibbard and the administrative team regarding the schools’ budget and the Plan. During the morning of February 25th, Board members Whaley, Wiseheart, and Gardenour met with Supt. Hibbard, Dep. Supt. Snyder, and Sally Jensen regarding the Plan and additional budget reductions beyond those discussed at the January 28th meetings. That afternoon, Board members Zoeller and Badger-Byrd met with Supt. Hibbard, Dep. Supt. Snyder, and Ms. Jensen regarding the same subjects. A third meeting was held the next day, February 26th, between Board members Sakel and Smith and Supt. Hibbard, Dep. Supt. Snyder, and Ms. Jensen. The subject of that meeting was, once again, the Board’s Plan and budget reductions.

With regard to both the series of meetings held on or about January 28th and those held on or about February 25th, it appears the elements of section 3.1 of the ODL are satisfied. In each case, one of the gatherings was attended by at least three members of the governing body, but a quorum was not present. Further, the sum of the members who attended the meetings constituted a quorum of the Board’s members and all meetings occurred within seven (7) days. Finally, it appears that the purpose of the meetings was to take official action upon public business. Under the ODL, “official action” means to “(1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action.” I.C. § 5-14-1.5-2(c)(7). At a minimum, if the Board members met to discuss budget matters and proposed spending cuts, they were “receiv[ing] information,” which constitutes official action under the ODL. Consequently, it is my opinion that both January 28th and February 25th sets of meetings were held in violation of section 3.1 of the APRA.

Your inquiry also requests that I “direct the School Board to discontinue its violations of the ODL” and declare the Board’s actions at its March 11, 2010, public meeting null and void under subsection 7(a)(3) of the ODL. However, the statutes

governing the public access counselor do not provide me with the authority to do either of those things. *See generally* I.C. § 5-14-4-1 *et seq.* I note that subsection 7(a) of the ODL provides a “*court* of competent jurisdiction” with the authority to, among other things, “declare void any policy, decision, or final action” that is based in whole or in part upon actions taken during serial meetings. *See* I.C. § 5-14-1.5-7(a)(3). Moreover, in such a case, the reviewing court has the authority to award reasonable attorney’s fees, court costs, and other reasonable expenses of litigation to the prevailing party under certain circumstances. *See* I.C. § 5-14-1.5-7(f).

If I can be of any additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor