

December 26, 2007

Robert Howard

*Via electronic mail to [rhc0224@earthlink.net](mailto:rhc0224@earthlink.net)*

Dear Mr. Howard:

This is in response to your informal inquiry dated January 17, 2007. I apologize for the delay in the response. Upon my appointment by Governor Daniels effective July 1 of this year, I found a backlog of informal inquiries. I am currently endeavoring to address those inquiries and issue an opinion in each matter pursuant to Indiana Code §5-14-4-10(5).

#### BACKGROUND

You emailed your inquiry to this office on January 17, 2007. In your inquiry, you alleged violations of the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by the North Judson Town Council (“Council”). You allege the Council has several times violated the ODL. Specifically, you allege that on January 15, 2007 Town Council President Guy Gardin told Clerk-Treasurer Connie Miller there would be a change in the agenda at the start of the regular public meeting. At the meeting, Mr. Gardin added the topic of Town Manager Position to the agenda. Bill Tolson, a Town Council member, made a motion to hire an individual for the position at the salary of \$1.00 a year. You allege Mr. Gardin and Mr. Tolson must have discussed this issue prior to the meeting.

Town Attorney Lee Lane responded by letter dated January 18, 2007 to your complaint as well as to a complaint from Connie Miller sent to former Counselor Karen Davis on January 16, 2007. A copy of her response is attached. In her letter, Ms. Lane addresses four issues:

- 1) A discussion of a firehouse building project at a November 24, 2006 executive session;
- 2) A utilities management contract received by the Town Council President;
- 3) A change to the posted agenda for a public meeting;
- 4) A motion made to create the position of Town Manager.

Ms. Lane contends the Council did not violate the ODL when it held the executive session on November 24, 2006. She says the members met to discuss the firehouse building project. During that meeting, they discussed the site selection, which Ms. Lane believes is an

authorized topic under Indiana Code §5-14-5-2(f). She contends no official action as taken on this project, and it was in the discussion stage as of January 18, 2007.

Regarding the utilities management contract, Ms. Lane contends there was no violation of the ODL because Mr. Gardin independently researched the contract. He submitted the contract to Ms. Lane for her review, but he did not provide a copy to the Council members until the public meeting on December 11, 2006. Mr. Gardin provided the members with copies of the brochures describing the company's services, but he did not speak with the members regarding this issue. At the December 11, 2006 meeting, the public was informed the town would be hiring a management company and the job was open for bidding. Ms. Lane states no decision was made at that meeting and the issue was discontinued because of public remonstrance.

Ms. Lane maintains there was no violation of the ODL as it relates to the agenda and the motion made at the January 15, 2007 public meeting. The meeting was properly noticed and the agenda posted prior to the meeting. Mr. Gardin added the agenda item prior to the meeting. According to Ms. Lane, there is no evidence supporting the allegation that Mr. Gardin and Mr. Tolson met prior to the meeting. All three Council members have stated there was no prior discussion held on this topic. Mr. Tolson stated he called Mr. Gardin the afternoon prior to the meeting to request the Town Manager Position be placed on the agenda. There is no provision in the ODL that prohibits this.

## 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).

### *Discussion of the firehouse building site in executive session*

The ODL defines an executive session as a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. I.C. §5-14-1.5-2(f). An executive session may be held only in an instance listed in I.C. §5-14-1.5-6.1. An executive session may be held to discuss the strategy for the purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties. I.C. §5-14-1.5-6.1(b)(2)(D).

While the Council may be authorized to discuss the possible sites for the firehouse building in executive session, it is prohibited from discussing any further topics unless authorized by the ODL. There is no evidence that anything besides the site selection was discussed. I believe Ms. Lane gave an incorrect statutory reference in her letter, but regardless of that, it is my opinion the Council did not violate the ODL by conducting the executive session for one of the enumerated instances listed in I.C. §5-14-1.5-6.1.

### *Utilities management contract received by the Town Council President*

Mr. Gardin asserts that any work to obtain a quote or develop a contract related to services from a private utilities management company was done solely by him. No other member of the Council was involved, and no meetings were conducted to discuss the issue. Nothing in the ODL prevents one member of a governing body from meeting with anyone, regarding services offered or any other matters. It is my opinion the Council has not violated the ODL in this instance.

*Change of agenda and motion to discuss Town Manager Position*

A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. I.C. §5-14-1.5-4(a). The Open Door Law does not prohibit the governing body from changing or adding to its agenda during the meeting. As such, this office has stated that a governing body may deviate from its agenda during a meeting. See *Opinion of the Public Access Counselor 04-FC-02*.

Further, no provision in the ODL prohibits board members from communicating to one another individually by telephone, including communicating with the Council President the topics they request placed on the agenda.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Lee Lane, Hoepfner Wagner & Evans  
Connie Miller