

December 10, 2007

Dock McDowell, Jr.
7895 Broadway, Suite C
Chapel Plaza
Merrillville, IN 46410

Re: Your informal inquiry regarding the Lake County Calumet Township Board

Dear Mr. McDowell:

This is in response to your informal inquiry dated January 12, 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). Your inquiry concerns an alleged violation of the Open Door Law (I.C. 5-14-1.5) by the Calumet Township Board.

BACKGROUND

You currently serve as the Calumet Township attorney. You requested the opportunity to speak at Calumet Township Board (“Board”) meetings held on December 19, 2006 and January 2 and 10, 2007. You claim you were denied this opportunity to speak regarding matters “being considered by the legislative body.” You believe these denials violated Indiana Code §36-6-6-6.

You also contend Mary Elgin, Calumet Township Trustee, requested and was denied the opportunity to speak at the January 2 meeting. You sent a letter to me dated February 7 correcting your January 12 letter. You state Ms. Elgin was denied the opportunity to speak at the December 19 meeting rather than the January 2 meeting. You also believe this to be a violation of I.C. §36-6-6-6.

Clorius Lay, Board Chair, responded to your complaint by letter dated April 3, 2007. He claims neither Ms. Elgin nor you attempted to speak at the January 2 meeting. He contends Ms. Elgin did not attend and you remained at the meeting for less than five minutes. Mr. Lay does state he stopped you from presenting a legal opinion on or about January 10, 2007. He indicates you were not attempting to speak pursuant to I.C. §36-6-6-6. Mr. Lay also contends he will not permit you or Ms. Elgin to “turn your backs on the board” and “continue to speak unless ordered by a court or approved by a majority of the board.”

ANALYSIS

It is the intent of the ODL 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).

Pursuant to Ind. Code §36-6-6-6, a taxpayer of a township may appear at any meeting of the legislative body and be heard as to: 1) an estimate of expenditures; 2) a proposed levy of taxes; 3) the approval of the executive's annual report; or 4) any other matter being considered by the legislative body. The township board is the legislative body of the township. I.C. §36-6-6-2(c).

The Open Door Law does not confer a right on a taxpayer or any other member of the public to be heard at a public meeting, as my office has stated many times. *Opinion of the Public Access Counselor 05-FC-24*. But if another statute applies to a meeting, members of the public may well have such a right. This is true for meetings of a township board. If you asked to be heard as to any of the four items listed in I.C. §36-6-6-6 and the Board denied your request, the Board may have violated the statute. Because only a court can determine facts in a disputed matter and because this matter is outside of the Open Door Law and outside the purview of the public access counselor's office, I leave you to your remedies under I.C. §5-14-1.5-7.

CONCLUSION

For the foregoing reasons, it is my opinion the Board did not violate the Open Door Law but may have violated I.C. §36-6-6-6.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Clorius Lay, Calumet Township Board Member