

March 12, 2007

J. Lee Robbins  
905 Southview Drive  
Indianapolis, IN 46227

*Re: Informal Inquiry Response; Alleged Violation of the Open Door Law by the Perry Township Board of Education*

Dear Mr. Robbins:

You filed a formal complaint alleging that the Perry Township Board of Education (“Board”) violated the Open Door Law by holding a meeting in a place that does not accommodate the members of the public. I found in 07-FC-32 that you did not have standing to file a formal complaint alleging a denial of access to a meeting that had not occurred at the time you filed your formal complaint. Accordingly, I am issuing an informal inquiry response in lieu of a formal advisory opinion.

#### BACKGROUND

You alleged at the time that you filed your complaint, February 8, 2007, that the Board changed the place of its upcoming meeting of February 12 (your complaint stated January 12 which I believe to be in error). The meeting of February 12 was to be held in a smaller venue, the Board room. This change occurred after the Board had held several of its recent meetings in the auditorium at Southport High School. The auditorium accommodates over 1,000 people. The Board room can accommodate only 115. In the past, additional members of the public have been accommodated in the gymnasium with a video monitor, speakers, and chairs. However, this accommodation does not allow the public to address the Board or for the Board to see everyone who has attended the meeting.

I sent a copy of your formal complaint to the Board. Mr. Jon M. Bailey of Bose, McKinney & Evans filed a response. I enclose a copy of the response. Mr. Bailey stated that the

February 12 regular meeting of the Board was properly noticed, an agenda was posted at the door, and the meeting was conducted in a manner that permitted the public to observe and record the meeting. In the past, the Board conducted its meetings in the Board room. The January 22 meeting was held in the Southport High School auditorium. Following the January 22 meeting the Board decided to return to the Board Room. The Board room accommodates 115 persons safely. It also allows good communication between Board members.

Although the Board president elected to return to the Board room, arrangements were made for a video/audio feed to a second location. The President's decision was motivated by a number of factors which included the acoustics in the auditorium and the Board was to be charged \$1600 to utilize the auditorium. The President did not find an entirely new, unique location for the Board meetings to frustrate the public's right to observe and record the meeting.

I also spoke with the Board President Susan Adams. She stated that for the February 12 meeting, the Board provided video and audio feed as Mr. Bailey stated. There were a substantial number of persons in the gymnasium for the February 12 meeting. Also, the Board was required to expend a significant amount of money to supply the overflow area with video and audio equipment.

Mr. Bailey contends that your complaint is not meritorious because you allege as a denial that the persons in the overflow space would not be able to address the Board. Yet, there is no right under the Open Door Law for members of the public to speak at a meeting of a governing body.

#### 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. Ind. Code 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. IC 5-14-1.5-3(a).

This Office has issued several advisory opinions concerning allegations that the meeting room for school board meetings is inadequate to accommodate the public. *See Opinion of the Public Access Counselor 00-FC-13; Opinion of the Public Access Counselor 03-FC-138.*

The Open Door Law sets specific requirements for meetings to be conducted by governing bodies of public agencies in Indiana. Notices to the public and media must be posted and delivered as prescribed under Indiana Code section 5-14-1.5-5. If an agenda is used, it must be posted outside the meeting room immediately before the meeting begins under Indiana Code section 5-14-1.5-4. The meeting room must be accessible for persons with disabilities under Indiana Code section 5-14-3-8. There is no provision of the Open Door Law that requires a specific meeting room size or capacity. However, if evidence indicates that the meeting room was so inadequate as to constitute an infringement of the public's right to observe and record the meeting, the governing body may be found to have violated the Open Door Law.

According to Jon Bailey's response, the Board complied with the requirements for notice, agenda, and accessibility, and you do not allege that the Board failed to comply with these particular requirements. It is my opinion that if the Board provided appropriate notice under Indiana Code section 5-14-1.5-5, posted their agenda under Indiana Code section 5-14-1.5-4 and held their meeting in a room accessible to persons with disabilities under Indiana Code section 5-14-1.5-8, then they did not violate these requirements of the Open Door Law.

If the Board did not hold its meeting in a room adequate to accommodate a substantial number of persons as has been the Board's recent experience, this could constitute a violation of the Open Door Law's requirement that the public be permitted to observe and record the meeting. On February 12 there were a substantial number of persons who had to observe the meeting from another room. It is not clear from the facts whether the video equipment allowed for all to observe, and whether the audio was clear enough for those present to hear the Board and to record the meeting. In addition, I note that providing video or audio of the meeting is but a substitute for actual attendance in the same room as the Board. Providing audio or video has been approved in circumstances where the Board had posted a notice for a particular room but had to accommodate a larger crowd than it could have anticipated.

Here, the Board was aware that the interest in the meetings ran high, and decided to revert to the Board room with full knowledge that the attendance would likely greatly exceed the size of the Board room. Even if the Board did not violate the letter of the Open Door Law, I find that the Board's action to move the meeting to its regular Board room did not conform to the spirit of the Open Door Law.

However, I note that the Open Door Law does not provide a right of the public to speak at a meeting of a governing body. Hence, I cannot approve your theory that the room must accommodate the public's right to address the Board.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jon Bailey