

September 20, 2004

Mr. Lemuel Stigler, Esq.
7895 Broadway, Suite D
Merrillville, IN 46410

*Re: Formal Complaint 04-FC-150; Alleged Violation of the Open Door Law by the
Gary Community School Corporation, School Board*

Dear Mr. Stigler:

This is in response to your formal complaint of your client, LeVon Whittaker, alleging that the Gary Community School Corporation (“School”), School Board (“Board”) violated the Open Door Law by holding a secret meeting. I find that to the extent that a gathering was held by less than the majority of the members of the Board, the gathering was not a violation of the Open Door Law.

BACKGROUND

On July 20, 2004, Ms. Rochelle Moody, Attorney for the School, sent to you copies of the minutes from the Board’s May 25, 2004 regular meeting in response to your July 12 request. You state that the minutes indicate that Ms. Josephine Brooks, Board member, stated she was told on May 24, 2004, that the Board planned to offer the superintendent a three year contract, but that in the minutes of the May 25 meeting, she was told that the superintendent’s contract would be five years. You allege that this indicates that at least three members of the Board held a meeting without notice to the public, and deliberated and decided to offer a multi-year contract to the superintendent.

You filed a formal complaint, which was received by this office on August 20, 2004. I forwarded a copy of your complaint to the School, and Ms. Moody replied on its behalf. I have enclosed a copy of her response for your reference.

Ms. Moody responds that your complaint has not been timely filed, as your complaint arises out of the facts and circumstances of the May 25, 2004 meeting. She says that she contacted the members of the Board and verified with each of them that no secret meeting took

place. She further states that even if three members met in a gathering as you allege, three members do not constitute a majority of the Board. If a majority of the members were not present, the Open Door Law would not apply to that gathering.

ANALYSIS

Indiana law governing formal complaints filed with this office provides that a formal complaint must be filed within thirty (30) days after the denial of access or after the person or agency filing the complaint "receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice." I.C. §5-14-5-7(a).

Your complaint alleges that the minutes provided to you by the School indicate that a secret meeting occurred some time before May 25, 2004. Whatever those minutes do or do not indicate, it is my opinion that the date of your receipt of those minutes is the date that triggers the time limitations for filing a formal complaint challenging a "secret meeting." You received the minutes from the School on July 26.¹ Therefore, your complaint, which was filed within thirty days of July 26, 2004, is timely.

The intent and purpose of the Open Door Law is 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. Toward that end, except under very limited circumstances, all meetings of the governing body of a public agency must be open for the purpose of permitting members of the public to observe and record the meetings. I.C. §5-14-1.5-3(a). A "meeting" is defined as a "gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." I.C. §5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." I.C. §5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include receiving information, deliberating (defined by I.C. §5-14-1.5-2(i) as discussing), making recommendations, establishing policy, making decisions, or taking a vote. I.C. §5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. I.C. §5-14-1.5-5(a).

Certainly, discussion of the superintendent's contract is the public business of the Board, and any gathering of a majority of the Board to discuss that contract would constitute a "meeting" falling under the requirements of the Open Door Law. You allege that "at least three members of the Board" held a secret meeting to discuss the superintendent's contract. Your evidence supporting that claim is the portion of the minutes in which Ms. Josephine Brooks, Board member, states she was told on May 24, 2004 that the length of the contract was going to

¹ Even assuming your formal complaint was not timely as to all of your allegations, this office is not precluded from issuing an informal inquiry response regarding any violations alleged to have occurred at any time. I.C. §5-14-4-10(5). Thus, to the extent that it is subsequently determined in any civil action you later file in this matter that your formal complaint was not timely filed under I.C. §5-14-5-7, it is my intention that this opinion serve as an informal inquiry response to your claims pursuant to I.C. §5-14-4-10(5), and that it have the full force and effect of an informal opinion of the Public Access Counselor under I.C. §5-14-3-9(i).

be three years, but that at the public meeting on May 25, 2004, the proposed length of the contract was five years. While that is evidence, standing alone it does not, in my opinion, prove your allegation. Founded only on this evidence, I am not willing to find that the Board gathered together in secret to discuss the contract at issue. While I do not find your claims substantiated as supported in this advisory forum, you certainly have the right to develop and present your evidence in any civil action you might file in a court of competent jurisdiction under Indiana Code 5-14-1.5-7.

Furthermore, Ms. Moody replied that there are seven (7) members on the Board. Assuming that a gathering did take place, if only three Board members were present, it does not qualify as a meeting as defined by I.C. §5-14-1.5-2(c), as there was no majority present. Therefore, such a gathering is not a violation of the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that your complaint was timely filed. I decline to opine as to whether or not a secret meeting in fact occurred. However, to the extent that less than a majority of the Board met to discuss the superintendent's contract, I find that such a gathering is not a violation of the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Rochelle Moody