

October 15, 2004

Mr. Marvin Huffman
8819 W. Co. Rd. 225 South
Medora, IN 47260

*Re: Formal Complaint 04-FC-166; Alleged Violation of Open Door Law by the
Jackson County Solid Waste Management District*

Dear Mr. Huffman:

This is in response to your formal complaint alleging that the Jackson County Solid Waste Management District (“Management District”) violated the Open Door Law (“ODL”), IC 5-14-1.5, by taking action on an item that was not on the meeting agenda. For the following reasons, I find that the Jackson County Solid Waste Management District did not violate the Open Door Law.

BACKGROUND

On September 9, 2004, the Jackson County Solid Waste Management District held a board of director’s meeting. You allege that during that meeting, the Management District’s Board of Directors voted to issue a letter of support for the expansion of a landfill. Neither that vote nor any reference to the landfill was on the agenda posted for that meeting. The vote came up during Item Seven of the agenda, which was the portion of the meeting reserved for “board member items.”

You filed a formal complaint, which was received by this office on September 15, 2004. I forwarded a copy of your complaint to the Management District. Mr. Rodney Farrow, attorney, responded on behalf of the Management District. A copy of his response is enclosed for your reference. Mr. Farrow does not refute your factual allegations regarding what happened at the meeting, but states that the meeting held on September 9th was a regular meeting and was not subject to the meeting provisions set out in Ind. Code §13-21-5.

ANALYSIS

The Board of Directors of the Jackson County Solid Waste Management District is the governing body of a public agency. IC 5-14-1.5-2(a)(3)(A); IC 13-21-3-21. Therefore, it is subject to the Open Door Law.

Indiana Code 13-21 governs solid waste management districts generally. Under IC 13-21-5, certain types of meetings are subject to special notice and agenda requirements. Specifically, IC 13-21-5-7 states that if the board conducts a meeting “other than a regularly scheduled public meeting conducted under section 2,” an agenda must be posted at least forty-eight (48) hours in advance, and the board of directors may discuss only those matters that were indicated on the meeting agenda. Although IC 13-21-5-7 does not specify the subject matter or purpose of a non-section 2 meeting, the chapter relates to the creation, amendment or alteration of the district solid waste management plan.

Through its attorney, Mr. Rodney Farrow, the Board of Directors states that the September 9 meeting was not conducted under IC 13-21-5, because the meeting did not involve the creation, amendment or alteration of the district solid waste management plan. Given the Board of Director’s statement and from my review of the agenda of the September 9 meeting, it appears that there were no plan-related items on the agenda. Therefore, absent evidence to the contrary, in my opinion the September 9 meeting was not governed by the more strict agenda requirements of IC 13-21-5.

Accordingly, the Open Door Law governs the September 9 meeting. The ODL does not require an agency to use an agenda, but states that if an agency chooses to use an agenda, that agenda must be posted at the entrance of the location of the meeting prior to the meeting. IC 5-14-1.5-4(a). The posting requirement is the only requirement concerning an agenda in the ODL. Because the ODL does not require an agenda, it is not a violation of the ODL to add or omit discussion items during the meeting or otherwise deviate from the agenda. Therefore, it was not a violation of the ODL for the Board of Directors to discuss or vote to issue a letter of support at the September 9 meeting.

CONCLUSION

For the foregoing reasons, it is my opinion that the Jackson County Solid Waste Management District did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. LeRoy Crees