

October 18, 2004

Ms. Laura E. Oberthur
225 West 246th Street
Sheridan, IN 46069

*Re: Formal Complaint 04-FC-169; Alleged Violation of the Open Door Law by the
Marion-Adams School Corporation/School Board*

Dear Ms. Oberthur:

This is in response to your formal complaint alleging that the Marion-Adams School Corporation/School Board (“School Board”) violated the Open Door Law by holding an executive session in violation of the Open Door law. I find that the School did not violate the Open Door Law when it held an executive session for discussion of strategy with respect to pending litigation.

BACKGROUND

In your complaint filed on September 17, 2004, you allege that a September 13 executive session held by the School Board following a meeting violated the Open Door Law because you believe that the Board must have discussed matters other than those specified in its notice. As support for your allegation, you state that the public was told by a school board member: “we’ll go into executive session and crunch some numbers and see what we can do to get all this worked out.” I forwarded your complaint to the School Board, and Superintendent Patrick Mark responded. His response is enclosed for your reference. In his response, Dr. Mark states that the remarks of the school board member followed a lengthy discussion during the public portion of the meeting regarding the school’s ability to afford to hire more aides. During the executive session, the board heard from its attorney, Mr. Hittle, regarding the potential for legal costs in a lawsuit pending against the school.

ANALYSIS

Although meetings of a governing body are to be open for the public to observe and record them, certain matters may be discussed in an executive session from which the public may be excluded. One of those instances concerns strategy discussions with respect to pending litigation. IC 5-14-1.5-6.1(b)(2)(B). You acknowledge that the School Board properly posted notice of the executive session and that the discussion involved pending litigation against the school. You allege, however, that the statement by the school board member implies that the School Board discussed the financial ability of the Marion-Adams School Corporation to hire 1st grade teaching aides.

According to Dr. Mark, the discussion in the executive session was related to pending litigation filed by Paula Boone, with the related topic of attorney fees and expenses of litigation forming part of the discussion. The fact that, as a result of the executive session, the Board felt comfortable adding additional teacher aides does not, of itself, alter the character of the discussion from one concerning strategy with respect to pending litigation. Without any indication that budgetary concerns were discussed in addition to the stated purpose for the executive session, I do not find a violation of the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that the Marion-Adams School Corporation/School Board did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Dr. Patrick Mark