



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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December 8 2010

Mr. Jeff Eakins
The Banner
P.O. Box 116
Knightstown, IN 46148

Re: Formal Complaint 10-FC-280; Alleged Violation of Ind. Code § 36-6-6-8 by Wayne Township Board

Dear Mr. Eakins:

This advisory opinion is in response to your formal complaint alleging the Wayne Township Board¹ ("Board") violated Ind. Code § 36-6-6-8.²

BACKGROUND

In your complaint, you allege that the Board violated I.C. § 36-6-6-8 by (1) not having the Board's secretary record the proceedings of the Board's meetings in full; (2) not approving minutes of prior meetings; (3) not placing minutes kept by the Board's secretary into a permanent record book; and (4) not having the Board's chairman keep Wayne Township's permanent record book in his custody.

My office forwarded a copy of your complaint to the Township. As of today, we have not received a response.

¹ Your complaint, which also named the Board and the Wayne Township Trustee ("Trustee"), sought both a formal opinion and an informal opinion with respect to various issues and allegations. Because the Board is the only entity listed in the portion of your complaint that sought a formal opinion, I issue this opinion with respect to the Board only.

² The public access counselor has the authority to opine on an alleged violation of I.C. § 36-6-6 pursuant to I.C. § 5-14-5-6, which authorizes the filing of a formal complaint where "[a] person or a public agency denied: (1) the right to inspect or copy records under IC 5-14-3; (2) the right to attend any public meeting of a public agency in violation of IC 5-14-1.5; or (3) any other . . . state statute or rule governing access to public meetings or public records...."

ANALYSIS

You allege several violations of I.C. § 36-6-6-8. That section applies to township boards, and provides the following:

The legislative body shall keep a permanent record of its proceedings in a book furnished by the executive. The secretary of the legislative body shall, under the direction of the legislative body, record the minutes of the proceedings of each meeting in full and shall provide copies of the minutes to each member of the legislative body before the next meeting is convened. After the minutes are approved by the legislative body, the secretary of the legislative body shall place the minutes in the permanent record book. The chairman of the legislative body shall retain the record in his custody.

First, you claim that the Board violated I.C. § 36-6-6-8 when it denied your request for a copy of the Board's minutes by claiming those records do not exist. The Board informed you that it does create and maintain *memoranda* created pursuant to the Open Door Law ("ODL"), I.C. § 5-14-1.5, but the plain language of I.C. § 36-6-6-8 requires the Board to create *minutes*. While I do not read the section to require the Board to record every word spoken at the Board's meeting, the statute does require the Board to create minutes. Thus, if the Board failed to do so, the Board violated I.C. § 36-6-6-8.

Second, you claim that the Board violated this section by failing to approve minutes of its meetings. However, I am not certain that I have the authority to offer an advisory opinion as to a violation of this sort, because it is not clear that the Board's failure to approve minutes somehow violates a *right* held by the public under the public access laws or I.C. § 36-6-6-8. *See* I.C. § 5-14-5-6. Moreover, while the approval of minutes is implied by the language of I.C. § 36-6-6-8, the section does not explicitly require the Board to approve minutes.

Third, you claim that the Board has violated I.C. § 36-6-6-8 because the Board has not placed its minutes into a permanent record book. You acknowledge that the Board keeps its memoranda in a permanent record book, but does not include minutes in the book because it does not create minutes. This issue does fall within the realm of public access, because whether or not a township board creates and stores its records permanently directly affects the ability of members of the public to access those records upon request. Consequently, if the Board has not maintained its meeting minutes in a permanent record book, it is in violation of I.C. § 36-6-6-8.

Finally, you allege that the Board violated I.C. § 36-6-6-8 "by not having the [B]oard's chairman keep the township's permanent record book in his custody." You note that the Board keeps its permanent record at the Trustee's office, and argue that while that office "may provide a secure location for [the] township trustee records, it is not where the township board's permanent record is supposed to be kept." In my opinion, the statute's requirement that a board chairman keep the permanent record book in his or her custody does not prohibit storing the book at the office of the township trustee. As long as the chairman is ultimately responsible for the custody of the book, I

do not believe such an arrangement violates I.C. § 36-6-6-8. To hold otherwise would be to require the chairman to keep the permanent record book on his person at all times, and I do not believe that is what the General Assembly intended when it enacted this provision.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated I.C. § 36-6-6-8 by failing to create minutes of its meetings and maintain those minutes in a permanent record book. The Board has not otherwise violated I.C. § 36-6-6-8.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor