



STATE OF INDIANA

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June 17, 2008

Kathleen Crouch
RR 3 Box 454
Bloomfield, Indiana 47424

*Re: Formal Complaint 08-FC-137; Alleged Violation of the Open Door Law
by the Greene County Board of Commissioners*

Dear Ms. Crouch:

This advisory opinion is in response to your formal complaint alleging the Greene County Board of Commissioners (“Commissioners”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by conducting a meeting without proper notice and by making decisions outside a public meeting. I have enclosed a copy of the Commissioners’ response to the complaint for your reference. It is my opinion the meeting at issue was an “administrative function” meeting, and as such notice was not required. Further, it is my opinion the Commissioners violated the Open Door Law if the meeting was not held in public. Finally, all Commissioners should have been afforded the opportunity to participate in carrying out the administrative functions.

BACKGROUND

You are a member of the Greene County Board of Commissioners. You allege that on May 20, 2008 you learned of a meeting conducted sometime during the week of April 28 or May 5. In attendance at the meeting were the other two Commissioners, the highway superintendent, two highway foremen and one other highway employee. You allege no notice was provided at the meeting. You further allege that at the meeting the two Commissioners decided on an alteration of schedules for county highway employees and amended the county employee handbook to reflect the change. You filed this complaint on May 22, alleging the meeting constituted a violation of the Open Door Law. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Commissioners responded to the complaint by letter dated June 9 from Greene County Attorney Marilyn Hartman. The Commissioners contend the meeting (which was held May 12) was a meeting to carry out administrative functions, as allowed

by I.C. § 5-14-1.5-5(f)(2). The Commissioners further contend that because it was an administrative function meeting, notice was not required.

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. I.C. § 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. I.C. § 5-14-1.5-3(a). The Commissioners constitute a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

A “meeting” means a gathering of the 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” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a).

The requirements for posting notice do not apply when the executive of a county meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. Administrative functions do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. I.C. § 5-14-1.5-5(f)(2). Even though notice is not required, the “administrative function” meeting must be held in the public, since the notice provision of the ODL is the only provision that does not apply to an “administrative function” meeting. I.C. § 5-14-1.5-5(f)(2).

No information provided to me indicates whether the meeting was open to the public. The meeting should have been conducted so the public could observe and record the meeting, but it was not necessary for the Commissioners to post notice of the meeting because addressing personnel regulations and schedules constituted an administrative function meeting. If the two Commissioners and the highway employees met behind closed doors, the Commissioners violated the Open Door Law. If the meeting was open to the public, the Commissioners did not violate the Open Door Law.

While the Commissioners may not have violated the Open Door Law if the meeting was open to the public, it is troubling that two Commissioners would meet in an “administrative function” meeting without inviting the third Commissioner. Certainly the purpose of the “administrative function” meeting is for the executive of a county to carry out administrative functions. In my opinion, this means all members of the county executive, namely all three Commissioners, should have an opportunity to attend the meeting.

CONCLUSION

For the foregoing reasons, it is my opinion the meeting at issue was an “administrative function” meeting, and as such notice was not required. Further, it is my opinion the Commissioners violated the Open Door Law if the meeting was not held in public. Finally, all Commissioners should have been afforded the opportunity to participate in carrying out the administrative functions.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Marilyn Hartman, Green County Attorney
Greene County Board of Commissioners