

March 13, 2008

Dorothy Snyder
236 East Pendle Street
Roseland, Indiana 46637

*Re: Formal Complaint 08-FC-65; Alleged Violation of the Open Door Law by the
Roseland Town Council*

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaint alleging the Roseland Town Council (“Council”) violated the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) by conducting a secret meeting to discuss collecting bids for snow plow and salt services for the Town of Roseland. A copy of the Council’s response to your complaint is enclosed for your reference. It is my opinion the Council did not violate the ODL.

BACKGROUND

You filed a complaint earlier this year, and I issued *Opinion of the Public Access Counselor 08-FC-35*. In that complaint, you indicated you had submitted a request to the Council for copies of records related to bids received for snow plowing. You received a copy of a contract from one company. At the bottom of the record was a handwritten notation that the Council had contacted four companies to seek bids. You now allege that notation is evidence that the Council met secretly to determine which companies it would contact to obtain bids. You filed this complaint on February 25.

The Council responded by letter from dated March 12 from attorney Michael Lipsky. Mr. Lipsky contends that because the contract is for less than \$25,000, the “normal public process” for bids was not required. Mr. Lipsky contends that at the end of 2007, the Town’s snow plowing contract had expired. Tedd Penn of the Council, on his own initiative, contacted four companies and asked them to submit proposals. Mr. Penn did not speak to any other member of the Council regarding the calls for bids prior to the December 1, 2007 Council meeting. Mr. Lipsky contends that Mr. Penn’s notation at the bottom of the record you received is incorrect because at no time other than the December 1 meeting did Mr. Penn discuss snow plowing with Mr. Shields, also of the Council.

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).

A meeting is “a gathering of a majority of a governing body of a public agency for the purpose of taking official action upon public business.” I.C. § 5-14-1.5-2(c).

Here you allege the Council violated the ODL by conducting a secret meeting to discuss obtaining bids for snow plowing and salt services for the Town. The evidence to which you point is Mr. Penn’s handwritten notation at the bottom of a contract indicating that Mr. Penn and Mr. Shields contacted four companies to seek bids. It is outside the purview of this office to address the bid process for public agencies. As such, I will only address the meeting issue.

While you have provided a copy of the notated record, I see no other evidence of a secret meeting. Both Mr. Penn and Mr. Shields contend they did not meet to discuss the issue prior to the December 1 meeting of the Council. Mr. Shields has offered to provide a sworn affidavit confirming that he did not discuss the issue with Mr. Penn. Mr. Penn contends he contacted the companies on his own. Absent any further information or evidence, I cannot find the Council held a secret meeting to discuss snow plowing and salt services.

CONCLUSION

For the foregoing reasons, it is my opinion the Roseland Town Council did not violate the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michael Lipsky, Attorney for the Roseland Town Council