



# STATE OF INDIANA

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April 8, 2013

Mr. Charles Pearson  
37 S. Market Street  
Andrews, Indiana 46702

*Re: Formal Complaint 13-FC-98; Alleged Violation of the Open Door Law by  
the Andrews Town Council*

Dear Mr. Pearson:

This advisory opinion is in response to your formal complaint alleging the Andrews Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Michael Hartburg, Attorney, responded in writing on behalf of the Council. A copy of the response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that the Council held a public meeting on March 19, 2013. At the meeting, Councilman John Harshbarger read correspondence that indicated that he was not required to allow the public to speak. Councilman Harshbarger then made a motion to reduce the Town Marshall in rank; the motion was seconded by Councilman Raymond Tackett. No discussion occurred by the Council prior to a vote being taken. The third member of the Council voted against the motion. You question whether the Council discussed the issue outside of the meeting. The Council then allowed the public to speak but when Councilman Tackett was questioned about breaking the ODL, he made a motion to adjourn. You believe that you should have been given the right to speak as the Council is allowing others to speak regarding certain issues.

In response to your formal complaint, Mr. Hartburg advised that after the special meeting of the Council was called to order on March 19, 2013, Mr Harshbarger read from Indiana's Handbook on Public Access Laws which provides that the ODL does not guarantee the right of the public to speak at public meetings. Thereafter, after the Council acted on Mr. Harshbarger's motion to reassign the Town Marshall, the Council consented to a request to receive public comment. Several attendees proceeded to make statements and ask questions. Shortly after denying the accusation that he and Mr. Harshbarger had violated the ODL, Mr. Tackett moved to adjourn the meeting.

## ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *See Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; *see also* I.C. § 5-14-1.5-3 (“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.”). “Indiana law does require a governing body to allow public testimony in certain instances (e.g. a hearing on a proposed budget), but as a general rule the ODL does not guarantee the right to speak at a meeting.” *See Opinions of the Public Access Counselor 08-FC-149 and 10-FC-240*. Minus a specific legal mandate, a governing body had the authority to determine whether it will receive public comment during a public meeting and if it elects to do so, the procedures that will be followed in carrying out this process. Our office has encouraged governing bodies that elect to receive public comment to adopt a uniform, nondiscriminatory process. As applicable here, it is my opinion that the Council did not violate the ODL by not providing you with an opportunity to speak at the March 19, 2013 public meeting.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Council did not violate the ODL.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage  
Public Access Counselor

cc: Michael Hartburg