

December 22, 2000

Mr. Richard E. Frost
507 Stonehedge Drive
Carmel, IN 46032-7400

Re: Advisory Opinion 00-FC-41 *Allegations of Violations of the Open Door Law by the Hamilton County Council and the Hamilton County Board of Commissioners.*

Dear Mr. Frost:

This is in response to your formal complaint, which was received on December 6, 2000. You have alleged that the Hamilton County Board of Commissioners ("Commissioners") and the Hamilton County Council ("Council") have violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. You allege that the Commissioners failed to post proper notice of their joint retreat held on November 9th and 10th, 2000 and that the Council did not pay for a legal advertisement at least forty-eight (48) hours prior to the joint retreat in violation of Indiana Code section 36-2-3-7(c). You have also alleged that the Commissioners violated Indiana Code section 36-2-2-9 by holding the retreat at a location other than the Hamilton County Government and Judicial Center ("Judicial Center"). Finally, you have also alleged that the Ft. Benjamin Harrison facility located at 5805 North Post Road, Indianapolis, Indiana is not accessible to individuals with disabilities as required by Indiana Code section 5-14-1.5-8. Mr. Steven Holt, President of the Commissioners, and Ms. Christine Altman, President of the Council, responded in writing to your complaint. Copies of their responses are enclosed for your reference.

It is my opinion that the Commissioners did not violate the ODL in posting their notice of the joint retreat under the ODL, but the Council did violate Indiana Code section 36-2-3-7(c) when they failed to publish legal notice of this retreat. Furthermore, it is my opinion that, from the information obtained, the Ft. Benjamin Harrison facility appears to be accessible to those with disabilities and holding a meeting at that location would not violate the ODL.

Finally, with respect to the conduct of the joint retreat at a location other than the county courthouse, the ODL does not include a provision that requires governing bodies to meet at any specific location. Indiana Code section 36-2-2-9, however, is more specific and requires the Commissioners to hold their meetings, which would include the joint retreat, in the county courthouse unless it is "not suitable, is inconvenient, or has been replaced or supplemented by other buildings to house county government offices." The Commissioners must, therefore, justify the location of the joint retreat under Indiana Code section 36-2-2-9 and it is my opinion that they failed to do so in response to your formal complaint.

BACKGROUND

In your complaint, you stated that the Commissioners and Council held a joint retreat on November the 9th and 10th of 2000 at a Ft. Benjamin Harrison facility in Marion County. Although, notice was posted on the County's bulletin board, notice was not posted at both entrances to the Judicial Center, which you believe to have been required. Also, the Council did not publish legal notice of the joint retreat in the local newspapers and Indiana Code section 36-2-3-7(c) requires publication of notice of special Council meetings. You have also stated that the Commissioners were required to meet in the county courthouse under Indiana Code section 36-2-2-9 unless the county courthouse was not suitable or inconvenient and that you were not aware of any circumstances that would have made the county facilities unusable for this joint retreat. You have also alleged that the meeting location for the joint retreat was not accessible for persons with disabilities, and therefore, violated the ODL.

In his response, President Holt stated that the Commissioners did post notice on the county bulletin board advising of the joint retreat and that this was appropriate under the ODL. He also noted that there is a ramp at the facility used for the retreat at Ft. Benjamin Harrison, and that it appears as if the facility was accessible to persons with disabilities. In response to your allegations that the joint retreat should have been held at the county courthouse, President Holt stated only that retreats are commonly held by governmental bodies, notice was posted and there was no attempt to keep people from attending the joint retreat. In fact, he stated that the joint retreat was open to the public and some members of the public, including yourself, were in attendance.

President Altman also responded in writing to your additional complaint concerning the Council and its' obligation to publish a legal notice of the joint retreat under Indiana Code section 36-2-3-7(c). She agreed that the Council did fail to publish this notice, it was an oversight and they would take steps in the future to ensure that this would not occur in the future.

ANALYSIS

The intent and purpose of the ODL is 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." Ind. Code § 5-14-1.5-1. The provisions of the ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Council and Commissioners are both clearly subject to the ODL as the governing bodies. Ind. Code § 5-14-1.5-2. Each of the specific issues raised in your formal complaint are addressed in the following paragraphs.

Notice

The ODL requires governing bodies of public agencies to post notice of their public meetings. Specifically, Indiana Code section 5-14-1.5-5(a) provides that:

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 (48) hours in advance (excluding Saturdays, Sundays, and legal holidays) before the meeting.

Public notice must be given by the governing body by "posting a copy of the notice at the *principal office* of the public agency holding the meeting or, *if no such office exists*, at the building where the meeting is to be held." Ind. Code § 5-14-1.5-5(b). According to your complaint, notices were not posted at both entrances to the Judicial Center, however, the ODL does not require notice be posted at every entrance to a building. According to Mr. Holt, notice was posted on the County bulletin board where all public notices are posted.

The Commissioners were obligated, therefore, to post the notice at their principal office or the meeting location-not both. For this reason, it is my opinion that the posting of the notice at the county bulletin board by the Commissioners complied with the requirements of Indiana Code section 5-14-1.5-5.¹

As to the other notice issue raised about the Council, the notice required under the ODL does not apply if "notice by publication is required by statute, ordinance, rule, or regulation." Ind. Code § 5-14-1.5-5(e). In this case, the Council was required to publish a legal notice of the joint retreat in a newspaper. This joint retreat would be considered a special meeting of the Council. Under Indiana Code section 36-2-3-7(c), "the auditor, president, or members calling the [special] meeting shall . . . publish, at least one (1) day before the meeting, the notice in accordance with IC 5-3-1-4." President Altman, in her response, admitted that the Council failed to provide the published notice as required under Indiana Code 36-2-3-7(c). She stated that this was an oversight and that the Council is taking remedial action to avoid similar problems in the future. It is my opinion, therefore, that the Council did not comply with the requirement that they publish legal notice under Indiana Code section 36-2-3-7(c).

Location

You have also alleged that the Commissioners held the joint retreat in a location that did not conform to the requirements of Indiana Code section 36-2-2-9. It is important to point out that the ODL does not prohibit governing bodies from holding a meeting at any particular location so long as proper notice is given and the facility is accessible to the individuals with disabilities. The Commissioners, however, are governed by a more specific statute, which would supersede the general provisions of the ODL. "When faced with a general statute and a specific statute on the same subject, the more specific one should be applied." *Ross v. State*, 729 N.E.2d 113, 116 (Ind. 2000) [Citations omitted.] Indiana Code section 36-2-2-9 provides that "the executive (Commissioners) may select a location other than the county courthouse for its meetings only if the courthouse is not suitable, is inconvenient, or has been replaced or supplemented by other buildings to house county government offices."

I have not been provided with much evidence that would assist me in determining whether or not there was any reason that the courthouse was or was not suitable or convenient for the joint retreat of the Commissioners and Council. It appears that the General Assembly placed the burden with the Commissioners to show that they have met the requirements Indiana Code section 36-2-2-9 with respect to the joint retreat. In his response, President Holt merely mentioned that governing bodies of public agencies routinely hold retreats, and I would agree with that statement. For many other public agencies,

the ODL is the only applicable statute and there is no requirement that they hold their meetings in a particular building or justify moving their meetings to another location. I have been provided with no statement or evidence that the courthouse was either unsuitable or inconvenient for the joint retreat, therefore, it is my opinion that the Commissioners did not comply with the requirements under Indiana Code section 36-2-2-9.

Accessibility of Joint Retreat to Persons with Disabilities

Indiana Code section 5-14-1.5-8 provides that "[a] public agency may not hold a meeting at a location that is not accessible to an individual with a disability." You have alleged that the meeting location for the joint retreat was not accessible to persons with disabilities, and therefore, violated the ODL. President Holt in his response stated that there is a ramp at the location for individuals with disabilities. He also stated that if anyone needed assistance that assistance would have been provided. Ms. Sandy Barger, Staff Attorney for this Office, also spoke to Ms. Suzette Brown of the Harrison Quarters, which was the location of the retreat about the accessibility of that building. Ms. Brown confirmed that the facility is accessible to persons with disabilities. Based upon this information, it is my opinion that the Commissioners and Council did not violate Indiana Code section 5-14-1.5-8 by holding a meeting at a location that is not accessible to individuals with disabilities.

CONCLUSION

It is my opinion that the Hamilton County Board of Commissioners did post notice of the joint retreat held on November 9th and 10th, 2000 as required under Indiana Code section 5-14-1.5-5. The Hamilton County Council, however, was required to publish a legal notice of the joint retreat under Indiana Code section 36-2-3-7(c) and failed to do so. The Commissioners are required to justify the location of their meetings under Indiana Code section 36-2-2-9 and did not do so in response to your complaint. The facility at which the joint retreat was held is apparently accessible to people with disabilities, thus to hold a meeting at this location would not violate the ODL.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: President Steven Holt, Hamilton County Commissioners w/out enclosures
President Christine Altman, Hamilton County Council w/out enclosures

[1](#) One could argue that this is not the "principal office" of the Commissioner, I suppose, but in Advisory Opinion 00-FC-23, I discussed the concept of "substantial compliance" with technical requirements for posting notice under the ODL. The fact that you and other members of the public attended the joint retreat indicates that the posting on the county bulletin board was effective to serve as notice to the public of the joint retreat under the ODL.
