



STATE OF INDIANA

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July 28, 2008

Dennis Kesler
4175 Sunflower Place
West Terre Haute, Indiana 47885

*Re: Formal Complaint 08-FC-168; Alleged Violation of the Open Door Law
by Vigo County Community Corrections*

Dear Mr. Kesler:

This advisory opinion is in response to your formal complaint alleging Vigo County Community Corrections ("VCCC") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting a meeting without proper notice. I have enclosed a copy of VCCC's response to the complaint for your reference. It is my opinion that you lack standing to file this complaint but that if you did have standing, it would be my opinion VCCC has not violated the Open Door Law.

BACKGROUND

You filed a complaint on July 9, 2008, postmarked June 7, 2008, alleging that on June 9, 2008 VCCC held a meeting without proper notice. You allege the meeting notice was posted on June 6, but you do not indicate the time it was posted. You allege the notice contained no indication the meeting was an emergency meeting. You further contend the meeting was held to terminate an employment position and that those in opposition were not allowed to attend. You allege that by chance you learned of the meeting.

VCCC responded to your complaint by letter dated July 21 from attorney Robert Effner. The letter was also signed by Bill Watson, Executive Director of VCCC and Tim Curley, President of the VCCC Advisory Board ("Board"). VCCC contends the June 9 meeting was an emergency meeting called to deal with a threat of disruption of governmental activity, namely potential lack of funding from the Indiana Department of Correction absent filing of an amended or renewed contract by June 15. VCCC contends the Board needed to meet on an emergency basis to address the issues and prepare the document to send to the Department of Correction in advance of the deadline. VCCC contends failure to do so would result in a significant negative effect on the criminal justice system in Vigo County.

VCCC contends notice was provided in accordance with the ODL as the members of the Board were notified of the meeting. VCCC provides an affidavit from Patricia Blye, swearing that she personally spoke to or left messages with all members of the Board. Further, Ms. Blye swears notice of the meeting was posted at the VCCC office reception counter on June 6. She further swears notice of the meeting was placed in mailboxes of interested staff members, including you. Finally, Ms. Blye swears VCCC had received by January 1 of this year no news media requests for copies of meeting notices. VCCC also provides an affidavit of Laura Chaney, who swears she personally notified you of the meeting. VCCC contends you were in attendance at the meeting, as reflected in the minutes of the June 9 meeting.

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 meetings of the VCCC Board are subject to the requirements of the ODL. *See* I.C. § 5-14-1.5-2.

A person denied the right to attend any public meeting of a public agency in violation of I.C. § 5-14-1.5 or denied any other right conferred by I.C. § 5-14-1.5 may file a formal complaint with the public access counselor. I.C. § 5-14-5-6. You were in attendance at the meeting at issue here. Because you were not denied access to the meeting, you lack standing to file a complaint with this office. I.C. § 5-14-5-6.

Even if you did have standing to file a complaint, it would be my opinion VCCC did not violate the ODL.

The ODL provides the following regarding notice of meetings:

(a) 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 (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) 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; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice.

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

I.C. § 5-14-1.5-5(a).

...

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

I.C. § 5-14-1.5-5(d).

Here, you allege that notice was not posted in accordance with the ODL. VCCC contends, and provides evidence, that the June 9 meeting was an emergency meeting called to deal with a threatened disruption of the governmental activity under the jurisdiction of the agency, namely that Indiana Department of Correction funding could be cut if VCCC did not file the required documents with the Department by June 15. In my opinion this is indeed a threat of disruption of governmental activity, and as such an emergency meeting was appropriate in this instance. Further, nothing in I.C. § 5-14-1.5-5(d) required VCCC to indicate within the notice the purpose for the meeting or the statutory authority to conduct the meeting.

VCCC provides evidence the staff contacted all Board members in advance of the meeting. VCCC further contends it was not required to provide the notice to any news media because no news media has requested copies of VCCC Board meeting notices. I agree that, based on the guidelines presented in I.C. § 5-14-1.5-5(d), VCCC followed the requirements of the ODL related to emergency meeting notices.

Further, VCCC contends, and you indicate, that notice was provided at the VCCC office on June 6. Nothing in the ODL required VCCC to personally notify you of the meeting, but the affidavits from both Ms. Blye and Ms. Chaney indicate you were notified in person and via a notice in your mailbox.

CONCLUSION

For the foregoing reasons, it is my opinion that you lack standing to file this complaint but that if you did have standing, it would be my opinion VCCC has not violated the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Robert Effner, Effner Law Firm
Bill Watson, Vigo County Community Corrections