



STATE OF INDIANA

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August 27, 2008

Harry Graves
2204 Blue Creek Road
Brookville, Indiana 47012

*Re: Formal Complaint 08-FC-196; Alleged Violation of the Open Door Law
by the Franklin County Board of Commissioners*

Dear Mr. Graves:

This advisory opinion is in response to your formal complaint alleging Franklin County Board of Commissioners (“Commissioners”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by providing insufficient notice for an executive session. A copy of the Commissioners’ response to the complaint is enclosed for your reference. In my opinion the Commissioners violated the ODL by providing insufficient notice for an executive session. Further, it is my opinion the Commissioners did not violate the ODL by failing to publish the meeting notice in the local newspaper.

BACKGROUND

You filed a complaint on August 13, 2008, alleging the Commissioners violated the ODL by failing to provide sufficient notice for an August 14 executive session. You allege that the Commissioners did not provide sufficient information regarding the reason for the executive session. You provide a copy of the notice, which indicates the meeting will be held “For the Purpose of Personnel Issues.” You further allege that notice was not published in the local newspaper.

The Commissioners responded to the complaint by letter dated August 18 from attorney Eugene Stewart. The Commissioners provide copies of notices for the August 11 and August 14 executive sessions. The Commissioners indicate the notices were posted at the four entrances to the courthouse annex, which is where the meetings are held. Mr. Stewart submitted an additional response on August 19, indicating the notices were posted 48 hours prior to each meeting and were posted at the Government Center, which is the name of the building referred to as the courthouse annex.

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).

Executive sessions, which are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d).

The issue here is whether the notice for executive session, which contained an indication the meeting was scheduled to address “personnel issues” was in conformance with the ODL. This office has addressed this issue in the past. In *Opinion of the Public Access Counselor 05-FC-233*, Counselor Davis wrote the following:

This office has stated on many occasions that “personnel issues” is wholly inadequate under the Open Door Law. First, there are several enumerated instances involving personnel-related matters that are permissible for an executive session. Accordingly, “personnel Issues” lacks the required specificity, because the Open Door Law states that notice of an executive session must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. IC 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to IC 5-14-1.5-6.1(b)(9),” for example, would satisfy the notice requirements. *Id.*, available at <http://www.in.gov/pac/advisory/files/05-FC-233.pdf>.

I agree with the opinion of Counselor Davis and would also note that there are a number of personnel matters which may not be discussed in executive session. To the extent the Commissioners conduct executive sessions to discuss personnel matters allowed to be discussed in executive session, the Commissioners must cite the specific statutory instance allowing the executive session. To the extent the Commissioners intend to address personnel matters not specifically enumerated in I.C. § 5-14-1.5-6.1, the Commissioners should address those matters at a meeting open to the public.

Regarding your allegation that the Commissioners failed to publish the notice in the local newspaper, nothing in the ODL requires a governing body to publish meeting notices in the local newspaper, unless another statute requires publication. While the governing body is required to provide notice to news media who have requested notices (See I.C. § 5-14-1.5-5(b)(2)), nothing requires the governing body to publish the notice.

As such, it is my opinion the Commissioners did not violate the ODL by failing to publish the notice in the local newspaper.

CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners violated the ODL by providing insufficient notice for an executive session. Further, it is my opinion the Commissioners did not violate the ODL by failing to publish the meeting notice in the local newspaper.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Tom Wilson, Franklin County Board of Commissioners
Eugene Stewart, Stewart Law Office