

March 31, 2008

Joni Kay Foulkes
147 Oak Street
Terre Haute, Indiana 47807

*Re: Formal Complaint 08-FC-80; Alleged Violation of the Open Door Law by the
Vigo County Council*

Dear Ms. Foulkes:

This advisory opinion is in response to your formal complaint alleging the Vigo County Council (“Council”) violated the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) by failing to provide proper notice for two meetings and by excluding you from a public meeting. I have enclosed the Council’s response to your complaint for your reference. In my opinion the Council has not violated the Open Door Law.

BACKGROUND

You filed this complaint on behalf of the Vigo County Health Department (“Department”). You allege the Department was notified on January 14, 2008 of a January 23 meeting of the Personnel Committee (“Committee”) of the Council. At the January 23 meeting, the Committee would review personnel requests to come before the Council at its February 26 meeting. You allege that members of the Department attended the January 23 Committee meeting, at which time department heads were told that because of the large number of requests the Committee would not be voting on the requests at the meeting but would vote at a later date and notify the department heads of the recommendations. You allege that no notice was provided to the Department regarding when the next meeting would occur.

You further allege that members of the Department attended the Council’s Budget Adjustment Committee meeting on March 5. You allege you inquired at the meeting when a vote would occur (regarding the department’s proposed budget, I assume), and you were told the vote would occur after the departments had made their presentations to the Budget Committee. You further allege you inquired whether you could remain for the discussion and vote, and you were told by a member of the Council that it would be inappropriate to discuss the business of other departments with you present. You filed this complaint March 10.

The Council responded to the complaint by letter dated March 20 from attorney Robert Effner. Mr. Effner also provided with his response a digital video disc containing video recordings of several Council and committee meetings. Mr. Effner contends the Council is committed to openness in government and has made efforts to meet and exceed Indiana's legal requirements for openness. Mr. Effner provides a copy of a letter from Council Administrator Matthew Muckler, who provides that notices for all meetings are sent to the newspaper and posted in the Vigo County Annex, which houses the Council chamber. Further, the Council website contains notice of all meetings.

Regarding the reconvened meeting following the January 23 Committee meeting, the Council contends, and provides an affidavit of the employee responsible, that notice was posted for the February 4 meeting at the public posting area at the entrance of the meeting location, the Council chamber. Further, the Council provides evidence of sending the notice to local news media.

Regarding the March 5 meeting, the Council contends the meeting was not reconvened; instead, when the Council indicated the vote would be taken later, the Council meant after the departments had made their presentations. But the vote was taken at the same meeting. Regarding your allegation that the Council excluded you from the meeting, the Council contends that while the comments used were regrettable, the remark from the Council member asking why you would want to stay for the vote was not intended to exclude you from the meeting. The Council contends the comments were related to when during the meeting the Council would conduct discussion and voting, and not whether you would be allowed to be present. The Council contends the Chairperson's comments were meant to indicate that you were not required to stay for the remainder of the meeting. The video submitted by the Council shows that you were allowed to stay for the discussion and vote regarding the Department as well as for that of another Department. The Council contends you were never asked to leave the 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).

A "meeting" means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d).

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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a). Notice shall be given by posting a copy of the notice at the principal office of the public agency or at the

building where the meeting is to be held if no principal office exists and by delivering to the news media who submit an annual request for notices by January 1. I.C. § 5-14-1.5-5(b).

You first allege the Council violated the ODL by failing to notify the Department of the February 4 meeting. Nothing in the ODL requires the Council to notify any specific person or entity, other than the media, of its meetings. The Council has provided evidence that notice for the February 4 meeting was posted at the Council chamber and was provided to the news media. So long as the Council chamber is the principal office of the Council (*See* I.C. § 5-14-1.5-5(b)), the Council did not violate the Open Door Law. If the Council maintains a principal office that is not located in or near the chamber and is instead in another location, the Council must post meeting notices at that office. I commend the Council for also providing notice as well as the opportunity to watch Council meetings via its website.

Regarding your allegation that you were excluded from the March 5 meeting, the Council contends you were not asked to leave and in fact stayed through the Budget Committee's discussion and vote regarding the Health Department and another department. The Council has provided a video recording documenting this, and I have viewed the recording. Regardless of whether the Council's comments were regrettable or you misunderstood the comments, the fact remains that you were not asked or forced to leave the meeting and fact remained at the meeting through the discussion and vote of two different departments. Because you were not excluded from the public meeting, I cannot find the Council violated the Open Door Law.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Darrick Scott, Chair, Vigo County Council
Robert O. Effner, Effner Law Firm