

April 21, 2008

Edward Sipes
8261 West 100 North
Farmland, Indiana 47340

*Re: Formal Complaint 08-FC-88; Alleged Violation of the Open Door Law by the
Muncie Parks Board*

Dear Mr. Sipes:

This advisory opinion is in response to your formal complaint alleging the Muncie Parks and Recreation Board (“Board”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by failing to provide proper notice for a meeting and by failing to produce information about the meeting when you requested it. It is my opinion the Board violated the ODL if it conducted a meeting of the governing body without proper notice. It is my opinion the Board did not violated the APRA or ODL by denying you access to records since you did not specifically request access to records.

BACKGROUND

In your complaint you allege that the Board changed the time of its March 18, 2008 public meeting without providing notice of the change in time. You further allege that on March 25 you requested information regarding the meeting, whether written, recorded, or verbal. You allege you were denied access to any information regarding the meeting. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Board responded to your complaint by letter dated April 11 from City Attorney Frank Gilkison. The Board contends that notice of the change in meeting time, from 4:15p.m. to 4:30p.m., was provided at the February 19 meeting and was reflected in the minutes of that meeting. Further, the Board contends that notice of the meeting, with the correct time, was provided to the Muncie Star Press on March 11. The Board indicates you should have learned the meeting time was moved to 4:30p.m. if you were there at 4:15p.m., as the person staffing the reception desk could have informed you of the change if you had inquired about the meeting.

Regarding your request for a copy of the minutes of the meeting, the Board contends that an unknown caller telephoned the office to inquire about the minutes. But the Board contends it does not know whether you were that caller. Mr. Gilkison indicates he sent you a letter dated April 2 asking you to submit your request with your name so the minutes could be provided to you, but you did not respond to the letter. The Board provided a copy of the minutes to you on April 11.

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. I.C. § 5-14-1.5-1. 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. I.C. § 5-14-1.5-3(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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. I.C. § 5-14-1.5-5(b).

Here you allege the Board conducted a meeting without proper notice. The Board contends that notice of the changed meeting time for the March 18 meeting was sent to the newspaper on March 11 and was reflect in the minutes of the Board's February 19 meeting. Further, the Board contends that if you arrived at the meeting location at 4:15p.m., when the meeting was originally scheduled, you should have been able to learn that the meeting was to be held at 4:30p.m. While the Board complied with the notice provision related to the news media, the ODL provides an additional notice requirement. The ODL does not place the onus on the person who would attend a meeting to learn when the meeting will be held. Instead, the ODL requires the agency to post notice at the principal office of the agency or at the meeting location if there is no office. I.C. § 5-14-1.5-5(b). If the Board did not provide this notice, the Board has violated the notice provision of the ODL.

Regarding your request for information related to the March 18 meeting, the ODL requires an agency to keep memoranda of its meetings and to make the memoranda available at a reasonable time after the meeting. I.C. § 5-14-1.5-4. The ODL does not require a governing body to keep minutes, but if the Board does keep minutes, those would be disclosable pursuant to the Access to Public Records Act ("APRA")(Ind. Code 5-14-3). Here, the Board contends you did not request access to the records. Instead, the Board contends you might have been the anonymous caller who inquired about the minutes of the meeting. In my opinion, you cannot have been denied access to the minutes or memoranda unless you specifically requested access to those records, as required by I.C. § 5-14-3-3(a). If you simply inquired whether the minutes were finished, it is my opinion that was not a request for access to records as contemplated by the APRA. I cannot find the Board violated the ODL or APRA on this issue.

CONCLUSION

For the foregoing reasons, it is my opinion the Board violated the ODL if it conducted a meeting of the governing body without proper notice. It is my opinion the Board did not violate the APRA or ODL by denying you access to records since you did not specifically request access to records.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Superintendent Doug Zook, Muncie Parks and Recreation Board
State Representative Dennis Tyler