

April 28, 2008

Joseph Wszolek
3731 42nd Place
Highland, Indiana 46322

*Re: Formal Complaint 08-FC-97; Alleged Violation of public access laws by the
Highland Town Council*

Dear Mr. Wszolek:

This advisory opinion is in response to your formal complaint alleging the Highland Town Council ("Council") violated Ind. Code § 8-1.5-3-9.1(b) by failing to provide proper notice to ratepayers before a meeting to vote on a proposed ordinance. I have enclosed the Council's response to your complaint for your reference. In my opinion the Council has not violated I.C. § 8-1.5-3-9.1(b).

BACKGROUND

You allege that the Highland Town Council is scheduled at its regular meeting of Monday, May 12, 2008 to consider and vote on Ordinance Number 1386, an ordinance to withdraw the Highland Water Utility from the jurisdiction of the Indiana Utility Regulatory Commission for the approval of rates and charges and the issuance of stocks, bonds, notes or other evidence of indebtedness. While I.C. § 8-1.5-3-9.1 requires the Council to mail written notice to all ratepayers at least thirty days before the final vote, you allege that you received the notice on April 16, which is 27 days prior to the meeting date. You requested priority status for this complaint, pursuant to 62 IAC 1-1-3. Because the complaint concerns conduct of a meeting for which notice has been posted but the meeting has not yet taken place, priority status was granted.

The Council responded to your complaint by letter dated April 23 from attorney Rhett Tauber. Mr. Tauber contends that the language of I.C. § 8-1.5-3-9.1 required the Council to mail the notice at least thirty days prior to the meeting date. Mr. Tauber contends, and provides evidence, that the Town of Highland mailed the notice to ratepayers on April 7, more than thirty days prior to the meeting. Mr. Tauber further contends that the Town sent a copy of the notice to the Indiana Utility Regulatory Commission on April 2.

ANALYSIS

It is the intent of the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) 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.

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). The ODL is a law of general application; any specific state statutes regarding meeting notice would supersede the general provisions of the ODL.

The following statute, which is provided here in part, is applicable to the issue at hand:
[A] municipally owned utility to which this section applies may be removed from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, if the municipal legislative body adopts an ordinance removing the utility from commission jurisdiction. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to all ratepayers of the utility and to the commission.
I.C. § 8-1.5-3-9.1(b).

The statute requires the legislative body to mail the notice to ratepayers at least thirty days prior to the meeting. The statute does not require the notice to be received by ratepayers at least thirty days in advance of the meeting. The Council has provided evidence that it mailed notice to all ratepayers on April 7, more than thirty days in advance of the meeting. As such, it is my opinion the Council complied with the notice provision in I.C. § 8-1.5-3-9.1(b).

CONCLUSION

For the foregoing reasons, it is my opinion the Highland Town Council did not violate I.C. § 8-1.5-3-9.1(b) because it mailed notice to ratepayers more than thirty days prior to the May 12 meeting.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Rhett Tauber, Tauber Wesland & Bennett P.C.