



STATE OF INDIANA

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August 28, 2008

Elizabeth Lauber
51387 Portage Road
South Bend, Indiana 46628

*Re: Formal Complaint 08-FC-197; Alleged Violation of the Open Door Law
by the South Bend Common Council*

Dear Ms. Lauber:

This advisory opinion is in response to your formal complaint alleging South Bend Common Council ("Council") 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 the Council's response to the complaint for your reference. It is my opinion the Council did not violate the ODL.

BACKGROUND

You allege that on June 23, 2008 the Council approved an extension of Auten Road without providing prior notification to any of the three owners of the farm that will be affected by the extension. You originally filed a complaint on July 14, 2008, and believing the issue was the same as that presented in *Opinion of the Public Access Counselor 08-FC-167*, I referred you to that opinion. You telephoned the office after receiving the opinion to indicate that your complaint was related to a different decision made by the Council at the June 23 meeting than the decision addressed by *Opinion 08-FC-167*. You renewed the complaint on August 13.

The Council responded to the complaint by letter dated August 22 from South Bend Assistant City Attorney Thomas Bodnar. The Council provides a detailed timeline of the complaints filed related to the June 23 meeting and the opinions I issued in response. Mr. Bodnar contends this office does not have the authority to rehear a complaint once it has issued a formal decision. Further, Mr. Bodnar contends the present complaint is untimely under I.C. § 5-14-5-7.

Regarding the substantive matter presented, Mr. Bodnar contends adequate public notice was provided for the June 23 meeting, as affirmed in my *Opinion 08-FC-167*. Mr. Bodnar contends that your allegation is related to lack of personal notice, and personal notice is not required by the ODL. Further, Mr. Bodnar contends that this office has no

jurisdiction to rule on any alleged violation of law regarding zoning, annexation or other government action involving land use.

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 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). The Council constitutes a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2(b).

Mr. Bodnar contends that the public access counselor has no authority to rehear a complaint once a formal opinion has been issued. While I find no provision in statute which expressly provides that the office may not rehear a complaint, it has been the practice of the office to read I.C. § 5-14-5-9 to require the counselor to issue only one opinion in response to each complaint. Here, though, this office misunderstood the basis for your original complaint. Because I misunderstood your complaint, it is my opinion the office has the authority to issue an opinion on the issue since it was not addressed in *Opinion 08-FC-173*. Similarly, since your original complaint, which I misunderstood, was filed on July 14 regarding the June 23 meeting, it is my opinion the complaint was timely under I.C. § 5-14-5-7.

The substance of your complaint is that you did not receive notice of the June 23 meeting. 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). Nothing in the ODL requires the notice to include an indication of the subject matter to be discussed at the meeting (except when the meeting is an executive session).

Public notice of a meeting shall be given by posting a copy of the notice at the principal office of the governing body or at the building where the meeting will be held if no office exists. Further, the governing body must deliver to all news media (who have requested notice by January 1 of the year) a copy of the notice. See I.C. § 5-14-1.5-5(b). Nothing in the ODL requires the governing body to deliver personal notice to any individual.

As I found in *Opinion 08-FC-167*, the Council did provide sufficient notice for the June 23 meeting by posting notice in the appropriate location prior to noon on June 19. The Council did not violate the ODL by failing to provide you with personal notice of the meeting.

As Mr. Bodnar contends, this office has no jurisdiction related to zoning, annexation, or other government action involving land use. Rather, the purview of this office is the “public access laws,” defined as Ind. Code 5-14-1.5, Ind. Code 5-14-3, or

any other statute or rule governing access to public meetings or public records. See I.C. § 5-14-4-3. To the extent you have a complaint regarding the Council's decision on the land use issue, that is a matter not related to the public access laws. As such, this office has no authority to issue an opinion related to the substance of the Council's actions.

CONCLUSION

For the foregoing reasons, it is my opinion the Council has not violated the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Thomas Bodnar, Assistant City Attorney
Timothy Rouse, South Bend Common Council