

January 27, 2004

Ms. Vonda L. Kiger  
8804 West 30<sup>th</sup> Street  
Indianapolis, Indiana 46234

*Re: Formal Complaint 04-FC-05: Alleged Violation of the Open Door Law  
by the Town of Clermont*

Dear Ms. Kiger:

This responds to your formal complaint alleging that the Town Board of the Town of Clermont (Town) met in violation of the Indiana Open Door Law (Ind. Code §5-14-1.5-1 *et seq.*) (Open Door Law). Three members of the Town Board have submitted separate responses to your complaint, and those responses are enclosed for your reference. For the reasons set forth below, it is my opinion that the Town did not violate the Open Door Law.

#### BACKGROUND

Your complaint alleges that three members of the Town Board held a meeting at which time they made a decision to fire the Town attorney.<sup>1</sup> No notice was provided under the Open Door Law. The members alleged to have been involved in the meeting were Heather Barrett, Elizabeth Cody, and Diane Tyra. You allege that at the first regular meeting of the Town Board on January 8, 2004, Tyra openly stated that she thought the Board (specifically, the three members alleged to have met previously), had previously “decided” to fire the Town attorney. You also provided a copy of an article from the local paper reporting that at the regular meeting “Tyra implied that she, Barrett and Cody had discussed the situation outside a public meeting.” Town attorney Allan Yackey also advised the undersigned that Tyra made that statement, but noted in addition that Barrett quickly retorted that no decision had been made.

Barrett, Cody and Tyra respond that they did not meet in violation of the law. All three readily acknowledge that a “caucus” was held on January 7, 2004, as you allege; however, Tyra and Cody assert and offer to present evidence to demonstrate that they were not present for that caucus, and Barrett asserts that the subject matter of that caucus was Barrett’s appointment to fill

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<sup>1</sup> Your complaint characterizes the meeting as a “caucus” that was held on January 7, 2004. A “caucus” is not a meeting under the Open Door Law. *See* IC 5-14-1.5-2(c)(4). I understand your complaint to allege that the meeting was either not a caucus as that term is defined in the Open Door Law (*see* IC 5-14-1.5-2(h)), or that if it was a caucus by design the board members acted outside the boundaries of the caucus in making a decision regarding the employment of the town attorney. As set forth below, I find that the challenged discussion occurred not at a January 7, 2004, caucus, but rather at an earlier gathering of members and non-members of the Town Board.

out the term of Jack Surber, a recently elected Board member who was vacating his seat. While the respondents deny that Tyra and Cody were present for the January 7, 2004, caucus where Barrett was appointed to fill the vacant seat, they readily admit gathering at Tyra's home two days earlier to discuss Town business, and it was at that gathering Tyra acknowledges that the three of them, along with a local republican party official, discussed firing Mr. Yackey. According to Tyra, at this time "[i]t was discussed once again that if [they] were going to fire the Town Attorney it would need to be done and could be done at [the] first meeting."

#### ANALYSIS

At issue is whether the January 5, 2004, gathering of Barrett, Cody, and Tyra was a meeting of the governing body. I conclude that it was not.

The intent and purpose of the Open Door Law is 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." IC 5-14-1.5-1. Toward that end, and except for limited circumstances not applicable here, 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. IC 5-14-1.5-3(a). A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. IC 5-14-1.5-2(c).

Certainly, the continued employment of the town attorney is a matter of public business (*see* IC 5-14-1.5-2(e)), and the deliberation and any decision by members of the governing body on that issue is official action (*see* IC 5-14-1.5-2(d)). However, there was not a majority of the members of the governing body gathered together on January 5, 2004, when the discussion regarding the Town attorney occurred. While Tyra and Cody were then members of the five-member Town Board, Barrett was not at that time a member of that governing body. She did not achieve that status until the caucus on January 7, 2004. There is no evidence that the subject matter of the Town attorney was discussed at the later caucus, or even if discussed that Tyra and Cody were present for that caucus. Accordingly, I find that the discussion referenced in your complaint occurred on January 5, 2004, and that it did not occur in a meeting as defined under the Open Door Law in that a majority of the Town Board was not then present.

#### CONCLUSION

Based on the foregoing, I find that the Town did not violate the Open Door Law.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Ms. Heather Barrett  
Ms. Diane Tyra  
Ms. Elizabeth Cody