

September 21, 2000

Mr. Calvin D. Hawkins
Commissioner, Gary Housing Authority
P.O. Box M859
Gary, Indiana 46401

Re: Advisory Opinion 00-FC-31 *Adequacy of Notices of Executive Sessions by the Gary Housing Authority.*

Dear Mr. Hawkins:

This is in response to your formal complaint, which was received on August 24, 2000. You have alleged that the Gary Housing Authority ("Authority") has violated the Indiana Open Door Law, Indiana Code chapter 5-14-1.5, in its notices of executive sessions. Specifically, you have referenced the notice of the Authority's August 10, 2000 executive session and you claim that the Authority failed to provide proper notice for this executive session. Mr. Willie Harris, attorney for the Gary Housing Authority, responded in a letter dated September 18, 2000. A copy of his response is enclosed for your reference.

Under Indiana Code sections 5-14-1.5-5(a) and 5-14-1.5-6.1(d), public agencies are required to provide notice of an executive session that includes the specific statutory exception or exceptions that a governing body has determined forty-eight (48) hours in advance will be the subject or subjects of that executive session. I have reviewed the Authority's August 10, 2000 notice of executive session, which merely sets forth a generalized list of many executive sessions exceptions and indicates that the session may involve one or more of these many exceptions. It is my opinion that this notice did not satisfy the Open Door Law requirements for specific notice of the subject matters to be discussed.

BACKGROUND

According to your complaint, the Authority routinely posts "generic" notices of executive sessions that do not reflect the content of the issues to be discussed nor what, in fact, they actually plan to discuss at a particular executive session. Rather the notices, as you stated, merely recite the possible exceptions for executive sessions under the Open Door Law.

The August 10, 2000 notice of executive session states that the Authority was meeting in executive session along with the date, time and location of the meeting. The notice further provides that:

The Executive Session shall involve, *when at issue*:

- A. Matters authorized for executive session by federal or state statutes;
- B. Discussion of strategy with regard to litigation, pending litigation, security systems, purchase for lease of real property, collective bargaining;
- C. Personnel matters including receiving information above, interviewing prospective employees, receiving information about employee misconduct, discussing status, placement or job performance of an employee, except compensation during budget process.

(Emphasis added.) You have made efforts to bring the Authority into compliance with the Open Door Law to no avail. As a result, you then filed your formal complaint with this Office.

In response to your complaint, Mr. Harris stated that it was the Authority's position that the notice does comply with all of the requirements of the Open Door Law. Specifically, he claims that since the notices include all of the possible circumstances under which the Authority would be authorized to conduct an executive session, that is all that is required under the Open Door Law.

ANALYSIS

This intent and purpose of the Indiana 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." Ind. Code § 5-14-1.5-1. The provisions of the Open Door Law are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Authority is clearly both a public agency and a governing body subject to the requirements of the Open Door Law. Ind. Code § 5-14-1.5-2.

The general rule of the Open Door Law is that all meetings of the governing body of a public agency are to be conducted openly for the purpose of permitting the public to attend and observe them. Ind. Code §5-14-1.5-3(a). The exception to this rule is an executive session, defined as a meeting from which the public is excluded, which may be held under Indiana Code section 5-14-1.5-6.1(b). Ind. Code §5-14-1.5-2(f).

The Open Door Law requires public agencies to provide notice of public meetings and executive sessions. Specifically, Indiana Code section 5-14-1.5-5(a) provides that:

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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

(Emphasis added). Public notice of the date, time and place of an executive session, therefore, must be provided at least forty-eight (48) hours in advance of the executive session. In addition, such notices must state the "*subject matter by specific reference to the enumerated instance or instances*" for which executive sessions may be held under Indiana Code section 5-14-1.5-6.1(b). Ind. Code § 5-14-1.5-6.1(d). (Emphasis added). The question presented is whether the August 10, 2000 notice of the Authority's

executive session conforms to Indiana Code section 5-14-1.5-6.1(d).

Since there is no Indiana case law interpreting Indiana Code section 5-14-1.5-6.1(d), we must rely upon the rules of statutory construction in order to ascertain the General Assembly's intent.

When construing a statute, we seek to ascertain and give effect to the intention of the legislature as expressed in the statute. In so doing, the objects and purposes of the statute in question must be considered as well as the effect and consequences of such interpretation. We presume words appearing in the statute were intended to have meaning, and we endeavor to give those words their plain and ordinary meaning absent a clearly manifested purpose to do otherwise.

Johnson v. State, 721 N.E.2d 327, 332 (Ind. App. 1999). [Citations omitted.]

The Open Door Law uses the terms "*specific reference*" and "*enumerated instance or instances*" when describing the notice of an executive session. It is clear that the General Assembly intended that public agencies provide the public with detailed information as to the purpose of their executive session so that the public would be "fully informed," despite the fact that the public is lawfully excluded from executive sessions. See, Ind. Code §5-14-1.5-1. The General Assembly has also recognized that a governing body may have more than one item to discuss during the executive session and that notice must be provided of any of the exceptions that permit an executive session. Mr. Harris suggests that the Open Door Law authorizes a governing body to list all possible exceptions that permit an executive session in order to satisfy the notice requirements of the Law. If we were to accept his interpretation, however, it would be contrary to the purpose of the Law that mandates that the public be fully informed and it would also leave the terms used in Indiana Code section 5-14-1.5-6.1(d), namely "specific reference" and "enumerated instance or instances," without meaning.

For these reasons, it is my opinion that the executive session notice provision at Indiana Code section 5-14-1.5-6.1(d) requires a specific reference to the applicable exception or exceptions permitting a governing body to meet in executive session. Therefore, it is also my opinion the August 10, 2000 notice of executive session utilized by the Authority does not meet the requirements of the Open Door Law because it does not refer to the specific exception or exceptions allowing them to meet in executive session on that day.

CONCLUSION

It is my opinion that the Gary Housing Authority's notice of its August 10, 2000 executive session did not comply with the requirement of Indiana Code section 5-14-1.5-6.1(d). The meeting notice failed to provide notice to the public of the specific exception or exceptions under Indiana Code section 5-14-1.5-6.1(b) that would permit the Authority to conduct business in executive session.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Willie Harris, Attorney
Gary Housing Authority

[1](#) The copying fee is set by ordinance of the Lake County Council, not the Department. I attempted to reach the attorney for the Council, Mr. Ray Szarmach to notify him of your complaint about this fee, but had not heard back prior to the writing of this opinion.
