

February 9, 2001

Mr. Thomas T. Dye, Sr.
609 North 13th
Vincennes, Indiana 47591

Re: *Advisory Opinion 01-FC-05*; ;Alleged Violation of the Indiana Open Door Law by the Vincennes City Council.

Dear Mr. Dye:

This is in response to your formal complaint, which was received on January 29, 2001. You have alleged that the Vincennes City Council ("Council") has violated the Indiana Open Door Law ("ODL") Indiana Code chapter 5-14-1.5. According to your complaint, a majority of the members of the Council reached a decision as to the election of officers for the year some time prior to their January 8, 2001 meeting without posting notice to the public. Mr. Rabb Emison, City Attorney, responded in writing to your complaint. A copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that if four (4) or more members of the Council, a majority of its members, gathered to discuss or decide who would serve as officers for the coming year prior to their January 8th public meeting, that gathering was a meeting for the purposes of the ODL and the requirements of the ODL should have been met. While there is some evidence to indicate that discussions took place prior to the January 8th public meeting of the Council, there has been no evidence presented that indicates that a majority of the Council members were present. For this reason, I cannot reach a more definitive conclusion as to whether any actual violations of the ODL occurred.

BACKGROUND

In your complaint, you allege that discussions and the decision as to which members would serve as officers for the Council took place prior to a public meeting held on January 8, 2001. As evidence of these possible violations, you point to several items. First you provided a copy of the agenda for the January 8th meeting with your formal complaint that stated that the election of officers would take place during that meeting. You also provided a copy of a January 1, 2001 memorandum from Councilor Mark Hill to the other members of the Council and point to Councilor Hall's own words as evidence that discussions and a decision on this matter had been made outside of a public meeting.

I appreciate Mr. Hall's commitment to continue as your Vice President and respect your willingness to allow me to serve as your President Pro Tempore for the next year.

January 1, 2001 Memorandum from Councilor Hill, Paragraph 2.

You also point to an article concerning the January 8th public meeting from local newspaper, the Vincennes Sun-Commercial, as evidence that discussions took place and a decision was made outside of a public meeting. According to the January 9, 2001 article, Councilor Pat Clark questioned the other members of the Council as to why he was excluded from prior discussions and the decision as to who would serve as officers for the coming year. The article also reported that Councilor Samuel Burke was also excluded from any such discussions or decisions. You filed your formal complaint on January 29, 2001 alleging that the Council violated the Open Door Law by discussion and, ultimately, making a decision on who would be officers for the coming year outside of a public meeting.

In his response, Mr. Emison stated that there may have been a discussion of the person to be nominated for officer positions at a time other than the January 8th public meeting, and that, in his opinion, such a discussion would be prudent. According to his letter, there is no record of who or how many Councilors may have been present at discussions that took place prior to the January 8th election, but that it has been reported that the two councilors noted in your complaint were not present. He also stated that the minutes of the January 8th meeting reflect the fact that the Council did take nominations and elected the president and vice-president in the open, public meeting in compliance with the ODL.

ANALYSIS

The intent and purpose of the ODL 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 ODL are to be "liberally construed with the view of carrying out its policy." Ind. Code § 5-14-1.5-1. The Council is a public agency and a governing body subject to the ODL. Ind. Code §§ 5-14-1.5-2(a) and (b).

A meeting for the purposes of the ODL is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code §5-14-1.5-2(c). There are three elements to this definition: a majority, official action and public business. If all three elements are met, the requirements of the ODL apply, including providing notice of the meeting and preparing memoranda. See, Ind. Code §§5-14-1.5-4 and 5.

For the purposes of my opinion, I will address the second two elements first: official action and public business. The action taken prior to the January 8th meeting must have also been "official action" by the Council in order to be subject to the requirements of the ODL. Official action is defined under the ODL to include receiving information, deliberating and taking final action, or a vote on a matter. Ind. Code §5-14-1.5-2(d). Deliberation is defined as "a discussion which may reasonably be expected to result in official action" including making recommendations, establishing policy, making decisions or taking final action. Ind. Code §5-14-1.5-2(i). According to your complaint, you believe that the discussions held prior to the January 8th public meeting did lead to a decision, which would not only be deliberation, but also taking final action, both of which qualify as "official action."

The second element for the purposes of a meeting under the ODL is whether the discussions and decision at issue concerned public business. Public business is defined in the ODL to mean "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). According to the information provided in your complaint and Mr. Emison's response, it is clear that the nomination and election of Council officers is public business of the Council and is subject to the ODL.

The final point of analysis is whether a majority of the members of the Council were present. The Council is comprised of seven (7) members. A majority, or four (4) of those members constitutes a majority. As Mr. Emison noted in his response, it has been reported that two (2) of the councilors were not present at any gathering where discussions were held prior to the January 8th public meeting; this leaves the possibility that up to five (5) of the members may have been present. Mr. Emison also does not dispute that such a gathering may have taken place. You did not have any evidence to indicate that four (4) members were present and Mr. Emison pointed out in his response that there is no record of how many were present as well.

Without more evidence, I cannot definitively state that the Council did violate the ODL by having discussions about or deciding who would be the officers before the January 8th public meeting. It is my opinion that if four (4) or more of the members of the Council were present at any gathering held prior to the January 8th public meeting to discuss or decide who would serve as officers for the coming year, that gathering was a meeting under the ODL. This would have also triggered the requirements of the ODL, including but not limited to the forty-eight (48) hour notice provisions under Indiana Code section 5-14-1.5-5 and the requirements for the preparation of memoranda under Indiana Code section 5-14-1.5-4.

I believe that both you and Mr. Emison have provided all of the information that you are aware of concerning this matter. It certainly would have been helpful to me in issuing this opinion if all or some of the five (5) members who may have been present at any such discussions would have been more forthcoming about the issue.

CONCLUSION

It is my opinion that if four (4) or more of the members of the Vincennes City Council, a majority of the membership, were present at any gathering held prior to their January 8th public meeting to discuss or decide who would serve as officers for the coming year, that gathering was a meeting under the ODL and the requirements of the ODL should have been met. Since there has been no evidence presented to me that indicates whether or not a majority of the members of the Council actually did participate in any such gatherings, I cannot reach a more definitive conclusion in this matter.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Rabb Emison, City Attorney w/o enclosures
