

August 20, 2004

James F. Kloboucnik  
318 McClure Boulevard  
Mooresville, IN 46158

*Re: Formal Complaint 04-FC-120; Alleged Violation of the Open Door Law by the  
Brooklyn Town Council*

Dear Mr. Kloboucnik:

This is in response to your formal complaint alleging that the Brooklyn Town Council (Council) violated the Open Door Law (ODL) by holding an executive session without statutory authority. I find that the Brooklyn Town Council failed to post proper notice of the executive session in violation of the Open Door Law. In addition, the Council's memoranda of the June 22, 2004 Council executive session did not meet the technical requirements of the Open Door Law.

#### BACKGROUND

You filed a complaint on July 21, 2004 in which you allege that you were denied the right to attend a meeting of the Brooklyn Town Council held on June 22, 2004. You claim that the notice of the executive session stated that the Council would meet in executive session "on personnel matters." You further allege that a report in the local newspaper casts doubt that the Council discussed only personnel matters. This is because the paper reported that part of the discussions "at several executive sessions" included policy regarding use of police vehicles. The newspaper article that you attached was undated, and the article did not refer to the particular session that you cite in your complaint, June 22, 2004.

I sent your complaint to the Council for response. By letter, Town Attorney James E. Harris responded. A copy of his response is enclosed for your reference. In his letter, he states that he attempted to reach the writer of the article to verify the accuracy of her sources, but was unable to reach her. Nevertheless, Harris states that the executive session of June 22 occurred after the Council met on May 27<sup>th</sup> to take action on the police vehicle issue. He also states that this as well as other executive sessions around that time were always regarding only "personnel issues" in the police department. Harris enclosed several exhibits, one of which was a notice of the June 22 executive session, as well as what is apparently the memoranda of the executive

session. In addition, I received a signed statement of the Council President Mike McCool (also enclosed) stating that the executive session held on June 22, 2004 was to discuss written complaints against police personnel.

## ANALYSIS

The Council is a governing body subject to the provisions of the Open Door Law. 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. IC 5-14-1.5-1. Meetings of public agencies are to be held openly, so that the public may observe and record them. IC 5-14-1.5-3(a). The exception to the general rule that a meeting of the governing body must be open to the public is the executive session. An executive session is defined as a meeting “from which the public is excluded, except the governing body may admit those person necessary to carry out its purpose.” IC 5-14-1.5-2(f).

Executive sessions are governed by Indiana Code 5-14-1.5-6.1, and may only be conducted under very limited circumstances. The purposes for which executive sessions may be held are limited to the twelve situations listed at Indiana Code section 5-14-1.5-6.1(b). The governing body of a public agency bears the burden of showing that its gathering is an executive session within one of several strict statutory exceptions. *Opinion of the Public Access Counselor 00-FC-12*. Nothing in the letter of attorney Harris indicates with sufficient specificity to allow me to determine that the executive session was properly held. The Town Council President’s certification that the executive session was held to discuss written complaints against police personnel, coupled with memoranda containing the precise wording of IC 5-14-1.5-6.1(b)(6), leads me to the conclusion that the executive session was proper. On the issue of the propriety of the executive session, the Council does not appear to have violated the Open Door Law.

However, on two issues that you have not raised, I note that the Council has not met the technical requirements of the Open Door Law for the notice and the memoranda. The notice of the June 22 executive session is lacking because it does not state the place of the executive session. IC 5-14-1.5-5(a) requires that notice of an executive session include the date, time and place of the meeting. The address of the Council appearing as the letterhead on the notice perhaps implies that the executive session would take place at 4 N. Main Street, but I believe that a better approach to the notice would have been to state that the executive session would take place at Council offices, or “at the above address.”

More importantly, the notice failed to meet the requirement contained at IC 5-14-1.5-6.1(d) that notices of executive sessions state the subject matter by specific reference to the enumerated instance for which executive sessions may be held under subsection (b). The June 22 notice merely states “The Town of Brooklyn will have an Executive Session to discuss employee matters on June 22, 2004 at 6:30 p.m.” There are several provisions in the executive session instances that could pertain to discussion of “personnel matters,” including interviewing prospective employees, receiving information concerning alleged employee misconduct, and discussing job performance of an employee. All three instances are discrete instances of the executive session provisions that must be specifically referenced in the notice.

With respect to the memoranda, the statement that the *purpose of the meeting* was to discuss alleged individual misconduct falls a bit short of a statement of the matters actually proposed, discussed or decided. The Open Door Law requires that for executive sessions, the memoranda identify the subject matter considered by specific reference to the enumerated instance for which public notice was given. IC 5-14-1.5-6.1(d). Also, the memoranda do not state the place of the meeting. IC 5-14-1.5-4(b)(1).

#### CONCLUSION

For the foregoing reasons, I find that the Council has sustained its burden to demonstrate that the executive session was held under one of the enumerated instances. However, the Council's notice and memoranda were deficient under the Open Door Law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. James E. Harris