

October 1, 2004

Mr. Lonnie Brumfield
P.O. Box 7
Cloverdale, IN 46120

*Re: Formal Complaint 04-FC-154; Alleged Violation of the Open Door Law by the
Cloverdale Town Council*

Dear Mr. Brumfield:

This is in response to your formal complaint alleging that the Cloverdale Town Council (“Council”) violated the Open Door Law, I.C. §5-14-1.5, by failing to post proper notice for the meeting held on August 24, 2004. For the following reasons, I find that the August 24, 2004 meeting held by the Cloverdale Town Council was not an administrative function meeting. Further, I find that the failure to post notice containing the correct date of the August 24 meeting was a violation of the Open Door Law, and that the correction to the notice was not in substantial compliance with the Open Door Law.

BACKGROUND

You were advised by a Council member that a special budget meeting was scheduled for August 24, 2004. Notices of Council meetings are kept in a bulletin board in the lobby of the Town Hall, and as of August 24, the notice posted for the August 24 meeting had a typographical error in that it listed the meeting month as September rather than August. The notice also stated that the August 24 meeting was to be an administrative meeting to discuss the budget. You state that you advised John Davis, Council President, and Patti Truax, Clerk, that the notice for the August meeting hadn’t been posted; Ms. Truax then went to the bulletin board and crossed out “September” on the notice and wrote in “August.” Ms. Truax advised you that the meeting would go on anyway, and she then proceeded to open the meeting.

You filed a formal complaint alleging that the Council failed to provide proper notice for its August 24 meeting. This office received your complaint on September 1, and forwarded a copy to the Council. Mr. Davis responded on behalf of the Council, a copy of which is enclosed

for your reference. Mr. Davis acknowledges that Ms. Truax did change the notice to reflect the correct date, but avers that the fact that the notice was changed on the date of the meeting is irrelevant as the meeting was an administrative meeting, and the Council was not required to post notice. Over the course of multiple telephone conversations, the Council advised this office that during the August 24 meeting, the Council deliberated on the budget.

Mr. Davis also states that during the August 10 regular meeting, the Council announced that there would be an administrative meeting on August 24. One (1) other member of the public was present at the August 24 meeting, which, according to Mr. Davis, is the normal attendance for administrative meetings, even with correct notice. He also advises this office that generally, the attendance at regular meetings is much greater.

ANALYSIS

Administrative Meeting

The Cloverdale Town Council is a governing body of a public agency for purposes of the Open Door Law. I.C. §5-14-1.5-2. Pursuant to I.C. §5-14-1.5-5(a), 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. Notice must be posted at the principal office of the public agency holding the meeting, or, if no such office exists, at the building where the meeting is to be held. I.C. §5-14-1.5-5(b). However, no notice is required when the meeting is an administrative function meeting, as defined in I.C. §5-14-1.5-5(f), and such meetings are open to the public.

The town council is the legislative body of a town. I.C. §36-5-2-2. Pursuant to I.C. §5-14-1.5-5(f)(2), the legislative body of a town may hold administrative function meetings without posting notice, but these meetings are to be open to the public. Administrative function meetings may be held

if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into of contracts or any other action creating an obligation or otherwise binding a . . . town.

I.C. §5-14-1.5-5(f)(2). [Emphasis added.]

In support of the Council's statement that the meeting was an administrative function meeting, it has provided a copy of the minutes of the August 24 meeting. According to the minutes, the purpose of the meeting was to "discuss the general fund budget after the Clerk/Treasurer had received word that the budget would need to be cut by approximately \$175,000." During a telephone conversation with this office, Mr. Davis added that the meeting was to deliberate on the budget, which had already been revised, to prepare for the next regular meeting. During the August 24 meeting, the Council reviewed the revised budget and a few

changes were made. The Council then decided against making changes, and left the figures intact so that the two absent Council members could review them.

Reviewing a town budget is a function of the Council. I.C. §36-5-3. However, the question is whether the deliberation on the budget was an *administrative* function. I do not find, nor does the Council cite to any authority that considers reviewing the town budget an administrative function. This office has opined on administrative function meetings in prior formal opinions. In 03-FC-5, a town council met with the council's attorney concerning the fact that the clerk-treasurer would not be present for the council's executive session. Specifically, the town council met to determine who would draft meeting memoranda and how to deal with absences of the clerk-treasurer in the future. In that opinion, this office held that a meeting in which the town council met to discuss how to deal with the absence of the clerk-treasurer, who would draft the meeting memoranda, and how to deal with future absences was an administrative meeting. Based on the facts presented, it is my opinion that deliberating on the town's revised budget goes beyond mere administrative functions. Therefore, absent additional information to the contrary, I find that the August 24 meeting was not an administrative function meeting. Because the meeting was not for an administrative function, notice was required to be posted at least forty-eight (48) hours in advance.

Adequacy of Notice

You indicate, and the Council acknowledges, that the notice posted contained a typographical error insofar as the notice stated that the meeting was in September, not August. On August 24, as the meeting was about to begin, the Clerk corrected the notice to indicate that the meeting was taking place on that day. You allege that the failure to correct the notice forty-eight (48) hours before the meeting is a violation of the Open Door Law.

The Indiana General Assembly and the Indiana Court of Appeals have recognized that a notice that does not meet all of the technical requirements may still be valid under a substantial compliance approach. *Opinion of the Public Access Counselor 00-FC-6*, citing *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (1997). In *Town*, the Court held that substantial compliance with the Open Door Law may in some cases be sufficient. "Substantial compliance" involves an analysis of: (1) the extent to which the violation denied or impaired access to a meeting; and (2) the extent to which public knowledge or understanding of the public's business was prevented or impaired.

During the Council's August 10 regular meeting, the Council announced to the attendees that it would be holding an administrative meeting on August 24. During the August 24 meeting, you were present, as was one other member of the public. According to the Council, that is the normal attendance for administrative meetings. However, the August 24 meeting was not an administrative meeting. The Council advised this office that attendance at regular meetings is usually much larger than that of an administrative meeting. Therefore, the facts do not support substantial compliance with the Open Door Law in spite of the incorrect date of the meeting in the notice. Rather, the nominal attendance at the August 24 meeting tends to suggest that the public's access to the meeting was impaired by the misleading date that was only corrected as the meeting was getting underway. Also, the announcement on August 10 that the August 24

meeting was an administrative meeting tended to impair the public's knowledge and understanding of the Council's business.

CONCLUSION

For the foregoing reasons, I find that the August 24 meeting held by the Cloverdale Town Council was not an administrative meeting as defined by the Open Door Law, and therefore, the Council was required to post notice of that meeting. Further, I find that the notice of the August 24 meeting was a technical violation of the Open Door Law, and that notice was not in substantial compliance with the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. John Davis
Ms. Patti Truax