

October 18, 2004

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

*Re: Formal Complaint 04-FC-170; 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 (“ODL”) by holding an executive session for an improper purpose. I find that the Cloverdale Town Council violated the Open Door Law.

BACKGROUND

You allege that the Council met in executive session on September 13, 2004. You also allege that at the executive session, the council listened to a presentation by a person selling fire engines and discussing how to set up a fire department, which you contend is not an instance for which an executive session may be held. Following your complaint to this office on September 17, I forwarded your complaint to the Cloverdale Town Council. Mr. John Davis, President of the Board of Trustees for the Town of Cloverdale responded. His response is attached for your reference.

In his response, Mr. Davis contends that the executive session was proper. He acknowledges that the topic of the gathering related to whether the Town should renew the current fire contract or start its own fire department, although he disputes that anyone there discussed the sale of fire equipment. Rather, he stated that a consultant gave a presentation to the Council on the validity of the costs of the present contract and the costs associated with starting the town’s own department. Throughout the session, there was discussion of the fire protection and security of the school and town property. He also refers to a Homeland security study that included some discussion of fire safety.

Mr. Davis included a copy of the notice of the executive session as well as what appears to be the memoranda. Finally, Mr. Davis's response letter cites to several specific instances under the Open Door Law that he believes justifies the executive session. The reasons stated include:

- IC 5-14-1.5-6.1(b)(2)(B): Initiation of litigation or litigation that is either pending or has been threatened specifically in writing; and IC 5-14-1.5-6.1(b)(2)(D) for the purchase or lease of real property. The specific discussion that took place under these instances, according to Mr. Davis, was "the strategy (renew the contract or start our own department) for the renewal of the Fire Contract. If we start our own, equipment will need to be purchased."
- IC 5-14-1.5-6.1(b)(3): For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems. The specific discussion that took place was an "assessment on whether the design of our own department, as opposed to contracting the service, would be sufficient for the safety of the school as stated as a concern in countless public meetings."
- IC 5-14-1.5-6.1(b)(2)(C): The implementation of security systems. The specific discussion that took place was "the implementation of security systems was discussed having received the result of our Homeland Security study of which the Fire Department was included."

ANALYSIS

Under the Open Door Law, 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). Members of the public may be excluded where the governing body holds an executive session pursuant to the terms of IC 5-14-1.5-6.1(b). Notice must be posted 48 hours in advance of an executive session. The notice must, among other things, state the subject matter of the executive session by specific reference to the enumerated instance or instances for which an executive session may be held under subsection (b). IC 5-14-1.5-6.1(d).

The notice supplied by the Council states: "The Cloverdale Town Council will meet in executive session Monday September 13th, at 6:00 p.m. I.C. Code 5-14-15(sic)-6.1." This notice fails to meet the requirements in the Open Door Law because it fails to specify in either words or by specific reference to the statutory instance under which an executive session may be held. This notice includes only the general citation to the section on executive sessions, containing twelve discrete instances under which executive sessions may be held.

Similarly, memoranda must be kept of an executive session that identifies the subject matter considered by specific reference to the enumerated instance for which public notice was given. In addition, the governing body must certify by a statement in the memoranda that no subject matter was discussed in the executive session other than the subject matter specified in the public notice. IC 5-14-1.5-6.1(d). The memoranda submitted by the Council, while meeting the other formal requirements for memoranda including the date, time and place of the executive

session and the members present, did not specify the enumerated instance for which the executive session may be held. Rather, it simply stated that “the purpose of the meeting was to discuss the proposal of a fire contract.” It also omitted the required certification that no other matters were discussed. The memoranda fail to comply with the requirements of the Open Door Law.

Finally, the letter submitted by the Council leaves me with great doubt that the discussion held at the September 13 gathering fell within any of the referenced instances for executive sessions. The discussion of whether to continue the fire contract was surely not a discussion of strategy with respect to either litigation or the purchase or lease of real estate. These two instances are limited to strategy discussions on those narrow topics. Also, although the discussion of the safety of the town and the adequacy of the current fire contract may well have included concerns relating to the school, the instance at IC 5-14-1.5-6.1(b)(3), for discussion of the assessment, design, and implementation of school safety measures, plans, and systems, is limited to specific plans of a school. The mere inclusion of a school in the discussion of fire response does not convert the gathering into a discussion of school safety measures, particularly where those exceptions are to be narrowly construed in keeping with the purpose of the Open Door Law. Finally, for similar reasons, the discussion of the fire department contract does not, in my opinion, fit within the narrow purpose stated at IC 5-14-1.5-6.1(b)(2)(C), “discussion of strategy with respect to” “the implementation of security systems.” A discussion whether to renew the fire contract or operate a fire department does not involve a security system.

As this office has observed, the Open Door Law is to be liberally construed to carry out its policy of open meetings.

CONCLUSION

For the foregoing reasons, it is my opinion that the Cloverdale Town Council violated the Open Door Law when it met on September 13, 2004 in executive session.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. John Davis