

June 21, 2004

Mr. Larry J. Dernay
405 South Liberty Drive
Bremen, Indiana 46506

*Re: Formal Complaint 04-FC-84; Alleged Violation of the Open Door Law by the
Bremen School Board of Trustees*

Dear Mr. Dernay:

This is in response to your formal complaint alleging that the Bremen School Board of Trustees (Board) violated the Indiana Open Door Law (Ind. Code §5-14-1.5) (Open Door Law) when all of the members of that governing body gathered together on April 29, 2004, for a Board “retreat.” Your complaint alleges that the gathering was a “meeting” subject to the requirements of the Open Door Law. You assert that the gathering was not properly noticed under the Open Door Law because the notice was styled “Agenda” and because it did not state the street address of the Oakwood Inn in Syracuse, which was the place of the gathering set out in the notice. You further assert that the meeting place was outside the geographic jurisdiction of the Board and violated state law requiring school boards to meet within the school corporation. The Board’s written response to your complaint is enclosed for your review. For the reasons set forth below, I find that the retreat was a meeting subject to the Open Door Law and that it was properly noticed under that statute. I decline to offer any opinions on whether the place of the meeting violated other state statutes proscribing the location of school board meetings or what remedies are appropriate in the event such laws were violated in this instance.

BACKGROUND

On April 29, 2004, the Board held a “retreat” at the Oakwood Inn in Syracuse, Indiana. The retreat was announced at the regular Board meeting held on April 20, 2004. Further, it was noticed in a document styled “Retreat Agenda,” which document included the date, time and place of the retreat. There appears to be no dispute that the retreat was held outside the geographic jurisdiction of the school corporation. The “Retreat Agenda” stated that the place of the retreat would be the Oakwood Inn in Syracuse, Indiana. The “Retreat Agenda” did not set out the street address for the Oakwood Inn. Your complaint and supporting documents, as well as the Board’s written response, indicate that the “Retreat Agenda” was posted at the

administration office for the schools, as well as in each of the schools in the district, and that it was also sent electronically to media who previously requested copies of notices of meetings of the Board. The Board also notes that a notice was posted at the Oakwood Inn, which notice also included the room number where the retreat was being held. The "Retreat Agenda" indicated that the gathering would begin at 6:30 p.m. Minutes were prepared for this gathering. Those minutes show that the Board called itself to order at 7:20 p.m. after a dinner. The minutes further reflect that the Board received information regarding financing options for a possible renovation project, and that the Board received information regarding the reports of a consultant and four committees of the Board. The minutes further reflect that the Board "indicated its interest in looking at various areas of the Corporation for possible renovation," and further show that an architect would "use the areas indicated by the Board to begin to develop costs of a project." The minutes show that the Board adjourned at 9:50 p.m. after a motion was made and seconded, and following a unanimous vote by the members of the Board. Your complaint does not say whether you attended the retreat, but neither you nor the Board has provided any evidence to suggest that the retreat was closed to the public or that any person who wanted to attend and to observe and record the retreat was not permitted to do so. The Board's response to your complaint affirmatively states that the retreat was open to the public and that no person was excluded from attending that gathering.

ANALYSIS

Your complaint alleges a notice violation of the Open Door Law. Indiana Code 5-14-1.5-5 requires that notice be posted within a specific time of the meeting, at a specific place, and that it contain specific information. Deficiencies in any of these items constitute violations of the statute. That is, of course, if the gathering for which you allege the notice was deficient was a "meeting" subject to the Open Door Law.

The intent and purpose of the 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." IC 5-14-1.5-1. Toward that end, except under very limited circumstances, all meetings of the governing body of a public agency must be open for the purpose of permitting members of the public to observe and record the meetings. IC 5-14-1.5-3(a). A "meeting" 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." IC 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." IC 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. IC 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. IC 5-14-1.5-5(a). The notice must be posted at the principal office of the public agency at issue, or if no principal office exists, at the location where the meeting is to be held. IC 5-14-1.5-5(b). Notice must also be provided to media, but there is no

requirement that the media or the governing body “publish” the notice, and publication does not satisfy the posting requirements of the statute. *See* IC 5-14-1.5-5(b).

In my opinion there can be no serious question that the Board’s retreat on April 29, 2004, satisfied the definition of a “meeting” subject to the Open Door Law. Certainly, the Board thought the gathering was a meeting subject to this statute in that it announced the date, time and place of the retreat at its April 20, 2004, regular meeting, prepared a meeting agenda that included that information as well as the categories of topics to be addressed by the Board at the retreat, posted its “Retreat Agenda” with that information at its administrative offices and at its schools, sent that “Retreat Agenda” to media, and prepared minutes from the retreat that included information required to be reported under the memorandum provisions of the statute. This includes the date, time and place of the gathering, the identity of the members present (which included a majority), the general subject matter of all items discussed, and a record of any votes taken (which included the Board voting on the adjournment of the retreat following a motion and second). *See* IC 5-14-1.5-4. Those minutes are further telling in that they show the Board’s own characterization of the gathering as a “meeting.” Even more significant than these trappings, the business reflected in the minutes clearly falls within the definitions of “official action” on the “public business” of the Board. By the Board’s own admission and as reflected in its minutes, the Board received information on how to finance specific projects of the Board, and it received information and deliberated regarding reports prepared by and/or for Board committees. One item in the minutes reflects that the Board also made decisions regarding these projects inasmuch as the minutes state that an “architect [would] use the areas indicated by the Board to begin to develop costs of a project.” It does not matter that the Board did not take final action, that is, vote, on any of these matters. While final action is one form of “official action,” the Board clearly engaged in other forms including the receipt of information, deliberation, and decision making. This was a meeting subject to the Open Door Law.

That said, your claim that the retreat was not properly noticed is not well taken. First, you assert that the notice was deficient because it was styled as an “Agenda.” There is no requirement in the Open Door Law that a notice of a meeting be styled in any specific way. *See* IC 5-14-1.5-5. Rather, the only content requirements are that the governing body provide “[p]ublic notice of the date, time and place of any meetings.” IC 5-14-1.5-5. A governing body is not required to use an agenda, but if an agenda is used, the Open Door Law requires that the governing body post the agenda prior to the meeting. IC 5-14-1.5-4. There are no content requirements for an agenda. IC 5-14-1.5-4. Governing bodies who use an agenda will oftentimes comply with the posting requirements for both a notice and an agenda by using a single document. If a document styled “Agenda” provides the date time and place of a meeting and is properly and timely posted under Indiana Code 5-14-1.5-5(a), it cannot be seriously contended that the public was not afforded “notice” of the meeting in accordance with the Open Door Law.

Your other contention that the notice was defective because it did not include the street address of the meeting place is also without merit. You assert that the notice without the street address of the Oakwood Inn in Syracuse, Indiana, is no different and no more notice of place than a notice that a meeting is to be held in Disney World. I think that it is quite different, and

your own argument defeats your claim. Your underlying point is well taken; Disney World is a big place. However, adding the street address for Disney World in a meeting notice would be no more notice of the place of a meeting in Disney World than if the notice merely identifies the location as Disney World. What is important in this context is that members of the public who want to attend the meeting and observe and record the proceedings of the governing body are provided with sufficient information regarding the location of the meeting toward that end. Depending on the specific facts, detailed information regarding the place of a meeting, including the street address, room number, or other identifying characteristics, may be vital to include in a meeting notice. However, under the facts presented in this matter, I am not willing to find that the letter of the law (requiring notice of “place”) was violated, or that the spirit of the law was not met, where the Board’s notice identified the Oakwood Inn in Syracuse, Indiana, as the place of the retreat. There is no suggestion or evidence that there is more than one Syracuse, Indiana, or that there is more than one Oakwood Inn in Syracuse, Indiana. Neither is there any suggestion that you or anyone else reading the notice would not know exactly where this retreat was going to be held. In my opinion, your claim that the notice in this matter was deficient must fail.¹

Your final claim is that the Board violated Indiana Code 20-5-3-2 by holding the meeting outside the geographic jurisdiction of the school corporation. As I previously advised you in a response to your earlier informal inquiry, I immediately doubt my authority to offer an opinion on this issue. *See* IC 5-14-4-10 (restricting the authority of this office to offer opinions on “public access” laws). The Board too doubts my authority, but aside from just saying so it offers no argument to inform the inquiry.

The law at issue provides:

All meetings of the governing body for the conduct of business shall, subject to the provisions of this subsection, be held within the school corporation, except they may be held:

(1) at the administrative offices of the school corporation where such offices are outside the geographic limits of the school corporation but are within any county where all or a part of the school corporation is located; or

(2) at any place where the statute or rule pursuant to which a statutory meeting is held permits meeting outside the school corporation, as may occur where the meeting is held jointly with another governing body.

¹ Even if the Open Door Law requires more, under these facts I would conclude that any violation was “technical” and that the Board substantially complied with the statute. *See Turner v. Town of Speedway*, 528 N.E.2d 858 (Ind. Ct. App. 1988) (recognizing “substantial compliance” standard). *Cf.*, IC 5-14-1.5-4(h) (meeting starting time not deficient unless it “so unreasonably depart[s] from the time stated in ... public notice that the public is misled or substantially deprived of the opportunity to attend, observe and record the meeting.”). As noted above, the notice identifying the place of the meeting as the Oakwood Inn in Syracuse, Indiana, was sufficiently specific so as to not deny or impair any person’s ability to attend the meeting.

IC 20-5-3-2. In my opinion, this statute is not a “public access” law subject to my authority. It strikes me that a meeting held at an administrative office of a school corporation where that office is located outside the school corporation’s boundaries – proper under this statute – offers no more “access” to the public than a meeting held at any other location outside the school corporation’s boundaries. Moreover, it seems equally clear to me that a meeting held outside the school corporation boundaries, even a meeting held in violation of Indiana Code 20-5-3-2, may under certain facts provide decidedly greater access to persons who want to attend and record the meeting. Because I do not believe this law to be a “public access” law subject to my authority, I offer no opinion on whether the Board violated this statute or what remedies might be appropriate for any violation when the Board met outside the boundaries of the school corporation on April 29, 2004. Of course, while I do not offer any opinions regarding the Board’s conduct under this statute, you are free to prosecute any alleged violation of this statute in a civil or other action against the Board.

CONCLUSION

For the reasons set forth above, I find that the Board did not violate the Open Door Law with regard to its April 29, 2004, retreat.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Mark E. Wagner