

August 14, 2006

Susan J. Cord
99 Montgomery Road
Vevay, IN 47043

*Re: Formal Complaint 06-FC-120; Alleged Violation of the Open Door Law by the
Switzerland County School Corporation*

Dear Ms. Cord:

This is in response to your formal complaint alleging that the Switzerland County School Corporation ("School") violated the Open Door Law by failing to post notice of its June 20 public meeting and executive session. I find that the School did not violate the Open Door Law.

BACKGROUND

You filed your formal complaint with the Office of the Public Access Counselor on July 14, 2006. In your complaint, you allege that the School did not post the agenda for the regular meeting of the School Board held on June 20, 2006 at the appropriate bulletin board at the school corporation office or anywhere else in the administration building. Also, you allege a violation of the Open Door Law because the agenda was not posted at the Switzerland County Middle School "as required." You also cite the absence of the notice for the executive session of June 20 planned for one hour earlier than the public meeting. You state that copies of agendas for the public session could not be obtained until immediately before the 7:30 public session. Although you marked the formal complaint form to indicate that you were denied access on June 19 as well as June 20, you do not allege anything about June 19 in the narrative portion of your complaint.

I sent a copy of your complaint to the School. The Attorney for the School, Ronald Hocker, replied. I have attached a copy of his letter for your reference. First, Mr. Hocker denies that a meeting or executive session occurred on June 19. With respect to June 20, notices of those sessions were posted immediately inside the public entrance to the School's Administration

Building, which is the customary place for such notices. The notice was posted more than 48 hours in advance of the meeting, and was sent to the media more than 48 hours in advance.

The agenda was attached to the notice and made part of the notice that was posted at the administration building. In addition, agendas were placed on seats provided in the public meeting room. Also, the School customarily faxes the notices and agendas for the regular meetings to all schools in the school corporation. The schools may not have posted the notices because they were closed for summer break. Mr. Hocker denies that the School violated the Open Door Law, and provided the affidavit of Ms. Janet Daugherty, secretary to the School Superintendent. Ms. Daugherty averred that the notice was posted on June 14 and sent to the media the same day.

ANALYSIS

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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Ind. Code 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency by posting a copy of the notice 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. In addition, the governing body shall deliver notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. IC 5-14-1.5-5(b).

A governing body utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. IC 5-14-1.5-4(a).

You have stated in your complaint that you and several patrons can verify that the agenda for the June 20 meeting and executive session were not posted on the appropriate bulletin board or anywhere else in the administration building. Yet, the School stated through Ms. Daugherty's sworn affidavit that the notice was posted the previous Wednesday. This would have been more than 48 hours in advance of the meeting. Therefore, I must find that the School did post the notices at the administration building, which is the principal office of the School. Although the School acknowledges that it customarily sends each school in the district a copy of the notice and agenda and did so for the June 20 meeting, the schools were closed for the summer. In any case, there is no requirement in the Open Door Law that the School post a notice at the School's middle school for a meeting to be held in the School administration building.

You also allege that "copies of the agendas could not be obtained until immediately before the 7:30 public session." It would not be a violation of the Open Door Law for the School to post the agenda only immediately prior to the meeting, or to place copies of the agenda at each seat just prior to the meeting, since section 4(a) of the Open Door Law requires that a public agency post a copy of the agenda prior to the meeting, not 48 hours in advance. If you mean to allege that you were denied a copy when you requested the agenda after it was prepared, then you would have alleged a violation of the Access to Public Records Act. However, you have not set this out clearly in your complaint, and understandably the School did not respond to any such

allegation. Hence, I find no violation of the public access laws with respect to the School's June 20 public meeting or executive session notices or agenda.

CONCLUSION

For the foregoing reasons, I find that the Switzerland County School Corporation did not violate the Open Door Law, as you allege.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ronald Hocker