

October 11, 2006

David S. Richards
R.R. 1 Box 905
Linton, IN 47441

Re: Formal Complaint 06-FC-160; Alleged Violation of the Open Door Law by the Wright Township Trustee and Advisory Board

Dear Mr. Richards:

This is in response to your formal complaint alleging that the Wright Township Trustee and Advisory Board (collectively, "Township") violated the Open Door Law by meeting in a location that is not accessible to an individual with a disability, and by not publishing notice in the newspaper. I find that the Township Advisory Board was required to meet in a building that is accessible to individuals with a disability.

BACKGROUND

You complain that the Township Advisory Board met on August 30, 2006 in the Trustee's home to consider an additional appropriation of \$200,000. Notice was posted at the office of the Trustee, which is located in his home. You allege that the Open Door Law was violated because notice was not published in the newspaper, the meeting place could not accommodate the public, and the home of the Trustee is not accessible to persons with a disability.

I sent a copy of your complaint to the Township. I enclose the response of the Township. Mr. John Rowe, counsel to the Township, denies that the Township violated the Open Door Law. He pointed out that the special meeting held in the home of the Trustee was not violative of the Open Door Law. The size of a meeting place is not addressed in the Open Door Law. Also, notice was posted at the meeting place, and no media have requested that notice be sent during 2006. There is no requirement that notice be published in the newspaper for this type of meeting. Finally, the Open Door Law does not require that a meeting of a township advisory board be held in a location that is accessible to individuals with a disability, because the

Township is not public agency described in Ind. Code 5-14-1.5-8. The Township Trustee has reason to believe that the Township Trustee's office, located in his home, is *not* accessible under the standards of the Americans with Disabilities Act.

ANALYSIS

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. Ind. Code 5-14-1.5-1. Except as provided in section 6.1 of 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).

Public notice of the date, time, and place of any meetings, executive session, or of any rescheduled or reconvened meeting shall be given at least forty-eight hours (excluding Saturdays, Sundays and legal holidays) before the meeting. IC 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. IC 5-14-1.5-5(b)(1). Notice shall also be given by delivering notice to all news media which delivery by January 1 an annual written request for such notices for the next succeeding calendar year. IC 5-14-1.5-5(b)(2).

Notice

You complain that notice of the meeting was not published in the local newspaper. Unless an applicable statute provides for publication of notice, it is not a violation of the Open Door Law for a governing body of a public agency to not publish the notice in the local newspaper. It was sufficient for the Township to post notice at the meeting place if there is no principal office for the Township Advisory Board.

Location of the Meeting

You have complained that the Township met at the home of the Trustee, where the Trustee's office is located. You state that the meeting place is not large enough to accommodate the public. You also allege that the Trustee's home is not accessible to individuals with a disability.

The ODL places one restriction upon governing bodies when selecting locations. The meeting location must be accessible to people with disabilities. Ind. Code 5-14-1.5-8. Hence, your complaint that the meeting place could not accommodate the public does not set out a violation of the Open Door Law. Although you complain that the meeting place located in the Trustee's home is not large enough to accommodate the public, you have alleged no facts supporting this allegation, such as whether you or anyone else was turned away at the August 30 meeting or otherwise barred from observing or recording the meeting.

Your allegation that the meeting location was not accessible to individuals with a disability has merit. The Township argues that on its face, Indiana Code 5-14-1.5-8 does not apply to the Township because it applies only to state entities or their advisory bodies. However, it is the law in Indiana that public agencies must meet in locations that provide barrier-free physical access to individuals with disabilities. *See Town of Merrillville v. Blanco, 687 N.E.2d 191, 198 (Ind. Ct. App. 1998)*. In *Town of Merrillville*, the Court of Appeals applied Indiana Code 5-14-1.5-8 to the Metropolitan Board of Police Commissioners, a local agency. This Office has also advised non-state entities that meetings must be held in locations that are accessible to individuals with a disability under IC 5-14-3-8. *See Opinion of the Public Access Counselor 04-FC-72; Opinion of the Public Access Counselor 00-FC-41*. It appears from the information I received from the Township that the meeting of August 30 was held in a location that was not accessible under the standards in IC 5-14-3-8. Therefore, the Township met in violation of the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that the Wright Township Advisory Board did not meet in a location that is accessible to an individual with a disability, in violation of the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: John Rowe