

October 26, 2006

Sent Via Facsimile

Ian Steele
221 Pokagon Trail
Michiana Shores, IN 46360

*Re: Formal Complaint 06-FC-165; Alleged Violation of the Open Door Law by the
Michiana Shores Advisory Plan Commission*

Dear Mr. Steele:

This is in response to your formal complaint alleging that the Michiana Shores Advisory Plan Commission ("Commission") violated the Open Door Law by canceling a regular meeting and then holding it without posting notice. I find that the Commission did not violate the Open Door Law.

BACKGROUND

You allege in your formal complaint that the Commission meeting scheduled for September 5, 2006 was canceled on or about August 25, 2006 as recorded in the "Town of Michiana Shores Official Flyer," a publication of the Clerk-Treasurer's Office and delivered to each home. You sent a copy of the Flyer with your complaint. The Flyer for August 2006 shows "Canceled" on the third page, under the section entitled "Important Dates," following the Advisory Plan Commission meeting of September 5. You state that the publication is also posted on the Clerk-Treasurer's display board and that copy also showed "canceled" when you read it on the board. You allege that, without any correction to the cancellation, the previously scheduled and then canceled meeting was nevertheless held on September 5. You considered this an Open Door Law violation when no correction was issued in the same form as the cancellation notice.

I sent a copy of your complaint to the Town's Clerk-Treasurer. Mr. Steven Millick responded to your complaint. I have enclosed a copy of the response. Mr. Millick admitted that

the meeting occurred on September 5. This meeting was one of the regular meetings of the Commission set the previous December for 2006. In addition, Mr. Millick stated that you were present at the meeting. He indicated that the Commission had sent notice to the news media that requested notice, and posted the annual notice of the 2006 meetings at the Town meeting room for public viewing. When I telephoned Mr. Millick, he acknowledged that the Flyer is a publication of the Clerk Treasurer. However, Mr. Millick stated that the Flyer was in error and that the notice posted on the public board did not show any cancellation of the September 5 meeting. He also stated that the Commission members who were late were not confused but were simply delayed in arriving for the meeting.

ANALYSIS

I first address the issue of standing. Indiana Code 5-14-5-6 sets forth the grounds for filing a formal complaint with the Office of the Public Access Counselor and provides that a complaint may be filed by any person or public agency denied (1) the right to inspect or copy records under Indiana Code 5-14-3; (2) the right to attend any public meeting of a public agency in violation of Indiana Code 5-14-1.5; or (3) any other right conferred by Indiana Code 5-14-3 or Indiana Code 5-14-1.5 or any other statute or rule governing access to public meetings or public records. IC 5-14-5-6. I take your complaint to allege an infirmity in the notice, since the meeting that was canceled was held without reposting notice. Because the right to notice of the meeting can be addressed in a formal complaint, I will issue this advisory opinion in spite of your attendance at the meeting. *See Opinion of the Public Access Counselor 04-FC-77.*

The Open Door Law requires that a governing body of a public agency post notice of its meetings at least forty-eight (48) hours in advance of the meeting, not counting Saturdays, Sundays, and legal holidays. Ind. Code 5-14-1.5-5. Public notice shall be given by the governing body 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). In addition, the governing body must 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)(2).

Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. IC 5-14-1.5-5(c). There are no provisions in the Open Door Law for notice that a meeting has been canceled.

You contend that the Town Flyer, which is a publication of the Clerk Treasurer, sufficed as notice that the September 5 meeting was canceled, necessitating correction of the cancellation in the same form as the cancellation notice. While the Town should not have put out a publication showing that the September 5 meeting was canceled, this was through oversight, and more importantly, nothing in the Open Door Law would require new notice of the meeting, which remained unchanged from the annual notice. I may have come to a different conclusion if the Town *had* posted notice and sent notice to the news media that the regular meeting had been canceled or changed. In fact, a rescheduled meeting must be posted 48 hours in advance, in accordance with IC 5-14-1.5-5(c). However, the Clerk Treasurer has disputed that the annual

notice that was posted at the principal office of the Town bore any indication that the September 5 meeting was canceled or rescheduled. In essence, the only indication that the September 5 meeting was canceled was in the Town Flyer, which does not and could not serve as public notice of any meetings.

Hence, your complaint makes out a case of misinformation promulgated by the Town, but falls short of alleging any violation of the Open Door Law under these circumstances.

CONCLUSION

For the foregoing reasons, I find that the Michiana Shores Plan Commission did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Steven Millick