

November 13, 2006

Sent Via Facsimile and U.S. Mail

Jodi E. James
220 E. 8th Street
Michigan City, IN 46360

Joanna T. Witulski
6269 Cleveland Street
Merrillville, IN 46410

*Re: Formal Complaint 06-FC-179; Alleged Violation of the Open Door Law by the
Indiana Council on Independent Living*

Dear Ms. James and Ms. Witulski:

This is in response to your formal complaints alleging that the Indiana Council on Independent Living (“ICOIL”) violated the Open Door Law by holding a meeting on September 13, 2006 without proper notice. I find that the ICOIL did not violate the Open Door Law.

BACKGROUND

Your complaints set forth nearly identical facts and allegations regarding the ICOIL meeting of September 13, 2006. Ms. James is a member of the ICOIL. You allege that the regular meeting of September 13 was cancelled by notice to all ICOIL members and notice posted on the website also showed that the meeting was cancelled. Further, Ms. James stated that at a September 1 meeting of the Executive Committee of the ICOIL, the September 13 meeting was actually rescheduled to September 22, 2006. Nevertheless, on September 13, 2006, a quorum of ICOIL members was convened and a meeting held. Also, Ms. James alleges that the meeting was not held in the original room that had been posted “since I cancelled the room along with the meeting.” Finally, you allege that no certified interpreters were present because Ms. James had cancelled the request for an interpreter once the meeting had been cancelled at Ms. James’ direction.

I sent a copy of your complaints to the ICOIL. ICOIL member Emas P. Bennett responded, a copy of which is enclosed for your reference. Mr. Bennett asserted that the Executive Committee met on September 1 and voted to cancel the September 13 meeting. However, he asserted that the Executive Committee had no authority under the ICOIL bylaws to cancel the ICOIL meeting. Moreover, because an October 18 informal opinion issued by the Office of the Public Access Counselor found that the telephonic participation of an absent member of the ICOIL during the September 1 meeting was in violation of the Open Door Law, the September 1 meeting should be declared void, nullifying the cancellation of the September 13 meeting.

Mr. Bennett continues, even if the September 1 meeting was not void, the cancellation that was posted on the website was withdrawn more than 48 hours prior to September 13. The website notice of the September 13 meeting date was reinstated on the website more than 48 hours before the meeting occurred. Mr. Bennett provided a copy of an e-mail communication from Nancy Young, Program Director for the Division of Disability & Rehabilitative Services to a Victoria Chinn asking her to leave the September 13 meeting on the calendar. This e-mail is dated September 6, 2006.

Hence, Mr. Bennett contends that the September 13 meeting, a regularly scheduled meeting of ICOIL, was properly noticed. He also stated that there were no requests for interpreters for the December 13 meeting, and in any case, Ms. Nancy Young was present and is an ICC certified interpreter.

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 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).

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1. 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).

You contend that the meeting of September 13 was invalid because the members of the ICOIL received e-mail notice that the meeting had been cancelled, and the electronic notice showed that the September 13 meeting had been cancelled.

Your contention regarding the e-mail notification to ICOIL members does not present an issue under the Open Door Law, since the Open Door Law does not prescribe separate notification to members of a governing body, outside of the public notice. In addition, the Open Door Law does not prescribe how meetings will be cancelled. For purposes of the Open Door Law, a cancelled meeting is a noticed meeting for which the governing body does not convene. While I could not condone an action where the governing body intentionally misleads the public by announcing that a meeting is cancelled by indicating it on the posted notice and then holding the meeting anyway, those facts are not apparent in this complaint.

Instead, the governing body corrected the electronic notice, which contained all the regular meetings for 2006, to remove the “cancelled” label on the September 13 meeting notice. This occurred, according to the ICOIL, at least 48 hours in advance of the September 13 meeting. Accordingly, the September 13 electronic meeting notice that was posted at least 48 hours in advance was not diminished by the temporary label affixed to it. It is for this narrow reason alone that I find that the ICOIL’s meeting of September 13 was held with proper electronic notice. I specifically do not find merit in ICOIL’s argument regarding the informal opinion finding that an absent ICOIL member could not participate by telephone on September 1. Although I did render that opinion, only a court can find that a meeting held in violation of the Open Door Law rendered any action taken therein void. *See* IC 5-14-1.5-7(a).

Your allegations concerning the place of the meeting are not meritorious. You have not specified what precise room the meeting was to be held, but from the meeting confirmation documentation sent by ICOIL, it appears that meetings are held in the Indiana Government Center South Conference Center. The Conference Center has a central bulletin board and all rooms are within several feet of one another. The minutes of the September 13 meeting show that the meeting was held in Conference Room C, a large conference room centrally located on the first floor of the Government Center South. Because you have not stated what room the meeting was originally scheduled in, and because a room change within the Conference Center is not fatal for purposes of notice under the Open Door Law, I do not find any violation of the Open Door Law from this allegation.

Also, although federal law may require that the ICOIL use certified interpreters under certain circumstances, the Open Door Law does not prescribe when certified interpreters are to be provided. I may issue guidance only on the requirements of the Indiana access laws. *See* IC 5-14-4-3.

CONCLUSION

For the foregoing reasons, I find that the ICOIL did not violate the Open Door Law as you have alleged.

Sincerely,

Karen Davis
Public Access Counselor

cc: Emas Bennett