

January 25, 2007

Cyndi McQueen
Clerk Treasurer
Town of Lakeville
118 S. Michigan
Lakeville, IN 46536

*Re: Formal Complaint 06-FC-223; Alleged Violation of the Open Door Law by the
Lakeville Town Council*

Dear Ms. McQueen:

This is in response to your formal complaint alleging that Lakeville Town Council (“Council”) violated the Open Door Law when it held three emergency meetings.

BACKGROUND

You are the Lakeville Clerk-Treasurer. Your complaint under the Open Door Law alleges that the Council met on three separate dates without posting adequate notice, in violation of the requirement that meetings be held with 48 hours’ notice. For each meeting, the notice stated that the meeting was an emergency special meeting or special session. The dates of these meetings were November 20, 2006, December 6, 2006, and December 15, 2006.

The stated purpose for the first emergency session was “police matters.” The December 6 emergency meeting notice also recited that the meeting would concern police matters. The third meeting, for December 15, was to “discuss Town elected official and employee salary and wage matters.” The notice for the December 15 meeting was given to you (and presumably posted) at 6:45 p.m. on December 14.

I sent a copy of your complaints to the Council. The Council, through its attorney Viola Woods, provided a response, a copy of which is attached. Ms. Woods averred that the November 20 meeting was an emergency because the regular Town Marshal had suffered a stroke. The police department was in chaos and various young and inexperienced officers were

being accused of multiple counts of wrongdoing, some of it of a criminal nature. To protect the town from further risk of liability, the Council believed the hiring of an experienced interim or part time marshal was an emergency matter. As an example, the police evidence locker had been tampered with, and the Council deemed the hiring of an interim marshal an emergency to prevent further tampering. The Council did retain an interim marshal at the November 20 meeting.

With respect to your allegations concerning a December 6 meeting, no meeting actually took place.

The December 15 meeting was an emergency because the Council learned that the salary ordinance that it had adopted on December 4 had increased your salary by 80%, and also substantially increased the number of hours that the deputy clerk could be paid to work. The Council alleges that you presented the ordinance to them at the December 4 meeting and represented that the ordinance contained the numbers you had earlier presented for their approval, when in fact, the ordinance contained higher numbers. Once the Council learned this fact from an interested member of the community, and when the community began to call for the Council members' resignations or impeachment at a December 18 town meeting, the Council took action and called an emergency meeting for December 15 at 3:00 p.m. The Council intended to revoke the December 4 ordinance at this meeting.

The Council explained that the short notice for this meeting was warranted for two reasons. First, the public outcry and the meeting for December 18 were cited, although Ms. Woods also admits "one could argue that this meeting could have waited another two days, even though it was the beginning of the holiday season with a lot of interruptions in the Council's availability." Seeming to concede this point, Ms. Woods states a second basis for the emergency meeting: the Council also intended to remove the deputy clerk from your supervision, and place her under the supervision of the Utility Superintendent. In Ms. Woods' words:

"The Council suspected that the deputy clerk would perhaps refuse to report to the Utility Superintendent, as she and her husband have reportedly been long time friends of Ms. McQueen and her husband. If the deputy clerk did in fact refuse to report to the Utility Superintendent, the Town was faced with the requirement of hiring and training another office clerk to perform the routine billing for, and collection of, our water and sewer fees beginning January 1, 2007."

Although the Council believed that you should be able to perform this function yourself, you have not been able to do so without assistance. Without an assistant to perform this function, the governance and functioning of the Town's utility services would be severely interrupted. Between December 15 and December 31, there were very few working days in which to find and train a new office clerk. Hence, the Council deemed the meeting to revoke the ordinance an emergency. A final, revised 2007 salary ordinance was adopted at a meeting subsequent to December 15.

Ms. Woods also included comments regarding allegations that you made concerning secret meetings in other complaints that you had filed after the instant complaints were filed.

You withdrew those complaints shortly after filing. I do not make any determination concerning those allegations, given that you have withdrawn those complaints.

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. 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).

The legislature has provided an exception to the 48 hour notice requirement in the event that an emergency meeting is warranted. If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice do not apply. However, news media that have requested notice of meetings must be given the same notice as is given to members of the governing body, and the public must be notified by posting a copy of the notice according to section 5. IC 5-14-1.5-5(d).

Your complaint raises an issue solely with respect to whether the purposes of each of the three meetings qualify as an emergency.

First, I write regarding your standing to bring this complaint. The Council has not raised the issue of whether you have standing to file a complaint under IC 5-14-5-6. Indeed, you have not alleged that you were deprived of the right to attend the meetings because you had no notice. In reality, you had actual notice of the meetings because you are the Clerk, and you may have even attended some of the meetings. I read your complaint to be that the notice was not timely posted. In an opinion issued by this Office in 2003, the public access counselor found that a newspaper that had received notice and attended the emergency meeting of a school board did not have standing to file a formal complaint alleging that the notice was not timely. *Opinion of the Public Access Counselor 03-FC-32*. The public access counselor issued an informal inquiry response in that matter.

However, I agree with the reasoning in *Opinion of the Public Access Counselor 04-FC-77*, wherein counselor Michael Hurst observed that IC 5-14-5-6(3) provided a vehicle for a person to redress other rights under the Open Door Law, including the right to at least 48 hours' notice of a meeting. Accordingly, I find that you have standing to file this formal complaint. If it is subsequently determined that you did not have standing to file this complaint, I intend for this advisory opinion to operate as an informal inquiry response, pursuant to IC 5-14-4-10(5).

Another matter of standing does not turn in your favor. A complaint must be filed within 30 days after the denial. IC 5-14-5-7(a)(1). Your complaint concerning the November 20 meeting is not timely, since you filed your complaint with my office on December 27. However, I may issue an informal inquiry response at any time. Because you raise the same issue about emergency meetings in a timely manner for the other two dates, I incorporate the informal inquiry response within this formal advisory opinion.

Emergency Meetings

Since there is no case law interpreting Indiana Code 5-14-1.5-5(d), I must rely on the rules of statutory construction to interpret this statute. When construing a statute, the interpreting body attempts to give words their plain and ordinary meaning. *Indiana Wholesale Wine v. State of Indiana, Alcoholic Beverage Commission*, 695 N.E.2d 99, 103 (Ind. 1998). “Emergency” is defined as “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” Merriam-Webster On-Line Dictionary (2007). The term “disruption” is defined as “to throw into disorder” or “to interrupt the normal course or unity of” and “event” means “something that happens.”

November 20, 2006 Meeting

The Council contends that the town marshal’s serious illness and the concurrent misconduct issues in the town’s police force presented the need for an interim marshal. The Council wanted to protect the town from further risk of liability in the event of an incident involving any of the police officers being investigated for wrongdoing. The Council has not sufficiently set out facts that narrowly focus the inquiry on the event that precipitated the need for the meeting. The Council implies that the marshal’s illness was a factor, but does not supply me with any facts concerning when he was taken ill in relation to the calling of the emergency meeting. On the other hand, the Council also describes possible criminal wrongdoing of certain members of the police department, all occurring prior to the called emergency meeting.

Actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event must be proved by the Council in the event that you or anyone else sued the Town under the Open Door Law. *See* IC 5-14-1.5-7. Certainly disruption in the provision of the public’s safety would be a governmental activity under the jurisdiction of the Council, but the Council’s explanation is too amorphous and ill-focused to afford me the ability to discern whether the November 20 meeting qualified as an emergency. Therefore, I make no specific finding with respect to the November 20 meeting.

December 6, 2006 Meeting

The Council avers that it did not meet on December 6, 2006. If the Council did not meet on December 6, the Council has not violated the Open Door Law even if the intended purpose of the meeting would not have qualified as an emergency.

December 15, 2006 Meeting

The Council appears to concede that the December 15 meeting may not have qualified as an emergency solely because the town was planning to hold a community meeting on the following Monday, December 18. Even if no concession was intended, I find that the Council could not use the town's outcry as a reason for an emergency. Ms. Woods states that a flyer was being distributed calling a community meeting to discuss the issue and organize a demand of resignation or impeachment. The flyer that she supplied to me does not mention any demand for resignation or impeachment. Rather, the flyer states "if you care come to a meeting—our leaders will be invited to explain." The leaders are listed as the three Council members. Even assuming demands for resignation or impeachment were communicated in other ways, the mere fact that the Council faced such demands did not constitute an actual or even threatened disruption of the governmental activity by an event, in my opinion.

The second reason given by the Council for the emergency meeting is the belief that moving the deputy clerk from your immediate supervision to that of the Utility Superintendent would cause the deputy clerk to resign, leaving no one to perform the duties of billing and collecting utility bills. It is my opinion that the Council could not meet with less than 48 hours notice because the Council feared that its expected action might result in a town employee leaving. That is nothing more than anticipating that an actual or threatened disruption will occur. In order to suspend the requirement of 48 hours notice, the Council must meet to deal with an actual or threatened disruption, not an anticipated or feared disruption. It is my opinion that the December 15 meeting did not qualify as an emergency meeting defined in the Open Door Law.

CONCLUSION

For the foregoing reasons, I find that the Lakeville Town Council violated the Open Door Law when it met on December 15, 2006 to revoke the salary ordinance. I find no violation of the Open Door Law if the Lakeville Town Council did not meet at all on December 6. I also make no express finding regarding whether or not the Lakeville Town Council could have met without 48 hours notice on November 20.

Sincerely,

Karen Davis
Public Access Counselor

cc: Viola Woods