

April 19, 2006

Del Stout  
3230 Maple Drive  
Highland, IN 46322

Lori Caldwell  
1065 Broadway  
Gary, IN 46402

*Re: Consolidated Formal Complaint 06-FC-54, 06-FC-55; Alleged Violation of the  
Open Door Law by the Gary Police Civil Service Commission*

Dear Mr. Stout and Ms. Caldwell:

This is in response to your formal complaints alleging that the Gary Police Civil Service Commission ("Commission") violated the Open Door Law by refusing you access to a meeting. I find that the Commission violated the Open Door Law.

#### BACKGROUND

You alleged that the Commission's "personnel committee" held a meeting on March 7, 2006. Mr. Stout sent representatives of the FPO Lodge #61 to monitor the proceedings, but the representatives were denied access because the meeting was not open to the public. Ms. Caldwell alleges she too was turned away at the door as were other people who sought to attend.

I sent a copy of your complaint to the Commission. I enclose for your reference a copy of the response of attorney Charles Brooks, Jr., counsel for the Commission. He enclosed a copy of the notice of the March 7, 2006 meeting. The notice bears a date of March 6, 2006. It is on Commission letterhead, and recites that a "personnel committee" meeting will be held on Tuesday, March 7, 2006 at 5:00 p.m., in the Police Commission Conference Room at 555 Polk Street. The agenda stated "to discuss the need for a promotion examination." Mr. Brooks asserted that the meeting "was scheduled and posted for March 7, 2006."

Mr. Brooks also provided minutes of a previous meeting of the Commission, held on March 2; these minutes show that under New Business, the Commission voted before adjournment to schedule a personnel committee meeting for March 7, 2006 to discuss the option regarding promotional testing. I also received minutes of the March 7 meeting of the committee. The minutes showed that the meeting was called to order at 5:30 p.m.

Mr. Brooks' complaint response letter stated, in sum, that 1) the door to the meeting room was open at all times; 2) the meeting did not start on time because a quorum was not present until 5:30; 3) Mr. Brooks recalls "mistakenly" advising the Commission Administrator that the meeting was closed when one police officer appeared to attend, but the meeting had not yet started when he had arrived; 4) no other persons appeared to the Commission's knowledge. In addition, Mr. Brooks emphasized that no other matters were discussed other than promotional testing, and no final action was taken at the meeting.

## ANALYSIS

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. Ind. Code 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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. IC 5-14-1.5-5(a). This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda. IC 5-14-1.5-5(a). Notice has not been given in accordance with section 5 of the Open Door Law if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. IC 5-14-1.5-5(h). A committee that is directly appointed by the governing body or its presiding officer to which authority to take official action upon public business has been delegated, is a "governing body" under the Open Door Law. IC 5-14-1.5-2(b)(3).

A governing body may exclude the public from a meeting only when holding an executive session for one or more of the purposes set forth in IC 5-14-1.5-6.1(b). The governing body is required to maintain memoranda from an executive session, and the memoranda must, among other requirements, recite that no other matters were discussed in the executive session *other* than the matter stated in the notice. IC 5-14-1.5-6.1(d). A final action must be taken in a meeting that is open to the public. IC 5-14-1.5-6.1(c). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. IC 5-14-1.5-2(g).

As a preliminary matter, I note that the personnel committee was a governing body in its own right, under IC 5-14-1.5-2(b)(3). In addition, the committee consists of a majority of the Commission. Hence, the March 7 meeting of the personnel committee was subject to the Open Door Law.

The complaint response of the Commission implied that no violation of the Open Door Law occurred because the meeting was, in fact, open to the public, since only one person was turned away well before the committee actually convened. On the other hand, the response also implied that the March 7 meeting was an executive session, since the response stated that no final action was taken and no other business was conducted. Perhaps because of its lack of focus, the response of the Commission did not convince me that the Commission followed the Open Door Law. Two separate complainants alleged that they or their representatives were turned away from the meeting, and the Commission's complaint response does not dispel this allegation when Mr. Brooks admitted that he mistakenly informed the Commission Administrator that the meeting was closed when one person appeared earlier than the meeting's start. If even one person was told that the meeting was closed, a violation of the Open Door Law occurred.

Moreover, the purpose for which the committee met, to discuss promotional testing, was not a purpose for which a governing body may meet under IC 5-14-1.5-6.1(b). Hence, if the Commission meant to argue that a proper executive session occurred on March 7, it fell short of the mark. Moreover, the Commission has failed to justify turning persons away from the meeting by arguing that no final action was taken. The public has the right to observe all official action taken by a governing body, not just final action. *See* IC 5-14-1.5-2(d).

The Commission seems to imply that because the meeting began late, early arriving members of the public who were told that the meeting was closed need only have stayed until a quorum was met, one half hour after the start time in the notice. However, while the start time of the meeting likely was not so unreasonably departing from the time stated in the public notice as to mislead the public, the message given to members of the public that the meeting was closed trumped any late convening of the meeting.

Additionally confusing was that part of the complaint response that stated that the Commission voted to meet on March 7 during its March 2 meeting. The minutes reflect that the March 7 committee meeting was set at the March 2 meeting, but this action is not tantamount to reconvening a meeting, which may be accomplished without the need to post additional notice, if the meeting is reconvened in accordance with IC 5-14-1.5-5(a). Here, no announcement was made on March 2 that the meeting was to be reconvened and the place where the meeting would be held. Hence, it was necessary to post separate notice of the March 7 meeting 48 hours in advance.

Which brings me to an additional concern not raised in your complaints. The Commission's response does not specify when the notice of the March 7 meeting was posted, only that it was posted. The date of the notice, however, is March 6, 2006, which was a Monday. By reference to the notice's stated date, the notice was posted less than 48 hours before the meeting. This too was a violation of the Open Door Law.

## CONCLUSION

For the foregoing reasons, I find that the Gary Police Civil Service Commission violated the Open Door Law when it refused you access to the March 7 meeting, and when it failed to post notice at least 48 hours before the meeting.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Charles D. Brooks