

January 17, 2008

Cheryl Gridley
137 East Pendle
South Bend, Indiana 46637

*Re: Formal Complaint 08-FC-14; Alleged Violation of the Open Door Law by the
Town of Roseland*

Dear Ms. Gridley:

This advisory opinion is in response to your formal complaint alleging the Town of Roseland ("Town") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by holding a secret meeting without public notice. I have enclosed a copy of the Town's response to your complaint for your reference. It is my opinion the Town did not violate the Open Door Law.

BACKGROUND

In your complaint you allege that two members of the Town Council met at some point between December 14, 2007 and December 18, 2007. You allege that at the meeting they made a decision to file a contempt action against you, the outgoing Clerk-Treasurer. You filed this complaint on December 19.

The Town responded by letter dated January 7, 2008 from Town Attorney Michael Lipsky. Mr. Lipsky contends the Council made the decision to file legal action against you at a public meeting held on October 18, 2007. The Council at that time authorized Mr. Lipsky to file "whatever is needed" to ensure you performed your job. Mr. Lipsky indicates he filed the first action against you that day. At a later time Mr. Lipsky learned you refused to pay certain claims as directed by the Council. After a discussion with the Council President, Mr. Lipsky filed a second action against you on December 18.

Mr. Lipsky further provides that in anticipation of allegations from you that he did not have the authority to file the action, he asked Mr. Shields to prepare a letter documenting Mr. Lipsky's authorization from the Council to file action when necessary. Another Council member, Ted Penn, retrieved the letter from Mr. Shields and faxed it to Mr. Lipsky. Mr. Penn and Mr. Snyder did not meet at that time.

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. I.C. §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. I.C. §5-14-1.5-3(a).

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c).

Here you allege that a secret meeting must have occurred at some time between December 14 and December 18. You provide no further evidence that a meeting occurred except a newspaper article indicating an action had been filed. Mr. Lipsky contends he was authorized by the Council to file any action necessary, and he further sought approval from Mr. Shields before continuing. This does not violate the ODL.

Mr. Lipsky indicates that Mr. Penn collected from Mr. Shields a letter to be faxed to Mr. Lipsky. So long as the two did not take official action on public business, this did not constitute a meeting under the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion the Town did not violate the Open Door Law.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michael Lipsky, Roseland Town Attorney