

February 4, 2008

Allen Hutchison
3164 South 300 West
Winchester, Indiana 47394

*Re: Formal Complaint 08-FC-24; Alleged Violation of the Open Door Law by the
Randolph County Area Planning Commission*

Dear Mr. Hutchison:

This advisory opinion is in response to your formal complaint alleging the Randolph County Area Planning Commission (“Commission”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by holding its December 27, 2007 meeting in a room too small for all the members of the public who wished to attend. Further, you allege that the Commission refused to allow public testimony. Nine other individuals filed complaints regarding the same matter. Because the complaints address the same issue, I am consolidating them and issuing one opinion in response to all complaints. I have enclosed a copy of the Commission’s response to your complaint for your reference. It is my opinion the Commission did not violate the ODL.

BACKGROUND

In your complaint you allege the Commission violated the ODL at the December 27, 2007 public hearing because the Commission held the hearing in a room which has a maximum capacity of sixty individuals. You indicate that at least seventy additional people appeared and desired to attend the hearing but were not allowed to do so because of the size of the room. Some of those individuals presented a petition to the Commission requesting the meeting be moved to accommodate the crowd. Further, you allege that although the meeting notice indicated public testimony would be taken, the Commission refused to hear public testimony. You filed this complaint on January 9, 2008.

The Commission responded by letter dated February 1 from attorney Robert Oliver, Jr. Mr. Oliver contends that the hearing met the requirements of the ODL. Mr. Oliver further contends that the Commission had no knowledge or expectation that a large crowd would appear for the meeting and as such did not violate the ODL.

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).

While the Open Door Law provides that meetings of public agencies must be held in accessible facilities as described in I.C. §5-14-1.5-8, it does not provide specific requirements for capacity of meeting location. Furthermore, there is no provision of the ODL indicating it has been violated when a meeting location does not accommodate every member of the public who wishes to attend.

But the public agency must be mindful of the public policy of the ODL when considering meeting location: 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. This office has previously addressed meeting location capacity in *Opinion of the Public Access Counselor 00-FC-13 and 13-FC-138*. In the former, the Counselor found the public agency violated the spirit of the ODL, though not the letter, when it refused to change meeting location upon request and upon receiving information its regular meeting room would not accommodate those who planned to attend. *Opinion of the Public Access Counselor 00-FC-13*. In the latter, the Counselor refused to find a violation of the letter or the spirit of the ODL when the public agency held its meeting in its regular meeting location and did not move the meeting when the room was filled to capacity. There the public agency provided a public address system so those in the overflow area could hear the meeting. *Opinion of the Public Access Counselor 03-FC-138*.

While no Indiana case law addresses the issue at hand, other jurisdictions have refused to require public agencies to hold meetings in locations sufficient for every member of the public to attend. In *Guitierrez v. City of Albuquerque*, 631 P.2d 304 (N.M. 1981), the New Mexico Supreme Court held that as long as the public agency makes reasonable efforts and allows members of the public to attend meetings, the open door law is satisfied. In *Gerwin v. Livingston County Bd.*, 802 N.E.2d 410 (Ill. Ct. App. 2003), the Illinois Court of Appeals rejected the assertion that government actions would be invalidated if room capacity were exceeded and some members of the public denied access. The court said that if enough members of the public came to the meeting, “the business of government would come to a standstill for lack of venue.” *Id.* at 417.

Here, the Commission contends it had no knowledge or expectation that an overflow crowd would appear at the hearing. Mr. Oliver contends that because the hearing was held only to address amendments and because so many previous public hearings regarding this issue had been held over the past four years, the Commission did not anticipate a large crowd. While I cannot find the Commission violated the letter of the law, it certainly came close to violating the spirit of the law. The ODL exists to provide transparency in government by allowing the public

to observe government in action. When more people are excluded from a meeting than are admitted, the purpose of the ODL is frustrated. While the Commission did not violate the law when it planned to hold the meeting in the room where it was held, it became apparent at some point during the meeting that dozens of concerned citizens were being excluded from the meeting. So although the ODL did not require the Commission to move the meeting, I would caution the Commission to be mindful of the spirit of the law in the future.

You further allege that the Commission refused to hear public testimony at the hearing. Although members of the public have the right to observe and record proceedings, the Open Door Law does not contain any requirement that members of the public be allowed to speak. *Opinion of the Public Access Counselor 05-FC-24*. Absent any separate statutory requirement that the Commission hear public testimony on the specific subject matter, the Commission did not violate the ODL by refusing to hear public testimony.

CONCLUSION

For the foregoing reasons, it is my opinion the Commission did not violate the ODL.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Mike Wickersham, Randolph County Area Planning Commission