



STATE OF INDIANA

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November 23, 2009

Mr. Rory Lee Hill
1804 Kapok St. S.W.
DeMotte, IN 46310

*Re: Formal Complaint 09-FC-248; Alleged Violation of the Open Door Law
by the Keener Township Board*

Dear Mr. Hill:

This advisory opinion is in response to your formal complaint alleging the Keener Township Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* For the following reasons, my opinion is that the Board did not violate the ODL.

BACKGROUND

In your complaint, you allege that during an October 19, 2009, meeting of the Board, you and other taxpayers requested the right to speak. You allege that the meeting is "covered by IC 36-6-6-6." You further allege that John Boissy, the Board's president, allowed his mother to speak at the meeting and to have read into the minutes a statement about her objections of the budget from the last meeting. When you and other taxpayers then requested to speak at the meeting, Mr. Boissy responded by stating that was "a closed meeting and the taxpayers are not allowed to speak." You argue that the "minute Mr. Boissy allowed [Mrs. Boissy] to speak at the meeting and read her statement, Mr. Boissy violated the closed rule, and all taxpayers that wanted to make a statement should have been afforded that opportunity."

My office forwarded a copy of your complaint to the Board. Mr. Boissy's response is enclosed for your review. Mr. Boissy asserts that the ODL does not guarantee the right to speak at public meetings. Mr. Boissy concedes, however, that for certain meetings a provision for public comment is required by statute. He further states that the Board's budget meeting was held on August 31, 2009, and that the October 19th meeting was an adoption meeting regarding that budget.

According to Mr. Boissy, at the August 31st meeting, former Keener Township trustee Dorothy Boissy stated that a complete budget was not given to the Board. Mrs.

Boissy asked to see a complete budget, but the current township trustee, Diana Haberlin, denied the request made by Mrs. Boissy. Subsequently, Mrs. Boissy filed papers to object to the budget and filed those papers with the Board. Mr. Boissy states that Mrs. Boissy was granted the right to speak at the October 19th meeting due to her written objection regarding the budget. That meeting was open to the public, but you were not on the list of forty-eight (48) people who objected.

Mr. Boissy states that you and any other taxpayer of the township had the right to ask questions at the August 31st meeting. He claims that you were at that meeting but did not ask to speak. In his response, Mr. Boissy also enclosed written materials that he cites for his position that the taxpayers of the township may address the Board at budget meetings (such as the meeting on August 31st) but do not have the right to speak at the adoption meeting, which was held on October 19th.

ANALYSIS

The General Assembly enacted the ODL intending 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 ODL, 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).

As Counselor Neal noted in Formal Complaint 08-FC-149, Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *See Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; *see also* I.C. § 5-14-1.5-3 (“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.”). “Indiana law does require a governing body to allow public testimony in certain instances (e.g. a hearing on a proposed budget), but as a general rule the ODL does not guarantee the right to speak at a meeting.” *Opinion of the Public Access Counselor 08-FC-149*.

In arguing that you had a right to speak at the Board’s October 19th meeting, you cite to Indiana Code section 36-6-6-6. In 2005, Counselor Davis issued an advisory opinion under similar circumstances that discussed that section. I hereby incorporate the relevant portions of her decision:

Under Ind. Code 36-6-6-6, a taxpayer of the township may appear at any meeting of the legislative body and be heard as to: 1) an estimate of expenditures; 2) a proposed levy of taxes; 3) the approval of the executive’s annual report; or 4) any other matter being considered by the legislative body.

The township board is the legislative body of the township.
IC 36-6-6-2(c).

The Open Door Law does not confer a right on a taxpayer or any other member of the public to be heard at a public meeting, as my office has stated many times. However, if another statute applies to a meeting, members of the public may well have such a right. This appears to be the case for meetings of a township board. Again, the township disputes your version of events at the meeting. Because only a court can determine facts in a disputed matter, I leave you to your remedies under IC 5-14-1.5-7. Also, I do not have authority to sanction members of a governing body or reinstate the Madison Township budget as proposed by the Trustee. *See* IC 5-14-4.

Opinion of the Public Access Counselor 05-FC-223. Because the ODL does not address the public's right to speak at public meetings, it is my opinion that the Board did not violate the ODL by failing to allow you to speak at the October 19th meeting.

As to whether or not the Board violated Indiana Code section 36-6-6-6, I do not have the authority to issue an opinion on that matter. *See* I.C. §§ 5-14-4-3, 5-14-4-10. Any rights you may have under section 36-6-6-6 are distinct from your right to *access* the Board's meeting, which you apparently attended without issue.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: John Boissy, Keener Township Board