



STATE OF INDIANA

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November 23, 2009

Ms. Donna S. Schroeder
Ms. Jacqueline A. Keller-Ridenour
165 N. County Road 450 E.
Connersville, IN 47331

*Re: Formal Complaints 09-FC-249, 09-FC-250; Alleged Violation of the
Open Door Law by the Fayette County School Corporation*

Dear Mmes. Schroeder and Keller-Ridenour:

This advisory opinion is in response to your formal complaints alleging the Fayette County School Corporation (the "School Board" or "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 violated the ODL by failing to include the specific time of its executive session in its public notice of the same. Further, it is my opinion that the Board did not otherwise violate the ODL.

BACKGROUND

In your complaints, which I have consolidated due to the similar nature of the claims, you allege that the Board violated the ODL with regard to a meeting on September 22, 2009. You state that a notice was published in the local newspaper that said the school board would meet on September 22nd to discuss student retention, but you "have evidence that they actually discussed Re-organization [sic] of our grammer [sic] schools (which is a very hot topic in the community) for four and a half hours." You further allege -- somewhat inconsistently -- that there was "no public notification of any School Board meeting of any sort for September 22, 2009." Moreover, you note that at a public meeting on October 13, 2009, the school board approved minutes of an executive session that was held on September 22nd.

My office forwarded a copy of your complaint to the Board. The response of Dr. Russell Hodges, superintendent of schools, is enclosed for your review. According to Dr. Hodges, the Board originally scheduled a special meeting and an executive session for September 22, 2009. The special session was scheduled for 6:30 p.m. and the executive session was scheduled to immediately follow the special meeting with the posted purpose: "To train school board members with an outside consultant about the

performance of the role of the members as public officials.” On the day of the scheduled meetings, it became apparent that the special meeting would not be necessary and the Board cancelled that meeting. However, because the trainer was already in town for the executive session/training meeting and because -- according to Dr. Hodges -- the executive session notice had already been publicized on September 17th, the Board held the executive session in accordance with the original notice. Dr. Hodges acknowledges that the original notice contained no definitive start time because the original intent was to begin after a meeting that was ultimately never held. The executive session did not begin until after 6:30 p.m. on September 22nd.

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). The Board does not contest that it is a public agency for purposes of the ODL.

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). Notice shall be given by posting a copy of the notice at the principal office of the public agency or at the building where the meeting is to be held if no principal office exists and by delivering to the news media who submit an annual request for such notices. I.C. §5-14-1.5-5(b).

One exception to the general rule that such meetings must be open to the public is an executive session. “Executive session” is defined as a meeting “from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” I.C. § 5-14-1.5-2(f). Executive sessions, however, may only be held under the narrowly construed statutory exceptions listed under Indiana Code section 5-14-1.5-6.1 and only after posting appropriate notice to the public. I.C. § 5-14-1.5-6.1(d). In any event, “final action must be taken at a meeting open to the public.” I.C. § 5-14-1.5-6.1(c).

With regard to the Board’s cancellation of the September 22nd special meeting, “[n]othing in the ODL prohibits an agency from cancelling a scheduled meeting, even a few minutes after the scheduled start time.” *Opinion of the Public Access Counselor 07-FC-331*. In my opinion, the Board did not violate the ODL with regard to that cancelled meeting.

As to the September 22nd executive session, there seems to be a factual dispute regarding whether or not notice of the executive session was posted in accordance with

the ODL. I.C. §§ 5-14-1.5-5, 5-14-1.5-6.1(d). If the Board failed to post a notice of its executive session, that would have violated the ODL. Moreover, Counselor Davis has advised that executive session notices that do not include a specific time for meetings do not satisfy the notice requirements of section 5 of the ODL:

The Hospital does not address your allegation that the annual meeting notice is deficient because it does not specify the time of the public meeting. The Open Door Law clearly states that notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meetings is required. The Hospital's annual meeting notice, which recites that the public meeting will follow the executive session, is not sufficient notice under the Open Door Law. This error is compounded by the fact that the annual notice refers to executive sessions, which cannot be the subject of an annual meeting notice. The Hospital should post a new annual meeting notice that sets out the specific time of the public meetings. I note also that it is not clear that the public meeting will be held in the same place as the executive session, although that seems implied. A revised annual notice should correct this problem as well.

Opinion of the Public Access Counselor 07-FC-11. Under Counselor Davis' reasoning, it appears that the Board's notice -- assuming for the sake of argument that it was published -- was deficient insofar as it failed to include a specific time for its executive session. In my opinion, the Board failed to comply with the ODL in that respect.¹

I also note that under the ODL, public agencies that conduct meetings are required to keep memoranda regarding their meetings. See I.C. § 5-14-1.5-4(b). In the case of executive sessions, the memoranda requirements are modified in that the memoranda "must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given." Ind. Code §5-14-1.5-6.1(d). The public agency must also certify in a statement in those memoranda that no subject was discussed other than the subject specified in the public notice. *Id.* I do not have enough information to determine whether or not the Board complied with these requirements. If the Board failed to certify in a statement that no subject was discussed in the September 22nd executive session other than training, it violated the ODL.

¹ I also note the following example, which is included in the latest handbook published by my office: "**Example:** A board posts a notice that indicates a public meeting will be held 'after the executive session.' This is not proper notice because it does not provide the time the meeting is scheduled to begin." See *Handbook on Public Access Laws* at p. 10, updated April 2008, available at http://www.in.gov/pac/files/pac_handbook.pdf.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the ODL by failing to post the specific time of the executive session in its public notice. Based on the information before me, it is my opinion that the Board did not otherwise violate the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: Dr. Russell E. Hodges, Fayette County School Corporation