



STATE OF INDIANA

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June 10, 2010

Mr. Joseph L. Weingarten
14066 Deer Stone Lane
Fortville, IN 46040

Re: Formal Complaint 10-FC-119; Alleged Violation of the Open Door Law by the Fall Creek Township Advisory Board

Dear Mr. Weingarten:

This advisory opinion is in response to your formal complaint alleging the Fall Creek Township Advisory Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, by failing to provide adequate public notice of its May 10, 2010, public meeting (the "Meeting") and refusing to "ask for Public comment as required by IC-36-6-6-6."

BACKGROUND

In your complaint, you allege that Board failed to post sufficient notice of Meeting. Moreover, during the Meeting, the Board did not ask for public comment.

My office forwarded a copy of your complaint to the Board. As of today, we have not received a response.

ANALYSIS

The General Assembly enacted the ODL with the intent 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).

Regarding your allegation that the Board failed to post sufficient notice of its Meeting, I refer you to my opinion in response to your complaint against the Town of

Fishers: *Formal Complaint 10-FC-118*. Here, I do not have the benefit of a response from the Board, so I do not know if the circumstances are similar to those in the Town of Fishers matter. Based on the fact that your allegations are similar in each case, it is my opinion that if the Board acted similarly to the Town with respect to the room change, the Board did not violate the ODL. However, if the Board failed to post any notice at least 48 hours prior to the Meeting, it violated the ODL.

You also allege that the Board violated the ODL by failing to invite public comment at the Meeting. Pursuant to Ind. Code §36-6-6-6, a taxpayer of a 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. I.C. §36-6-6-2(c).

The ODL does not confer a right on a taxpayer or any other member of the public to be heard at a public meeting, as this office has stated many times. *See Opinion of the Public Access Counselor 05-FC-24*. But if another statute applies to a meeting, members of the public may well have such a right. This is true for meetings of a township board. If you asked to be heard as to any of the items listed in I.C. § 36-6-6-6 and the Board denied your request, the Board may have violated the statute. I do not see a requirement within that statute that the legislative body "ask for" public comment, however. Regardless, because only a court can determine facts in a disputed matter and because this matter is outside of the ODL (and, consequently, outside the purview of the public access counselor's office) I leave you to your remedies under I.C. § 5-14-1.5-7.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Board failed to post notice of its Meeting at least 48 hours in advance, it violated the ODL. Moreover, the Board may have violated I.C. § 36-6-6-6.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Fall Creek Township Board