



STATE OF INDIANA

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September 2, 2010

Mr. John R. Molitor, o/b/o Mr. Rex Rund
9465 Counselors Row, Suite 200
Indianapolis, IN 46240-6150

*Re: Formal Complaint 10-FC-194; Alleged Violation of the Open Door Law
by the Sheridan Plan Commission*

Dear Mr. Molitor:

This advisory opinion is in response to the formal complaint submitted by your client, Mr. Rex Rund, alleging the Sheridan Plan Commission (the "Commission") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* A copy of Commission's response is enclosed for your reference.

BACKGROUND

Mr. Rund's complaint relates to the Commission's meeting on August 16, 2010 (the "Meeting"). Mr. Rund attended the Meeting. He claims that during the Meeting, the Commission "informally recessed" and then "huddled in the front of the room for a discussion out of earshot of citizens attending the meeting." Mr. Rund believes the Commission took a secret ballot vote on a pending motion during the informal recess and then reconvened the Meeting. Once the Meeting was reconvened, the Commission's presiding officer declined to allow an open vote on a pending motion to table a rezoning proposal. Instead, the Commission voted on the rezoning proposal itself, which passed by a 5-4 vote. The Commission's draft minutes do not mention the motion to table or the secret ballot vote that was taken on the motion. Mr. Rund argues that the informal recess was an illegal executive session and that the secret ballot vote should be declared void (along with "all subsequent decisions that occurred after the motion to table was denied"). Finally, Mr. Rund alleges that the Meeting was held in a facility that was inadequate to accommodate all interested members of the public. Mr. Rund does not explain how the facility was inadequate except to say that several citizens were illegally excluded from the Meeting as a result of such inadequacy.

My office forwarded a copy of Mr. Rund's complaint to the Commission. In response, the Commission's attorney, Brian J. Zaiger, denies that the Commission violated the ODL. Mr. Zaiger notes that the Meeting was duly advertised and held in a

public place. He claims that all actions were conducted in public and all persons who wanted to be heard before the Commission were given the opportunity to speak. Mr. Zaiger also enclosed affidavits from the Commission President Randy Parsons, Commission member Connie Pearson, and Commission Counsel Nicole Finelli. The affiants all state, among other things, the following:

That the meeting in question was held in the normal course of business, at the normal location, was properly advertised and was fully conducted in open, before the public and was never halted, suspended, recessed or in any other way conducted outside the public. No secret ballot vote was cast and all motions properly and openly made and seconded were voted upon.

The affidavits are enclosed for your reference.

ANALYSIS

It is the intent of the ODL that public agencies conduct business and take official action openly unless otherwise 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).

Here, there is a dispute regarding the nature of the Meeting and whether or not members of the public were denied the right to attend the Meeting due to the Meeting's location. The public access counselor does not sit as a finder of fact, so I express no opinion regarding the disputed facts.

With regard to Mr. Rund's allegation that the Commission conducted a secret ballot vote at the Meeting, the ODL prohibits governing bodies from voting by secret ballot at their meetings. IC 5-14-1.5-3(b). If the Commission held such a vote, it violated subsection 3(b) of the ODL.

As to Mr. Rund's claim that the Commission violated the ODL by failing to hold the Meeting in a room accessible to the public, it is unclear how Mr. Rund believes the Meeting's location was insufficient. The ODL does require that meetings of public agencies must be held in accessible facilities as described in I.C. §5-14-1.5-8. However, the ODL does not provide specific requirements for capacity of meeting location. Furthermore, as Counselor Neal noted in an opinion in 2007, the ODL does not contain any language suggesting that a governing body violates the ODL when a meeting location does not accommodate every member of the public who wishes to attend. *Opinion of the Public Access Counselor 07-FC-220*. Without more information regarding the Meeting location, it is difficult for me to determine whether or not the Commission selected a meeting place in contravention of section 8 of the ODL. Consequently, I cannot at this time opine that the Commission violated the ODL in that respect.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Commission conducted a secret ballot vote during the Meeting, it violated the ODL. I do not have sufficient information to express an opinion regarding the legality of the Meeting's location.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack
Public Access Counselor

cc: Brian J. Zaiger