



STATE OF INDIANA

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September 14, 2010

Mr. Larry O. Wilder o/b/o Adrian Hall
530 E. Court Ave.
Jeffersonville, IN 47130

Re: Formal Complaint 10-FC-203; Alleged Violation of the Open Door Law by the Elizabeth Town Council

Dear Mr. Wilder:

This advisory opinion is in response to the formal complaint you submitted on behalf of your client, which alleges the Elizabeth Town Council (“Council”) violated the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et seq.* I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that the Council violated the ODL by conducting an executive session on August 7, 2010 at 9:00 a.m. The Council provided notice of the executive session to the *Corydon Democrat*, but the notice simply read: “Purpose: Personnel.” You claim that the notice included information regarding a “Special Meeting” after the executive session, but there is no evidence that the notice was posted at the Town Hall.

On August 9, 2010, the Council filed a lawsuit in Harrison Circuit Court. The lawsuit seeks the removal of your client from his position as Elizabeth Clerk-Treasurer. The complaint was signed by three of the Council members as well as your client’s predecessor, Hugh Burns, who is now a private citizen. The case went to trial on September 1st. On September 4th, you examined Chris Fetz, a Council member, regarding the executive session held on August 7th. Mr. Fetz testified that he did not know whether or not notice of the executive session was provided to the local newspaper; he claimed that the notice was the responsibility of Tina Attig, who is the “Cemetery Manager.”

At that point in the trial, you state that the “court took note that in order to continue it was necessary to determine if the executive session meeting was properly

conducted.” Ms. Attig was not present in court, but the judge requested that Mr. Burns contact her by telephone to answer questions regarding the notice. Ms. Attig informed the court that she had faxed notice of the executive session to the *Corydon Democrat*. She also stated that she was present during the meeting and that she had prepared minutes of both the executive session meeting and the “public session” meeting that followed the executive session. At that point, the judge directed Ms. Attig to bring evidence of the fax and the minutes she prepared before the court. Ms. Attig submitted copies of the fax and minutes. You believe that the minutes show that the Council violated the ODL.

It is my understanding that this issue is already pending before a court, because your complaint states that the court concluded “it was necessary to determine if the executive session meeting was properly conducted” and inquired into the underlying facts regarding the executive session by questioning Ms. Attig. As a result of these developments, it is my opinion I am precluded from issuing an advisory opinion in response to this complaint because it concerns a specific matter with respect to which a lawsuit has been filed under I.C. § 5-14-1.5. My governing statutes note that “the counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under I.C. § 5-14-1.5 or I.C. § 5-14-3.” I.C. § 5-14-4-10(6). Because the court has already addressed the subject of your complaint, it is my opinion that I.C. § 5-14-4-10(6) prohibits me from doing so.

If you have any questions, please do not hesitate to contact me.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Elizabeth Town Council