



STATE OF INDIANA

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February 22, 2010

Mr. Michael A. Gillenwater
2504 Allentown Road
Sellersburg, IN 47172

*Re: Formal Complaint 10-FC-23; Alleged Violation of the Open Door
Law by the Sellersburg Town Council*

Dear Mr. Gillenwater:

This advisory opinion is in response to your formal complaint alleging the Sellersburg Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, by failing to post its agenda for its December 28, 2009, public meeting. A copy of the Council's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Council held a special meeting on December 28, 2009. At that meeting, no agenda was posted before or during the meeting. You also note that "there were no copies of the agenda available for the public when [you] arrived, although some other people in attendance apparently had obtained copies."

My office forwarded a copy of your second complaint to the Council. In response, the Council's attorney, William P. McCall, III, claims that the Sellersburg Clerk-Treasurer routinely posts an agenda at the Council's meetings and makes copies available at the entrance to the meeting room. Mr. McCall further stated, "It is my belief based upon the number of individuals in attendance, someone attending the meeting concerning the annexation ordinance removed the posted agenda."

ANALYSIS

It is the intent of the ODL 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 ODL does not require a governing body to utilize an agenda at its public meetings. *See generally* I.C. 5-14-1.5-4. However, if a governing body of a public agency utilizes an agenda, the ODL requires that the governing body post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. I.C. § 5-14-1.5-4(a).

Here, there is a factual dispute regarding whether or not the Council posted an agenda prior to the December 28th meeting. As I am not a finder of fact, I express no opinion as to whether or not an agenda was or was not posted. However, if the Council failed to post the agenda, it is my opinion that such a failure would have violated section 4(a) of the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Council utilized an agenda at the December 28th meeting but failed to post that agenda prior to the meeting in accordance with section 4(a), the Council violated the ODL. If the Council did post the agenda prior to the meeting and -- as Mr. McCall alleges -- a member of the public took down the posting or it was otherwise removed through no fault of the Council, the Council did not violate the ODL.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: William P. McCall, III