



# STATE OF INDIANA

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November 4, 2010

Mr. Kenneth M. Roe  
3068 N.W. Lakeshore Dr.  
Macy, IN 46951

*Re: Formal Complaint 10-FC-240; Alleged Violation of the Open Door Law  
by the City of Rochester*

Dear Mr. Roe:

This advisory opinion is in response to your formal complaint alleging the City of Rochester ("City") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* The City's response to your complaint is enclosed for your reference.

## BACKGROUND

In your complaint, you allege the City denied your request to present a petition to the City Council ("Council") meeting. You would like to be on the Council's agenda to submit your petition against vacating a public alley. At the September 14, 2010, Council meeting, the mayor denied your request to be on the next meeting's agenda. You believe that you should have access to the Council meeting to present your petition.

In response to your complaint, the City, through its attorney Gregory L. Heller, avers that the City did not violate the ODL because the ODL does not provide the public with the right to speak at public meetings. Moreover, he outlines the process in I.C. § 36-7-3-12 that must be followed before the Council to hold a hearing on a petition to vacate all or part of a public way. Mr. Heller argues that the Council would have violated this provision of Indiana law if it had accepted your petition before going through the appropriate process.

## 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).

As Counselor Neal noted in Formal Complaint 08-FC-149, Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *See Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South Bend Cmty. Sch. Corp., 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), trans. denied, 2003; see also I.C. § 5-14-1.5-3 (“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.”). “Indiana law does require a governing body to allow public testimony in certain instances (e.g. a hearing on a proposed budget), but as a general rule the ODL does not guarantee the right to speak at a meeting.”* *Opinion of the Public Access Counselor 08-FC-149*. Consequently, it is my opinion that the City did not violate the ODL by denying your request to present your petition.

I do not have the authority to issue an opinion regarding the issues raised by Mr. Heller with respect to I.C. § 36-7-3-12 because that provision falls outside of the realm of public access laws. *See I.C. § 5-14-4-10*. However, I trust that if you follow the appropriate procedures regarding the submission of your petition, the City will fulfill its obligations under the law as well.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the ODL.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Gregory L. Heller