



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 3, 2010

Mr. Frederick Greg Spencer and Mrs. Teresa Kay Spencer
2205 Lafayette St.
Anderson, IN 46012

Re: Formal Complaint 10-FC-273; Alleged Violation of the Open Door Law by the City of Anderson and Anderson Park Board

Dear Mr. and Mrs. Spencer:

This advisory opinion is in response to your formal complaint alleging the City of Anderson ("City") and Anderson Park Board ("Board") (collectively, the "Agencies") violated the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.* The City's response to your complaint is enclosed for your review.

BACKGROUND

The Spencers' complaint alleges that on October 5, 2010, the Board held a public meeting. During the meeting, Mrs. Spencer, who is the park department's business manager, conducted her normal business. City of Anderson Mayor Kris Ockomon attended the meeting. At the close of the meeting, Mayor Ockomon "ordered" Mr. and Mrs. Spencer removed from the meeting by police escort. The meeting had been adjourned, but "remained in informal session to sign lease agreements, then remained in informal session." After Mr. and Mrs. Spencer were removed from the meeting room, Mayor Ockomon approached the quorum of Board members and "made extremely derogatory comments about Teresa Spencer." Board members questioned Mayor Ockomon, and he responded to their questions, but it is unclear what the substance of their discussion was. The Board was apparently unaware that Mayor Ockomon had ordered the Spencers removed from the meeting room, but the Spencers allege that the Board's actions nevertheless constituted a violation of the ODL.

In response to the complaint, Board President Darin Foltz states that he presided over the October 5th meeting, and that the entire meeting was conducted without any disturbances or disruptions. After Mrs. Spencer's presentation of her financial report, Mr. Foltz asked for questions regarding the report. Two Board members asked questions, but no other members of the audience asked questions. The Board voted to approve the outstanding expenses, and the meeting adjourned. After the adjournment, Board

members remained in the meeting room as they gathered their belongings and Mr. Foltz signed required documents. During that time, Mayor Ockomon approached Board members and made derogatory statements about Mrs. Spencer. Mr. Foltz ignored him and walked away from the meeting area because he knew that it was inappropriate for a quorum of Board members to receive information while not in session.

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. *See* I.C. § 5-14-1.5-1. Accordingly, 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). A “meeting” is defined as a “gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” I.C. § 5-14-1.5-2(c). “Public business” means “any function upon which the public agency is empowered or authorized to take official action.” I.C. § 5-14-1.5-2(e). “Official action” is very broadly defined by our state legislature to include everything from merely “receiving information” and “deliberating” to making recommendations, establishing policy, making decisions, or taking a vote. I.C. § 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. I.C. § 5-14-1.5-5(a).

Here, it does not appear that the Board violated the ODL. The meeting was open to the public, and the complaint does not allege that the Board’s meeting notice was deficient. The allegations relating to Mayor Ockomon’s actions of removing the Spencers from the building were not the result of any action of the Board, so they cannot be attributed to the Board or form the basis of a complaint that the Board violated the ODL. Further, Mayor Ockomon’s act of entering the adjourned meeting to address the Board was not induced by or sanctioned by the Board, and Mr. Foltz left the room soon after to avoid receiving information outside of the formal meeting. I do not believe that a governing body should be held in violation of the ODL merely because an uninvited individual entered an adjourned meeting and began speaking to members who were preparing to leave the room, especially when the Board otherwise conducted the meeting in accordance with the ODL.

If Mayor Ockomon’s act of ordering the Spencers is viewed independently from the rest of the complaint, there is nothing left to suggest that the Board acted inappropriately. In other words, Mayor Ockomon’s actions appear to be the only source of the Spencers’ allegation that they were deprived access to the Board’s meeting. Mayor Ockomon, however, is not subject to the ODL because the ODL only applies to governing bodies of public agencies, which are defined as “two (2) or more individuals” who constitute a board, commission, committee, body, or other entity. I.C. § 5-14-1.5-

2(b) (emphasis added). Because Mayor Ockomon is only one person, he is not a “governing body” under the ODL. Whether or not the Spencers have another remedy against Mayor Ockomon for allegedly wrongfully removing them from the building or making derogatory comments about Mrs. Spencer is outside of the Public Access Counselor’s advisory authority. I.C. § 5-14-4-10(6).

CONCLUSION

For the foregoing reasons, it is my opinion that neither the Board nor the City violated the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Darin Foltz