



STATE OF INDIANA

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January 12, 2011

Mr. William M. Rosemeyer
10535 E. County Rd. 650 N.
Indianapolis, IN 46234

*Re: Formal Complaint 10-FC-314; Alleged Violation of the Open Door Law
by the Brownsburg Fire Territory Safety Board*

Dear Mr. Rosemeyer:

This advisory opinion is in response to your formal complaint alleging the Brownsburg Fire Territory Safety Board (the "Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* A copy of the Board's response is enclosed for your reference.

BACKGROUND

According to your complaint, the Board sent a letter dated November 5, 2010, to Jonathan Zajicek. In the letter, the Board informed Mr. Zajicek that, after "having reviewed documentation [that Mr. Zajicek] submitted, [the Board] has decided not to meet, in formal hearing, in reference to your request. This is based upon the [B]oard's view that the issues presented lack merit for a hearing." You state that you found out on November 16, 2010, that the Board was meeting to discuss the matter for the first time. You do not allege that the November 16th meeting violated the ODL. You argue that the November 5th letter to Mr. Zajicek is a violation of the ODL.

My office forwarded a copy of your complaint to the Board. Attorney Jeffrey Logston and Board Chairman Bill Null responded on behalf of the Board. Mr. Null states that no meeting between the Board members was held prior to the November 16th public meeting. Rather, Mr. Null contacted the other Board members regarding Mr. Zajicek's request for a hearing. The members agreed that no hearing was necessary prior to the November 16th meeting. Mr. Null notes that Mr. Zajicek is a firefighter with the Brownsburg Fire Territory who was disciplined for a vehicle accident that occurred while he was driving a fire truck. Pursuant to the employee handbook and state law, Mr. Zajicek had the option to appeal that disciplinary action to the Board within 48 hours. The Board may, in its discretion, hold a hearing during its review of the matter. With regard to Mr. Zajicek's appeal, the Board felt that a hearing was unnecessary before the

November 16th public meeting because at that meeting the Board would discuss whether it would uphold or reverse the disciplinary action. The November 5th letter was a “courtesy letter” intended to inform Mr. Zajicek about whether or not the Board would hold a separate hearing regarding his appeal. Ind. Code § 36-8-3-4.1 requires the Board to send notice if a formal hearing is to be held, so Mr. Null wanted to inform Mr. Zajicek that the hearing would not occur.

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. 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).

To the extent the Board members discussed whether or not to hold a hearing during telephone conversations, those discussions do not constitute meetings under the ODL. A meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. I.C. § 5-14-1.5-2(c). While the ODL does not define “gathering,” this office has generally said that members must be physically present to be considered “gathering.” Further, the General Assembly has indicated any member who is not physically present at the meeting but communicates with members by telephone, computer, or other electronic means cannot be considered present at the meeting and cannot participate in final action. *See* I.C. § 5-14-1.5-3(d). If members participating by telephone cannot be counted as present, a telephone conversation between two people where each is at a different location would never constitute a meeting. As such, it is my opinion the Board members’ telephone conversations did not constitute meetings.

The ODL does require that “final action” be taken at a meeting open to the public. I.C. § 5-14-1.5-6.1(c). “Final action” means a vote by a governing body on a motion, proposal, resolution, rule, regulation, ordinance or order. I.C. § 5-14-1.5-2(g). I am not of the opinion, however, that deciding whether or not to hold a hearing -- or any other meeting -- requires final action by the Board. If it did, no meeting would ever be valid under the ODL because the Board would have to hold a public meeting to decide whether to hold a meeting. This reasoning leads to an absurd result that, in my opinion, was not intended by the General Assembly.

Moreover, here the Board did take final action (i.e. vote) on the appeal of the disciplinary action at its November 16th meeting. That meeting was open to the public and there is no allegation that it violated the ODL. Therefore, it is my opinion the Board followed the requirements of I.C. § 5-14-1.5-6.1(c) by taking final action in a meeting open to the public.

CONCLUSION

For the foregoing reasons, it is my opinion the Board did not violate 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: Jeffrey L. Logston