



STATE OF INDIANA

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March 30, 2010

Mr. Gary Robinson
595 Sugar St.
Marengo, IN 47140

Re: Formal Complaint 10-FC-54; Alleged Violation of the Access to Public Records Act and Open Door Law by the Town of Marengo

Dear Mr. Robinson:

This advisory opinion is in response to your formal complaint alleging the Town of Marengo (the "Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* I have enclosed the Council's response for your reference.

BACKGROUND

According to your complaint, the advertised that its February 8, 2010, regular meeting would begin at 7:30 p.m. However, the Council's executive session lasted longer than expected and delayed the regular meeting until 7:53 p.m. Moreover, you allege that the executive session was illegally held because the Council discussed "police issues and unsafe buildings in town," which you believe the public should have observed. You also allege that the Council violated the APRA by charging you twenty-five cents (\$.25) per page for copies of the Council's meeting minutes.

In response to your complaint, Town Council President Tony Jones acknowledges that the February 8th meeting started later than advertised and apologized for the same. He further admits that the "issue of unsafe buildings was mentioned in the Executive meeting [sic] but no decisions regarding anything to do with them was [sic] ever brought up in executive meeting." Mr. Jones also concedes that the Council overcharged you for copies, but states that the Council has corrected the error and refunded you the difference.

ANALYSIS

The intent and purpose of the ODL is 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. The provisions of the ODL are to be “liberally construed with the view of carrying out its policy.” I.C. § 5-14-1.5-1. The Council is a public agency and a governing body subject to the ODL. I.C. §§ 5-14-1.5-2(a), (b).

Notice of the date, time and place for a meeting or executive session of a governing body must be provided at least forty-eight (48) hours in advance, not including Saturdays, Sundays or legal holidays. I.C. § 5-14-1.5-5(a). In addition, the ODL provides that

notice [of a meeting] has not been given in accordance with [the ODL] if a governing body . . . convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe and record.

I.C. § 5-14-1.5-5(h).

Under the facts presented, it appears that your complaint is directed at the fact that the Council's February 8th executive session did not end before the scheduled start time of the public hearing/meeting, for which the notice indicated would begin at 7:30 p.m. The ODL requires that a public meeting convene at a time not is not so “unreasonably” different from the scheduled time of the meeting. I.C. § 5-14-1.5-5(h). In this case, the executive session ran long by approximately twenty-three (23) minutes. It is my opinion that a delay of approximately twenty minutes with respect to a public meeting by the Council was not so unreasonably different from the advertised meeting time as to deprive the public of the opportunity to attend, observe and record the meeting. However, if additional time is needed for an executive session held immediately prior to a public meeting, I suggest that the Council take this into account in order to ensure that their public meetings are convened at or near the time scheduled.

Executive sessions, which are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. See I.C. § 5-14-1.5-6.1(d). Because the ODL does not permit governing bodies to meet in executive session for such issues as “unsafe buildings,” the Council violated the ODL by conducting such a discussion during an executive session. I also note that the ODL requires governing bodies that hold executive sessions to “certify by a statement in the memoranda . . . that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.” *Id.* To the extent that the Council failed to so certify, it also violated the ODL.

With regard to the Council's assessment of an improper copy fee, the Council has acknowledged the error and made a good faith effort to comply with section 8 of the APRA by refunding the overcharge and modifying its policies. *See* I.C. § 5-14-3-8.

CONCLUSION

For the foregoing reasons, it is my opinion that the Council violated the ODL and APRA. I appreciate the Council's efforts to come into compliance with the law and trust this resolves these issues.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Tony Jones, Town Council President