



STATE OF INDIANA

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April 22, 2010

Mr. Thomas J. DeArk
P.O. Box 2062
Clarksville, IN 47131

Re: Formal Complaint 10-FC-76; Alleged Violation of the Open Door Law by the Clark County Council and Clark County Commissioners

Dear Mr. DeArk:

This advisory opinion is in response to your formal complaint alleging that Clark County Council and Clark County Commissioners (collectively the "Respondents") violated the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.* The Respondents' response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that on March 10, 2010, the Clark County Council ("Council") held a meeting at the Clark County Government Building. The meeting began at 5:00 p.m. and ended at approximately 7:00 p.m. At approximately 6:00 p.m., you attempted to enter the building and attend the meeting. The doors to the building were locked, however, and you were unable to attend the meeting. You further state that you have named the Council in this complaint because it is the public agency that held the meeting you were unable to attend. You also name the Clark County Commissioners ("Commissioners") because of "their position as County Executive, with oversight of matters pertaining to the County Government Building (Courthouse)." [Complaint at 1].

My office forwarded a copy of your complaint to the Respondents. The Council's attorney, R. Scott Lewis, responded on behalf of the Council. Mr. Lewis notes that the March 10th meeting was properly noticed and was open to the public. The courthouse contains two public entrances that are staffed by security personnel from the Clark County Sheriff's Office ("Sheriff"). Neither the Council nor the Commissioners have any direct authority over the Sheriff's personnel. Prior to the Council's meeting on March 10th, Mr. Lewis and a councilman both entered the east entrance to the courthouse and advised the Sheriff's personnel at that entrance that there was a regularly-scheduled public meeting of the Council beginning at 5:00 p.m. The Council assumed that the

Sheriff's personnel would remain at the entrances to the building until the Council's meeting adjourned pursuant to their normal procedures. Mr. Lewis notes that the March 10th meeting was attended by various county officeholders and officials, including the Sheriff, members of the public, and local news media.

After the Council and Commissioners received your complaint, they learned that shortly before 6:00 p.m., the Sheriff's personnel left their security posts at the two entrances of the building and locked the doors as they left. Neither the Council nor the Commissioners ever instructed them to do so; they were unaware of the actions of the Sheriff's personnel until you filed your complaint. Mr. Lewis states that he has discussed this issue with the Sheriff's personnel and discovered that the decision to leave their security posts and lock the building doors prior to the meeting's adjournment was "inadvertent, unintentional, and in no way ... intended to prevent any person from attending the said meeting." Mr. Lewis argues that the fact that other members of the public and the news media were able to attend the meeting demonstrates that the "public interest was not harmed in any way due to the inadvertent and unintentional actions of the Sheriff's security personnel." [Response at 2].

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).

Initially, I note that the Commissioners are not the proper respondent in this matter because they neither held the public meeting from which you were denied access nor exercised control over the Sheriff's personnel who locked the doors to the courthouse. *See* I.C. § 5-14-5-6. Consequently, it is my opinion that the Commissioners did not violate the ODL.

The remaining question is whether the Council violated the ODL because the courthouse's locked doors prevented you from attending the March 10th meeting. Based on Mr. Lewis' statements, it seems clear that neither the Council (nor the Commissioners) intended to deny you access to the meeting. The meeting was attended by several members of the public and the media, and they presumably had no problems accessing the building or the meeting prior to the time that the Sheriff's personnel left their posts and locked the building. As a result, I am sympathetic to the fact that the Respondents were operating under the impression that the building would be accessible by the public until the meeting was adjourned.

On the other hand, Counselor Hurst noted in a somewhat similar situation that public agencies violate the ODL "by meeting in a circumstance that would have

precluded any member of the public from having the opportunity to observe and record the meeting.” See *Opinion of the Public Access Counselor 04-FC-68*. Counselor Davis also opined in a 2007 opinion that a library “violated the Open Door Law when it locked the doors to the Library building during the time that the [library board] was meeting.” See *Opinion of the Public Access Counselor 07-FC-9*. If I were to say that the Council did not violate the ODL in this instance, it would open the door for other agencies to restrict access to their public meetings after the meeting begins, which would be contrary to the intent and purpose of the ODL. Thus, although I believe the Council acted in good faith in this instance and did not intentionally exclude any member of the public from its March 10th meeting, the fact that the doors were locked prior to the meeting’s adjournment was a violation of the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion that the Council violated the ODL by meeting in a circumstance that precluded a member of the public from having the opportunity to observe and record the meeting. Further, it is my opinion that the Commissioners were not the appropriate respondent in this matter and did not violate the ODL.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: R. Scott Lewis