



# STATE OF INDIANA

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February 7, 2011

Ms. Deborah S. Workman  
8478 S. Christian Dr.  
Nineveh, IN 46164

*Re: Formal Complaint 11-FC-14; Alleged Violation of the Open Door Law by the Town of Princes Lakes Town Council*

Dear Ms. Workman:

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

## BACKGROUND

In your complaint, you allege that on Monday, December 20, 2010, the Council held an "executive meeting" for which notice was not posted 48 hours in advance. Around the time of the meeting, you informed the president of the Council that the meeting was in violation of the ODL and should be rescheduled. You claim that the president, however, chose to proceed with the meeting. You state that another member of the Council and you did not attend the meeting because of the violation. Following that meeting, the Council held a regular meeting in which you attended. When you asked the other Council members about the meeting, they told you they were "just talking." You responded that there was a quorum of the Council members, so their actions were not allowed under the ODL. The other Council member that did not attend the executive meeting also stated that he did not believe the meeting was permissible.

In response to your complaint, Council President Lorri McCall, Member Pete Ketchum, and Member Layman Boyd (collectively, "Respondents") deny that the Council violated the ODL. The Respondents claim that the Council provided notice to the media 48 hours in advance of the planned meeting in accordance with the ODL, but neglected to post a copy of the notice at the meeting place. According, they cancelled the meeting. Instead, the three of them "sat together in the meeting room and participated in a 10 minute discussion," which "was comprised of: an explanation of the notice requirements for executive sessions, cancellation of the scheduled executive session, consideration of how the council should proceed with its investigation [of an employee's

misconduct], and identification of dates and times when the council members would be available to meet in executive session.” Thus, Respondents claim that the gathering was held solely to deal with town administrative functions, and no “meeting” occurred within the meaning of the ODL because the members took no official business at that time.

## 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). The Council is a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

A “meeting” means a gathering of the 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” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

Here, Respondents claim that no executive session occurred because they cancelled it prior to the meeting due to concerns about the meeting’s notices. Respondents did gather prior to the Council’s December 20th regular meeting, but they claim they did so solely to discuss administrative functions. Generally, the ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a). However, the requirements for posting notice do not apply when the executive of a county or the legislative body of a town (e.g., the Council, in this case) meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. Administrative functions do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. I.C. § 5-14-1.5-5(f)(2). Even though notice is not required, the “administrative function” meeting must be held in the public, since the notice provision of the ODL is *the only provision* that does not apply to an “administrative function” meeting. I.C. § 5-14-1.5-5(f)(2), emphasis added. Thus, as long as the Council gathered on December 20th *solely* to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the

internal management of the unit, public notice was not required. *See* I.C. § 5-14-1.5-5(f)(2). All other requirements of the ODL apply to these meetings.

In Indiana, town councils function as the legislative bodies of towns and town council presidents serve as the towns' executives. *See* I.C. § 36-5-2-2. Consequently, the ODL provided for circumstances where town councils would need to meet without notice to handle day-to-day issues in the internal management of the town. In my opinion, the Council's attorney explaining the ODL's notice requirements, the cancellation of an executive session, and discussing preliminary investigatory actions with respect to an employee is acceptable under the administrative function exception to the ODL, provided that any final action (and actions leading up to final action, such as testimony) regarding an employee's status occurs at a regular or special meeting of the council that is open to the public. *See Frye v. Vigo County*, 769 N.E.2d 188, 193 (Ind. Ct. App. 2002).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Council did not violate the ODL if their gathering before the December 20, 2010, consisted of administrative functions under Ind. Code § 5-14-1.5-5(f)(2).

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: Lee Robbins