

August 29, 2000

Ms. Michelle Livinghouse
406 Miner Street
Plymouth, Indiana 46563

Re: *Advisory Opinion 00-FC-27 Alleged Violation of the Indiana Open Door Law by the Marshall County Board of Commissioners.*

Dear Ms. Livinghouse:

This is in response to the formal complaint, which was received on August 14, 2000. You are one of a number of persons¹ who has complained that the Marshall County Board of Commissioners ("Commissioners") violated the Indiana Open Door Law, Indiana Code chapter 5-14-1.5. Specifically, you claim that the Commissioners made a decision to deny further admissions to the Marshall County Home outside of a public meeting. Mr. Don Ferguson, President of the Commissioners, responded to your complaint in a letter dated August 16, 2000. A copy of his response is enclosed for your reference. It is my opinion that there is no evidence to indicate that a meeting of the majority of the members of the Commissioners occurred in violation of the Open Door Law with respect to a decision to decline further admissions to the County Home.

BACKGROUND

According to the complaint, on July 17, 2000, the Commissioners met in an open, public meeting and voted 3-0 to close the Marshall County Home. The decision was made to "phase out" this facility by the end of the year 2003. No discussion or vote took place with respect to how the Commissioners would deal with requests for new admissions to the County Home during the July 17th meeting.

Admissions to the County Home generally are reviewed and approved by the Commissioners, except when an emergency placement is at issue. In early August, President Ferguson informed Robin Crone, Director for Nursing at the County Home, via telephone that all new admissions were being denied, including the one emergency admission she had called him about. You then personally called President Ferguson on this matter and were informed that the Commissioners had "decided . . . informally" that no further admissions would be accepted.

In his response to your complaint, President Ferguson admitted that he had conversations with both you and Ms. Crone on the subject of an admission to the County Home. He admitted that his response to both of your phone calls was based upon his assumption that the phasing out of the County

Home also meant that no further admissions would be accepted. President Ferguson also stated that the Commissioners have not met or made any decisions with respect to further admissions to the County Home in violation of the Open Door Law. President Ferguson stated that he misspoke with respect to the policy on new admissions and has asked that the County Home Administrator be present at the next Commissioners' meeting so that the policy on new admissions will be discussed and clarified in a public meeting.

ANALYSIS

The intent and purpose of the Indiana Open Door Law 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." Ind. Code § 5-14-1.5- 1. Indiana Code section 5-14-1.5-3(a) provides, in pertinent part, that:

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.

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." Ind. Code §5-14-1.5-2(c). Clearly, the Commissioners are a governing body of a public agency and any gatherings of a majority of its members would constitute a meeting subject to the requirements of the Open Door Law. Ind. Code §§5-14-1.5-2 (a) and (b).

In general, a governing body must either take official, including making decisions or establishing policies, in a public meeting or in an executive session. A meeting that is open to the public must permit the public an opportunity to attend, observe and record. Ind. Code §5-14-1.5-3(a). Executive sessions are meetings from which the public is properly excluded, except that the governing body may invite persons who are necessary to the purpose of that executive session to attend. Ind. Code §5-14-1.5-2(f). Executive sessions are specific exceptions to the general rule of openness under the Open Door Law. See, Ind. Code §5-14-1.5-6.1(b). Public notice of either type of gathering must be posted at least forty-eight (48) hours in advance of any public meeting or executive session under Indiana Code section 5-14-1.5-5.

According to the facts presented, the only evidence that there was a violation of the Open Door Law is the statement from President Ferguson that an informal decision was made by the Commissioners. If, in fact, his statement were true, this would be a violation. President Ferguson, in response to your formal complaint, now admits that he only assumed that this decision was made based upon his interpretation of the July 17th vote to phase out the facility. He claims that the Commissioners have never discussed the issue of new admissions since the decision was made to eventually close the facility. It appears, then, that no violation of the Open Door Law occurred.

The lack of evidence to support an actual violation in this case does not diminish the importance of your complaint. The intent of the Open Door Law is clear.

It is the intent of this chapter 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.

Indiana Code §5-14-1.5-1. It is critical that public officials understand that they may not make decisions as governing bodies outside of a public forum and that any statements or actions they take which do not conform to the decisions that are made in a public setting will be, and should be, questioned.

CONCLUSION

It is my opinion that there is no evidence to indicate that a meeting of the majority of the members of the Marshall County Board of Commissioners occurred in violation of the Open Door Law with respect to a decision to decline further admissions to the County Home.

Sincerely,

Anne Mullin O'Connor

Enclosure cc: Mr. Don Ferguson, President
Marshall County Board of Commissioners

[1](#) This response is being directed to you on behalf of yourself and the following complainants (some of the names were illegible); Gene Rowe, Patty Rowe, Marion Ebersole, Rick Daumport, Doroty Sahogun, F. Filson, Robin Crone, Bonnie Neidlinger, Tim Morlock, Jeff Botter, Rosalie Davenport, Naomi Young, Mary Batcho, and Julia Street.
