

January 25, 2002

Mr. Jack Surber
8925 Kathleen Av.
Clermont, IN 46234

Re: *Advisory Opinion 01-FC-82*;

Alleged Violation of the Indiana Open Door Law by the Clermont Town Council.

Dear Mr. Surber:

This is in response to your formal complaint, which was received in this Office on December 28, 2001. You have alleged that the Clermont Town Council ("Council") has violated the Indiana Open Door Law ("ODL"), Indiana Code chapter 5-14-1.5. According to your complaint, on December 3, 2001 all three members of the Council met without posting notice of the meeting. Mr. Beuford Hall, Council President, in a letter, which was received in this Office on January 3, 2002 indicated that his response to this issue had been provided in response to Formal Complaint 79. A copy of that response is enclosed for your reference.

It is my opinion that if the Council held an administrative function meeting pursuant to Indiana Code section 5-14-1.5-5(f)(2) then the Council's failure to post notice of the meeting did not violate the ODL. However, if the Council took final action concerning legal representation, then that final action was improper for an administrative function meeting and the failure to post notice violated the ODL.

BACKGROUND

According to your complaint, on December 3, 2001 the Council met without posting notice of the meeting. You allege that during the course of the meeting the Council voted on legal representation for the Town of Clermont.

In response to your complaint, Mr. Hall refers to Indiana Code section 5-14-1.5-5(f)(2) as authority for the Council's actions. Mr. Hall states that a "closed (no public) executive meeting was held to discuss some personnel matters" and that the meeting was in full compliance with Indiana Code section 5-14-1.5-5(f)(2).

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.

In response to your complaint Mr. hall stated that "[a] closed (no public) executive meeting was called on [December 3, 2001] to discuss some personnel matters and was in full compliance" with Indiana Code section 5-14-1.5-5(f)(2). However, Mr. Hall did not address your concern that no notice was posted forty-eight (48) hours in advance of this meeting. However, his response that the meeting complied with Indiana Code section 5-14-1.5-5(f)(2) indicates that Mr. Hall considered this meeting to be an administrative function meeting, which is exempt from the notice requirement of Indiana Code section 5-14-1.5-5(a).

Under Indiana Code section 5-14-1.5-5(f)(2), the Council may hold administrative function meetings, and for such meetings, the notice requirements under Indiana Code section 5-14-1.5-5 would not apply:

* * * *

if the meetings are 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 of contracts or any other action creating an obligation or otherwise binding a . . . town.

Indiana Code section 5-14-1.5-5(f)(2). [Emphasis added.] A town council is only exempt from the notice requirement for administrative function meetings, and such meetings must still be open for the public to attend and observe them. Administrative function meetings are limited in scope and cannot be used to bind or obligate the Town in any way.

The only information that Mr. Hall provided in his response to your complaint was that the Council discussed "personnel matters" during the meeting in question. The lack of information in his response makes it difficult for me to reach a definitive conclusion as to whether the meeting held on December 3, 2001 without posting notice violated the ODL. It is my opinion, however, that if the Council during the course of the December 3rd meeting voted on legal representation for the Town of Clermont that decision would violate the ODL.

Mr. Hall stated in his response that the December 3rd meeting was a "closed (no public) executive meeting." Although the Council is excused from posting notice of any administrative function meeting, those meetings are open to the public. Consequently, any member of the public may attend an administrative function meeting. The Council may exclude the public from attending a meeting when it is conducting an executive session pursuant to Indiana Code section 5-14-1.5-6.1. However, in order to conduct an executive session the Council must post notice forty-eight (48) hours in advance of the

executive session stating the date, time, and place of the meeting. Ind. Code § 5-14-1.5-5. A notice of an executive session must also state the subject matter by specific reference to the enumerated instance or instances for which executive session may be held under Indiana Code section 5-14-1.5-6.1(b). Ind. Code § 5-14-1.5-6.1(d). Again since the content of the December 3rd meeting is unclear I cannot determine whether the December 3rd discussion could have been held in a properly noticed executive session. However, it is my opinion that the discussion of "personnel matters" and the hiring and firing of a public employee in an executive session would violate the ODL.

CONCLUSION

Based on the facts that I have been provided I cannot make a definitive determination as to whether the subjects discussed during the course of the December 3, 2001 meeting violated the Indiana Open Door Law. If, as you contend, the Clermont Town Council voted on legal representation for the Town of Clermont during the December 3rd meeting, then it is my opinion that such a determination would be beyond the scope of the administrative function meeting authorized under Indiana Code section 5-14-1.5-5(f)(2) and the failure to post notice did violate the Indiana Open Door Law.

Sincerely,

Sandra K. Barger
Staff Attorney

Enclosure

cc: Mr. Beuford Hall, Clermont Town Council President
w/o enc.

¹ Indiana Code section 5-14-5-7 provides that a formal complaint must be filed within thirty (30) days of the alleged denial. Therefore, this opinion will only address the alleged denial of access to public records on December 7, 2001. However, Ms. Sudhoff did address your November 18, 2001 request in her response.