

October 18, 1999

Ms. Lori A. Coleman
403 Willowood Drive
Ossian, Indiana 46777

Mr. Paul F. Double
10778 N. State Road 1
Ossian, Indiana 46777

Re: *ADVISORY OPINION No. 99-FC-6:*

Meeting Notices Concerning the Adoption of the Town of Ossian 2000 Budget.

Dear Mr. Double and Ms. Coleman:

You each filed a formal complaint against the Town Council of Ossian, Indiana (hereinafter, "Town Council.") Mr. Double, your complaint was received in this Office on September 20, 1999, and Ms. Coleman, your complaint was received the following day. In the two complaints, you allege that the Town Council failed to comply with the meeting notice requirements of the Indiana Open Door Law for the public hearing and adoption meeting conducted on September 2 and September 12, 1999, respectively. Ms. Coleman, you also indicated that the Town Council failed to properly post notice of its August 24, 1999 meeting.

In addition, concerns were raised about a newspaper article from September 3, 1999 that referenced a meeting to adopt the town budget on September 13, 1999 and the conduct of a public meeting on a Sunday. Copies of your complaints were faxed to Town Council President Thomas Woodward on the dates they were received. A written response was provided by Mary Schafer, Town Clerk-Treasurer. A copy of her letter and the attachments are enclosed for your review.

For the reasons stated below, it is my opinion that the Town Council did not violate the Indiana Open Door Law with respect to the meetings conducted on September 2, 1999 and September 12, 1999 and, since the Town Council did not hold a meeting on August 24, 1999, there could not have been a violation on that date. The publication of an erroneous meeting date in the newspaper article and the conduct of a public meeting on a Sunday also do not violate the Open Door Law.

BACKGROUND

According to your complaints, the Town Council did not post a notice outside the town offices

for meetings conducted August 24, 1999, September 2, 1999 and September 12, 1999. Mr. Double allegedly alerted a member of the Town Council, to the notice problem before the September 2, 1999 meeting.

The two September meetings were for the purposes of a public hearing on the 2000 Town Budget and the adoption of that budget, in that order. Notices of these two meetings were published in the legal notice sections of two local newspapers on August 19 and August 26, 1999 .¹ You both allege that the Open Door Law notice requirements were not followed because in the August 26, 1999 legal notice, the date of the adoption meeting was changed from Monday, September 13, 1999 at 7:00 pm to Sunday, September 12, 1999, at 1:00 pm.

As further support for your allegations, you point to a newspaper article dated September 2 and 3, 1999, from your local newspapers that refer to the budget adoption date as September 13th, not September 12th. An additional concern raised by Mr. Double is that the adoption of the budget took place on a Sunday and, since the Open Door Law does not allow public agencies to include Saturdays, Sundays or legal holidays in the calculation of the 48-hour period for posting notices, a Sunday meeting did not appear appropriate.

In response to your complaints, Town Clerk-Treasurer Shafer stated that there was no meeting conducted on August 24, 1999, because one of the Town Council members was out of town. As to the posting of notices of the September 2 and September 12, 1999 meetings, Clerk-Treasurer Shafer enclosed copies of the posted notices, which were posted on August 30 and September 8, 1999, respectively.

With respect to the change in the date of the meeting at which the 2000 Budget was adopted, Ms. Shafer indicated that the adoption date had to be moved due to the plans of two of the Council members to attend the Indiana Association of Cities and Towns conference beginning September 13, 1999. The Town, after consulting the Indiana State Board of Tax Commissioners, amended its adoption date and published the new date and time in the August 26, 1999 legal notice. The newspaper article dated September 3, 1999 did provide the wrong date for the budget adoption hearing, but the legal notice of August 26, 1999 was correct. Ms. Shafer also indicated that there is no state statute that prohibits the Town from meeting on a Sunday to conduct its business.

ANALYSIS

Meeting Notices

Under the Indiana Open Door Law, public notice of the meetings of governing bodies of public agencies, such as the Town Council, must be posted outside the principal office of the governing body or the meeting location at least 48 hours in advance of the meeting. Ind. Code §5-14-1.5-5 (a). There is no requirement, for most meetings of governing bodies, that notices be published in the newspaper, only that media that have requested copies of meeting notices receive copies of those notices. Ind. Code §5-14-1.5-5(b).

The Open Door Law recognizes, however, that other state statutes may require a governing body to provide notice by publication of public business.

This section [Ind. Code 5-14-1.5-5] shall not apply where statute, ordinance, rule or regulation requires notice by publication.

Indiana Code 5-14-1.5-5(e). The adoption of a budget is one of the actions of a local governing body that does require notice by publication. Under Indiana Code section 6-1.1-17-3(a), a political subdivision, such as the Town of Ossian, shall:

formulate its estimated budget and its proposed tax rate and tax levy . . . [and] shall give ***notice by publication*** to taxpayers of:

- (1) the estimated budget;
- (2) the estimated maximum permissible levy;
- (3) the current and proposed tax levies of each fund; and
- (4) the amounts of excessive levy appeals to be requested.

In the notice, the political subdivision shall also state the time and place at which a public hearing will be held on these items. The notice shall be published twice in accordance with IC 5-3-1 with the first publication at least ten (10) days before the date fixed for the public hearing.

(Emphasis added.) Indiana Code chapter 5-3-1 outlines the requirements and specifications for newspaper notices and section 5-3-1-1 specifically addresses the publication of estimated budgets by political subdivisions under Indiana Code section 6-1.1-17-3. The State Board of Tax Commissioners is responsible for approving the budgets of political subdivisions and provides guidelines for the publication of notices for the budget process.

Applying the facts provided in your complaints to the statutes outlined above, it appears that the Town did not violate the Open Door Law in the conduct of its meetings on September 2 and September 12, 1999. First, the Open Door Law did not apply to the notices for those meetings under Indiana Code section 5-14-1.5-5(e). Secondly, even if the Town was required to post notices of these two meetings, notices were posted and posted at least 48 hours in advance of each meeting. The only defect that detected in the posted notices for these two dates was the failure to state the place of the meeting. Again, these postings were not required under the Open Door Law, and the newspaper publications of the notices did provide the location of the meetings. As to the failure to post a notice of a meeting on August 24, 1999, there was no meeting according to the Town officials; therefore, no notice was required.²

According to Melissa Henson, Director of the Budget Division for the State Tax Board, it is permissible for the political subdivision to change the date of the budget adoption meeting so long as that notice appears well before the adoption date. In this case, since the second notice listing the date of September 12, 1999 was published on August 26, 1999, the State Tax Board permitted the change of date and, ultimately, approved the 2000 budget for the Town of Ossian.

Other Issues

Many people confuse the requirement that public agencies notify the media of its public meetings with a requirement that the newspaper publish that notice. Indiana Code section 5-14-1.5-5(b) requires public agencies to notify representatives of the media, but there is no requirement that the media publish the notice. There was an error printed in a newspaper article of September 3, 1999 that referred to the original budget adoption meeting date of September 13, 1999. This newspaper article, however, is not considered public notice under either the Open Door Law or the statutes governing notices of budget proceedings.

Further, there is no statute, as the Town Clerk-Treasurer points out, even the Open Door Law, that prohibits the conduct of meetings on Saturdays, Sundays or legal holidays. The Town may not use these same days in its calculation of the 48 hours notice required prior to a meeting, but is not restricted from holding a meeting on weekends or legal holidays.

CONCLUSION

It is my opinion that the Town Council of Ossian did not violate the Indiana Open Door Law with respect to a public hearing and a meeting to adopt its 2000 Budget. When notice by publication is required by state statute, the notice requirements of the Open Door Law do not apply. The publication of an erroneous meeting date in the newspaper article and the conduct of a public meeting on a Sunday are not violations of the Open Door Law.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Mary Shafer
Ossian Clerk-Treasurer

Mr. Thomas Woodward, President
Ossian Town Council

¹One of the newspapers is a weekly publication and therefore, only the legal notice of August 19th appeared in that publication. ²It was not clear from the complaints or the Town's response

whether the August 24th was a regular meeting and that it had been cancelled. The Open Door Law does not state any requirements for notifying the public of cancellations, but it may be advisable to post a cancellation notice to alert any persons who may appear to attend the meeting.