

May 14, 2008

Michael Walter
320 West 17th Street
Auburn, Indiana 46706-2826

*Re: Formal Complaint 08-FC-101; Alleged Violation of the Open Door Law by the
DeKalb County Sheriff's Merit Board*

Dear Mr. Walter:

This advisory opinion is in response to your formal complaint alleging the DeKalb County Sheriff's Merit Board ("Board") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by failing to provide proper notice of a public meeting. I have enclosed the Board's response to your complaint for your reference. In my opinion the Board has violated the Open Door Law.

BACKGROUND

You allege that the Board provided notice on March 31, 2008 of an executive session scheduled for April 3 to consider an investigation into a failure of duty by two officers. You learned from a newspaper report dated April 8 that the Board, once gathered, decided to open the meeting to the public so a number of deputies not connected to the inquiry could attend. You allege the meeting was changed from an executive session to a public meeting so final action could be taken.

The Board responded to the complaint by letter dated April 29 from A. Howard Williams of the Sheriff's Department. Mr. Williams indicates that it appears a technical error was made in the meeting notice for the April 3 meeting. Mr. Williams indicates that there were no pending disciplinary actions before the Board at the time of the meeting, and the Board has no authority to act absent pending charges. Mr. Williams contends that the meeting was improperly noticed as an executive session and was changed to a public meeting so the deputies who appeared could learn from the events being discussed. Mr. Williams contends that the unintentional error will not be repeated.

ANALYSIS

It is the intent of the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) 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.

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).

An executive session may be held for only one of the instances listed in I.C. § 5-14-1.5-6.1(b). The governing body may admit to an executive session those persons necessary to carry out its purpose. I.C. § 5-14-1.5-2(f).

Here, the Board provided notice for an executive session. I do not have evidence of the specific statutory instance cited in the notice as the authority for conducting an executive session. Mr. Williams has indicated the notice was in error, and it is my understanding and opinion the Board did not have the authority to conduct an executive session.

While I commend the Board for realizing it did not have the authority to conduct an executive session and as such cancelling the executive session, the Board’s action to change the meeting at the last minute to a public meeting violated the ODL. The ODL requires public notice of date, time, and location of meeting at least forty-eight hours (excluding weekends and holidays) in advance of the meeting. I.C. § 5-14-1.5-5(a). While the Board had provided notice for the executive session, it did not provide appropriate notice for the public meeting, which became a different meeting once the Board decided to make it a public meeting. The public must be provided notice of meetings in advance so members of the public may decide whether to attend in order to observe and record a meeting. In this case, members of the public might not have appeared because they believed the meeting was an executive session, to which they would not be permitted. When the meeting was changed to a public meeting without proper notice, members of the public, who did not receive proper notice, were denied the right to observe and record a public meeting.

CONCLUSION

For the foregoing reasons, it is my opinion the DeKalb County Sheriff’s Merit Board violated the Open Door Law when it did not provide proper notice of a public meeting.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: A. Howard Williams, DeKalb County Sheriff’s Department