

May 15, 2008

Harold Jerome Rhoades  
314 West Jefferson Avenue  
Chandler, Indiana 47610

*Re: Formal Complaint 08-FC-102; Alleged Violation of the Open Door Law by the  
Chandler Town Council*

Dear Mr. Rhoades:

This advisory opinion is in response to your formal complaint alleging the Chandler Town Council (“Council”) violated the Open Door Law (“ODL”)(Ind. Code 5-14-1.5) by conducting a secret meeting to discuss the hiring of a new police chief for the Town of Chandler. A copy of the Council’s response to your complaint is enclosed for your reference. It is my opinion the Chandler Town Council violated the Open Door Law when Mr. Hess and Ms. Lance held a private in-person discussion regarding public business but did not otherwise violate the ODL.

#### BACKGROUND

You allege that the Council violated the Open Door Law by holding secret meetings between its March 3 and March 17, 2008 meetings. You allege, and provide a number of newspaper accounts, that the Council made a motion and seconded the motion to hire the new chief and voted on the motion with little discussion. You allege this provides evidence that at least two of the three Council members met in a secret meeting or meetings to discuss the hiring of the new chief. One newspaper account contains a quotation from Council Member Hess regarding a meeting with the new chief, Marlin Weisheit: “Hess also said they hadn’t been doing anything illegal, adding ‘I met with Marlin Weisheit at his house and he went down to Jeanette’s house.’” See *Boonville Standard/Newburgh Register*, “Public outraged with town council,” March 20, 2008, at 1A. You mailed this complaint on April 15, and I received it on April 23. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

Councilors Hess and Lance responded to the complaint by letter dated May 8 from attorney S. Anthony Long. The Council contends that the complaint is based on beliefs, facial expressions, speculation and conjecture. Further, the Council acknowledges that Mr. Weisheit

met with all three Council members individually after the March 3 meeting. The individual meetings were held to discuss his qualifications and interest in being hired.

Mr. Long provides an affidavit from Councilor Hess, affirming that he met with Mr. Weisheit after the March 3 meeting to discuss his interest in the position. Mr. Hess suggested Mr. Weisheit meet with Ms. Lance as well. Mr. Hess also contacted Mr. Long and asked him to advise the remaining council member, Brian Lucas, of Mr. Weisheit's interest. Mr. Hess affirms that he did not meet with Mr. Weisheit in the presence of any other council member before the March 17 meeting. Mr. Hess indicates that the only discussions he had with Ms. Lance before March 17 on the subject of the chief's hiring were when he asked her if she was still of the mind to hire a chief outside the department and when she indicated she had spoken with Mr. Weisheit and thought he would be a good choice for chief. Mr. Hess indicates his belief that the discussions were held at a church event or events. He affirms he did not speak with Mr. Lucas regarding the issue.

Mr. Long also provides an affidavit from Councilor Lance. Ms. Lance's affidavit contains a recount of facts similar to those recounted by Mr. Hess. Ms. Lance also indicates she mentioned to Mr. Hess, at church, at some time before March 17 that she had been visited by Mr. Weisheit and thought he would be a good candidate for the chief job.

Mr. Long provides an affidavit of Mr. Weisheit, who confirms he met individually with Hess and with Lance. He also spoke by telephone with Mr. Lucas about his interest in the position.

#### ANALYSIS

It is the intent of the Open Door Law 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. Except as provided in section 6.1 of the Open Door Law, 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).

A meeting is "a gathering of a majority of a governing body of a public agency for the purpose of taking official action upon public business." I.C. § 5-14-1.5-2(c). It does not include any social or chance gathering not intended to avoid this chapter. *Id.* 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). 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).

Here you allege the Council violated the ODL by conducting a secret meeting or meetings to discuss the hiring of Mr. Weisheit as the police chief for the Town of Chandler. While you have provided a copy of newspaper articles recounting the events surrounding the vote to hire Mr. Weisheit, you have provided no other evidence of a secret meeting. I cannot find a secret meeting has occurred if no evidence of a secret meeting exists.

In the affidavits of Mr. Hess and Ms. Lance, however, I do see one item that is cause for concern and appears to show a violation of the ODL. Both Mr. Hess and Ms. Lance affirm that they discussed Mr. Weisheit's hiring, if only briefly, at church. While the ODL provides that a social or chance gathering is not a meeting (*See* I.C. § 5-14-1.5-2(c)), such a social or chance gathering cannot be intended to avoid the ODL. Further, once a social or chance gathering, which is certainly what I consider attendance at church or church events to be, turns into a gathering of a majority of the governing body of a public agency for the purposes of taking official action on public business, it becomes a meeting. I.C. § 5-14-1.5-2(c).

It is clear the hiring of a new police chief is public business. And it is clear the in-person discussion at church between Mr. Hess and Ms. Lance was a gathering of the majority of a governing body, since they are two members of a three member body. The question is whether the gathering was for the purpose of taking official action on public business. While the two may not have intended to take official action on public business, even inadvertently doing so can turn a social or chance gathering into a meeting.

Here, Mr. Hess has indicated that he spoke to Ms. Lance in person, probably at church, when he asked her if she was still of a mind to hire a chief outside the department and when she told him she had spoken with Mr. Weisheit and thought he would be a good choice for chief. Ms. Lance indicates she recalls speaking with Mr. Hess at church and mentioning to Mr. Hess that she had been visited by Mr. Weisheit and thought he would be a good man for the job of chief. She further says that Mr. Hess indicated he agreed with her assessment of Mr. Weisheit.

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). Here, Mr. Hess and Ms. Lance exchanged remarks regarding the hiring of the police chief. During the discussion, it is my opinion each received information from the other, Mr. Hess received information that Ms. Lance had met with Mr. Weisheit and thought he was a good candidate for the job, and Ms. Lance received information that Mr. Hess agreed with her assessment.

The issue of the exception to the definition of meeting for a social or chance gathering has been addressed by this office in several advisory opinions. This office has found that when official action is taken at a social or chance gathering, that gathering violates the ODL. Former Counselor Hurst opined the following:

To say that a governing body's intent in gathering, however innocent, absolves it of any violation for whatever discussions and events occur after it gathers would defeat the purpose of the statute and the clear intent of the General Assembly that 'the official action of public agencies be conducted openly.' See generally IC 5-14-1.5-1.

...

The Council asks that the issue be reviewed in the context of what occurred at the gathering, and it is from that perspective that I find the unfortunate basis to conclude there was a violation of the Open Door Law. I say it is "unfortunate" because, as noted above, I do not believe based on the evidence presented that it was the intent of the Council or Mr. Dixon (who hosted the meeting) to violate the law or to hold anything that resembled a "meeting" of the Council. Still, it is undisputed that the

“public business” of the Council was discussed with and among the members of the Council who were gathered together.

...

What occurred at this gathering was much more than the mere attendance of a majority of the Council at the same place; it included an active discussion of precisely the same issues that were appropriate for a regular meeting of the Council in the council chamber.

*Opinion of the Public Access Counselor 04-FC-72.*

I agree with Counselor Hurst’s opinion and believe the present issue closely resembles the issue Mr. Hurst addressed. While the gathering in *Opinion of the Public Access Counselor 04-FC-72* was a town hall style meeting and the gathering in the present issue was a church service, I find the resulting issue to be nearly identical. It is my opinion that in this matter, even though the church event was not held for the purpose of circumventing the ODL and even though Mr. Hess and Ms. Lance did not intend to hold a secret meeting, the gathering of the two members of the Council became a meeting when they took official action (received information and discussed the hiring of a new chief) on public business. Because the meeting was not properly noticed or open to the public, it violated the ODL.

Having said that, it is my opinion that no other actions of the Council related to this matter violated the ODL. Nothing in the ODL prevents individual members of a governing body from meeting individually with another person. Nothing in the ODL would prevent Mr. Hess from sending Mr. Weisheit to meet with Ms. Lance. Nothing in the ODL would prevent Mr. Hess from asking Mr. Long to inform Mr. Lucas of Mr. Weisheit’s interest in the position. Nothing in the ODL would prevent Mr. Lucas from telephoning Mr. Weisheit to discuss his interest. Regarding the meeting on March 17, nothing in the ODL requires the Council to allow public testimony or to set aside a certain amount of time for the Council to discuss a motion before voting. So while it is my opinion that the discussion between Mr. Hess and Ms. Lance violated the ODL, it is my opinion that the Council did not otherwise violate the ODL by any actions identified in the complaint or the accompanying newspaper accounts of the issue.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Chandler Town Council violated the Open Door Law when Mr. Hess and Ms. Lance held a private in-person discussion regarding public business but did not otherwise violate the ODL.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: S. Anthony Long, Long & Mathies  
Chandler Town Council