



STATE OF INDIANA

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June 2, 2008

Wiley Graham
c/o Kevin Patmore
Suite 201, Liberty Building
PO Box 459
Santa Claus, Indiana 47579

*Re: Formal Complaint 08-FC-129; Alleged Violation of the Open Door Law
by the Town of Holland*

Dear Mr. Graham:

This advisory opinion is in response to your formal complaint alleging the Town of Holland ("Town") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by failing to provide proper notice for a meeting held on or about April 29, 2008. I have enclosed a copy of the Town's response to your complaint for your reference. It is my opinion the Town did not violate the ODL unless the April 29 meeting was held behind closed doors so the public could not observe and record.

BACKGROUND

You allege two of the three members of the Town Council met with you on or about April 29 so the Council members could discuss which maps should be retained or discarded. You allege no notice of the meeting was issued to the public. While at the meeting, one Council member told you they had "discussed it" and had determined that you would be permitted to take vacation, but the time would be unpaid. You allege that on May 1 your counsel advised you the Council violated the ODL. You further allege that on May 9 the Council president informed vendors that you no longer had responsibilities with the Town. You contend this determination must have been made in another unnoticed meeting. On May 14, you were paid vacation pay for the April 23 vacation day, and you contend this decision was also made in an unnoticed meeting. On May 15 your employment was terminated at a properly noticed meeting following an executive session.

You filed this complaint on May 16, alleging a violation of the ODL. 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.

The Town responded to the complaint by letter dated May 19 from attorney Scott Blazey. The Town contends that on April 29 two of the Town Board members conducted a meeting pursuant to I.C. § 5-14-1.5-5(2) (sic) for the purpose of receiving information or recommendations in order to carry out administrative functions or confer with staff members on matters related to the internal management of the unit. Further, the Town denies that any Board members informed vendors on May 9 that you were no longer employed by the Town. Instead, the Board contends that the vendor wanted to contact the Board by electronic mail, and because you do not utilize electronic mail, Mr. Thacker of the Board indicated the vendor should contact him directly.

The Town agrees that you were paid on May 14 and the pay included vacation pay as well as regular pay. The Town contends the Board does not meet every time employees are paid. Finally, the Town agrees that your employment was terminated at a properly noticed executive session on May 15.

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). The Town Board is a governing body. I.C. § 5-14-1.5-2.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “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 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). Notice shall be given by posting a copy of the notice at the principal office of the public agency or at the building where the meeting is to be held if no principal office exists and by delivering to the news media who submit an annual request for notices by January 1. I.C. § 5-14-1.5-5(b). Public notice of executive sessions must state the subject matter by reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). I.C. § 5-14-1.5-6.1(d).

You have alleged the Town violated the ODL by holding a meeting on April 29 without posting notice. Further, you allege the Town must have held meetings prior to May 9 and May 14, when you allege the Town indicated to a vendor you no longer worked for the town and when you were paid for your vacation time, respectively.

While public notice must be posted for any regular meetings or executive sessions of a governing body (*See* I.C. § 5-14-1.5-5), the requirements for posting notice do not apply when the executive of a county or the legislative body of a town meets, if the meeting is 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. I.C. § 5-14-1.5-5(f)(2). The “administrative function” meeting must be held in the public, even though notice is not required

Here the Town contends the April 29 meeting was held to carry out administrative functions. While the law does not provide detail as to what constitutes an administrative function, the General Assembly has indicated that “administrative functions” do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. I.C. § 5-14-1.5-5(f)(2). I see no evidence to indicate the Town held the April 29 meeting for any other reason than to carry out administrative functions.

At the April 29 meeting, the Town should have met so that the public could observe and record the meeting, but it was not necessary to post notice of the meeting because determining which maps to retain and discard, if no other discussion occurred, was an administrative function meeting. If the two council members and you met behind closed doors so no member of the public could observe and record the meeting, the Town Council violated the Open Door Law. I do not have sufficient evidence to determine whether members of the public could have attended if they wished to do so.

Regarding your allegation that the Town must have held meetings prior to May 9 and May 14, I do not find sufficient evidence to indicate the Town held secret meetings prior to those dates. Regarding the May 9 incident, you allege the Board told a vendor you were no longer employed with the Town. The Town argues Mr. Thacker provided his email address as a point of contact because you do not utilize email but said nothing regarding your employment with the Town. Even if Mr. Thacker had commented regarding your employment with the Town, this comment would not be sufficient evidence to show a secret meeting occurred prior to May 9.

You also allege the Town must have held a secret meeting prior to your May 14 pay, since you were paid for vacation time for which you were previously told you would not receive pay. The Board contends it does not meet every time employees are paid. While the Board does not explain the change that allowed you to be paid for vacation time, it certainly could have been the result of a phone call from one member of the Board to the person responsible for the payroll. If the Board met in private to discuss the issue, it would constitute a violation of the ODL. But again I have insufficient evidence to find definitively that the Board violated the ODL on this issue.

CONCLUSION

For the foregoing reasons, it is my opinion the Town did not violate the ODL unless the April 29 meeting was held behind closed doors so the public could not observe and record.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Scott A. Blazey, Town of Holland

Note: You refer to the Town Council and the Town refers to the Town Board. I have used the term "Council" in the portion of the opinion recounting your allegations and have used "Town" or "Town Board" thereafter. For purposes of this opinion, "Council" and "Board" refer to the same governing body.

