



STATE OF INDIANA

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November 14, 2008

Tracy Thornbrugh
The Hamilton News
3950 Church Street
Hamilton, Indiana 46742

*Re: Formal Complaint 08-FC-226; Alleged Violation of the Open Door Law
by the Hamilton Plan Commission*

Dear Ms. Thornbrugh:

This advisory opinion is in response to your formal complaint alleging a sub-committee of the Hamilton Plan Commission ("Commission") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by providing insufficient notice for a public meeting. A copy of the Commission's response to the complaint is enclosed for your reference. In my opinion the Commission violated the ODL by failing to post notice of the meeting.

BACKGROUND

You filed a complaint on October 24, 2008, alleging the Commission violated the ODL by failing to provide sufficient notice for an October 21 sub-committee meeting attended by three Commission members.

The Commission responded to the complaint by electronic mail message dated October 24 from Don Norris, who apologized for the failure to post notice. Mr. Norris indicated he failed to notify the Clerk-Treasurer, who is responsible for posting notice.

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).

I do not have information regarding the make-up of the Commission, but if the three members of the Commission in attendance at the October 21 gathering constituted a

majority of the Commission, the gather was a meeting for the purposes of the ODL. *See* I.C. § 5-14-1.5-2(c). If the three members did not constitute a majority of the governing body, the gathering was not a meeting.

Regarding notice, the ODL provides the following:

(a) 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 (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. . .
I.C. § 5-14-1.5-5.

Here, if the gathering constituted a meeting under I.C. § 5-14-1.5-2(c), the Commission was required to provide notice as prescribed by I.C. § 5-14-1.5-5. The Commission concedes it did not provide notice but indicates the failure to provide notice was an oversight. The ODL does not excuse the failure to post notice on the basis of mistake or oversight.

CONCLUSION

For the foregoing reasons, it is my opinion the Commission violated the ODL by failing to provide appropriate notice for the October 21 meeting.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Don Norris, Hamilton Plan Commission