

May 1, 2008

Mike Snyder
The Commercial Review
309 West Main Street
Portland, Indiana 47371

Re: Formal Complaint 08-FC-93; Alleged Violation of the Open Door Law by the Pennville Town Council

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the Pennville Town Council ("Council") violated the Open Door Law ("ODL")(Ind. Code 5-14-1.5) by failing to provide proper notice for an executive session and for conducting an executive session for a reason not allowed by statute. It is my opinion the Pennville Town Council violated the ODL by providing a defective notice for an executive session. Further, the Council may have violated the ODL by conducting an executive session to discuss subject matter not authorized to be discussed at an executive session.

BACKGROUND

You allege that on April 1 the Town sent The Commercial Review a notice of an executive session planned for April 3. The notice contained the following information: "The Pennville Town Council will meet Thursday April 3, 2008 at 7:00pm for an executive session". The notice did not indicate the reason for the meeting or cite the statutory authority allowing the executive session. You telephoned the Town Clerk Treasurer on April 1 and learned the meeting was to discuss reserve deputy marshal pay. You allege that you indicated to the Clerk Treasurer the subject matter was not permitted in executive session.

You telephoned the Clerk Treasurer again on April 4, and the Clerk Treasurer told you the meeting had been held and the Town's attorney had advised the Council that the executive session was allowed pursuant to I.C. § 5-14-1.5-6.1(b)(2)(A), allowing an executive session for a strategy session with respect to collective bargaining. You mailed this complaint, alleging a violation of the Open Door Law, on April 7, and I received it on April 10.

My office forwarded a copy of the complaint to the Council and invited the Council to respond to the Complaint. To date we have not received a response to the complaint.

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).

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).

It is my opinion the notice sent to The Commercial Review by the Town was defective. The ODL requires a meeting notice to indicate the date, time, and place of a meeting. I.C. § 5-14-1.5-5(a). The notice at issue contained the date and time but did not contain the location of the meeting. As such, the Council violated the Open Door Law.

Further, when the notice is for an executive session, the notice must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under I.C. § 5-14-1.5-6.1(b). The notice at issue here did not contain any reference to the subject matter of the executive session, and therefore was defective for this reason as well.

Regarding the Council's assertion that the executive session was authorized to be held pursuant to I.C. § 5-14-1.5-6.1(b)(2)(A), for a discussion of strategy with respect to collective bargaining, I do not have the benefit of a response to the complaint from the Council, so I do not have enough information to determine whether this was an appropriate use of the executive session statute. Such a strategy discussion must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries. I.C. § 5-14-1.5-6.1(b)(2).

It is my understanding the Council has asserted the collective bargaining instance for an executive session to discuss the wages of a reserve officer. If the discussion was about the wages of just one officer, it is my opinion that was not a strategy discussion with respect to collective bargaining, since by definition collective bargaining involves negotiations with more than one individual. See *New Illustrated Webster's Dictionary of the English Language*, Pamco Publishing 1992, at 198, defining "collective." Without further information from the Council, I cannot find that the executive session was authorized pursuant to the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion the Pennville Town Council violated the ODL by providing a defective notice for an executive session. Further, the Council may have violated the ODL by conducting an executive session to discuss subject matter not authorized to be discussed at an executive session.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Pat Frazee, President, Pennville Town Council