



# STATE OF INDIANA

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April 27, 2009

Eric Cox  
The Banner  
24 North Washington Street  
Knightstown, Indiana 46148

*Re: Formal Complaint 09-FC-85; Alleged Violation of the Access to Public Records Act and Open Door Law by the Knightstown Plan Commission*

Dear Mr. Cox:

This advisory opinion is in response to your formal complaint alleging the Knightstown Plan Commission ("Commission") violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) and the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). A copy of the Commission's response to the complaint is enclosed for your reference. It is my opinion the Commission has violated the Open Door Law by failing to keep the required memoranda for each meeting of the Commission.

## BACKGROUND

Following my opinion in response to your Formal Complaint 09-FC-52, you filed the present complaint on March 27, 2009, alleging the Commission has violated the APRA and the ODL. You again allege that the Commission has failed to provide you with requested records in a reasonable amount of time. Because I have already issued an opinion in that matter, I today address only your other allegation: that the Commission has failed to keep the required memoranda for its meetings. You allege that the memoranda from the July 29 and October 13, 2008 meetings do not conform to the requirements of the ODL.

The Commission responded to the complaint by letter dated April 9 from Commission President Clyde South. Mr. South contends that while the memoranda may not have technically complied with the ODL, *The Banner* was made aware of the date, time and location of the meetings and as such was provided all the required information. The Commission also contends the Commission Secretary was not in attendance at the meetings.

## ANALYSIS

It is the intent of the ODL 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 ODL does not require a governing body to create minutes of its meetings. Regarding minutes and memoranda, the ODL provides the following:

(b) As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying.

I.C. § 5-14-1.5-4.

After reviewing the two records provided by the Commission in response to your request for memoranda of the July 29 and October 13 meetings, it is my opinion neither of those records comply with the ODL. The July 29 memorandum appears to contain the date and time of the meeting but not the place. Further, I do not see an indication of the members recorded present or absent. I do not see a record of any votes taken, either. For the October 13 meeting, the date is listed but not the time or location. There appears a list of individuals, but there is no indication that those were the members in attendance and which, if any, were absent. Further, I do not see a record of any votes taken. In my opinion, the memoranda for the two meetings do not conform to the requirements of I.C. § 5-14-1.5-4.

The Commission argues that because you were provided the date, time, and location of the meeting, the technical violation of the ODL is mitigated. I do not agree. The Commission is required to keep the memoranda listed in I.C. § 5-14-1.5-4 for every meeting. I would suggest the Commission prepare a memoranda-taking template to be used for every meeting, even those which the Secretary cannot or does not attend.

## CONCLUSION

For the foregoing reasons, it is my opinion the Commission has violated the ODL by failing to keep the required meeting memoranda.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Clyde South, Knightstown Plan Commission