

August 30, 2005 Alleged Violation of the Open Door Law by the Elwood Community School Corporation "Elementary Task Force"

August 30, 2005

Sent Via Facsimile

Edward A. McCormick
2001 South L Street
Elwood, IN 46036

Re: Informal Inquiry Response; Alleged Violation of the Open Door Law by the Elwood Community School Corporation

Dear Mr. McCormick:

You filed a formal complaint with the Office of the Public Access Counselor on August 3, 2005. You alleged violations of the Open Door Law for meetings through June 27, 2005. Under IC 5-14-5-7, a person filing a formal complaint must file the complaint not later than thirty (30) days after the denial. Although your complaint was untimely, I may issue an informal inquiry response. Pursuant to Ind.Code 5-14-4-10(5), I am issuing this letter in response to your complaint.

You complain that seven (7) executive session meetings of the Elwood School Corporation elementary task force took place from November 17, 2004 to June 27, 2005. You believe that the executive sessions were not held for any of the reasons for which executive sessions may be held. You allege that the superintendent justified the need to meet in executive session because the task force may have wanted to discuss personnel matters and did not want the public there.

You enclosed copies of the notices and the memoranda from each of these executive sessions. I sent a copy of the complaint to the Elwood Community School Corporation (hereinafter, "school corporation") and invited comment. I received a letter on August 16, 2005 from Bud Badger, President of the Board of School Trustees. I did not detect in his letter any explanation of how the elementary task force could justify meeting in executive session. Rather, Mr. Badger explained that the meetings were announced in advance and an agenda prepared and mailed to the local newspaper.

I called and spoke with Superintendent Thomas Austin regarding the school corporation's position. He confirmed that the seven meetings of the elementary task force were in fact executive sessions held outside of the public. He also stated that the elementary task force went into executive session because it anticipated that personnel-related matters, such as grade reassignments for teachers, might come up, and those matters should not be discussed in public. He told me that the task force is not a recommending body, but did compose a position paper that was presented to the full board in a public meeting.

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, except as provided in section 6.1. Ind. Code 5-14-1.5-3(a). A governing body may be a committee that is appointed by the governing body or its presiding officer, to which authority to take official action on public business has been delegated. IC 5-14-1.5-2(b)(3). The school corporation has not disputed that the elementary task force is a governing body, and its meetings subject to the Open Door Law.

Under IC 5-14-1.5-6.1(b), a governing body may meet in executive session for one or more of the purposes set out therein. There are fifteen discrete purposes for which an executive session may be held. Executive sessions are exceptions to the general rule of openness, and as such, the instances are to be narrowly construed. IC 5-14-1.5-1. There are several executive session instances that involve what may be characterized as "personnel" matters.

Notice of the date, time and place of an executive session must be posted at least 48 hours in advance of the meeting. IC 5-14-1.5-5(a). In addition to the date, time and place of the meeting, the notice for an executive session must state the subject matter by *specific reference* to the enumerated instance or instances for which executive sessions may be held under subsection 6.1(b). IC 5-14-1.5-6.1(d). This office has stated many times that this means that a notice must contain the citation and the text of the executive session instance; the notice may not just state "personnel issues."

In reviewing the notices, I observed that many of the notices contain citations to section 6.1(b), but the text of the notice states "personnel" or "collective bargaining", or both. The notices of these executive sessions are not in compliance with the Open Door Law, because they do not recite the precise text of the executive session instance. However, the real issue is whether the elementary task force could exclude the public from its meetings in the first place, based on the purposes for which it actually met.

Interestingly, the memoranda that you provided from those meetings contained detailed descriptions of the discussion, which is unusual for executive session memoranda. In fact, I was confused whether these could have been executive session memoranda, but the superintendent assured me that they were. The memoranda did not contain any mention of the personnel or collective bargaining-related discussions. Rather, the discussions centered on the charge of the task force, which was to investigate the possibility of converting the existing elementary grade configuration to a "primary/intermediate configuration." See Minutes of November 17, 2004 meeting. Memoranda for an executive session must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. IC

5-14-1.5-6.1(d). Further, the governing body must certify by a statement in the memoranda and minutes that no subject matter was discussed in the executive session other than the subject matter specified in the public notice. IC 5-14-1.5-6.1(d).

The memoranda indicate, and the superintendent confirmed, that the elementary task force discussed matters other than those provided in the executive session statute. Further, discussions regarding grade reassignments of teachers that could occur as a result of some action taken by the task force or full school board are not one of the executive session instances. Rather, the Open Door Law provides only limited, narrow personnel-related actions that may be taken in executive session, such as interviewing prospective employees and discussing specific employee misconduct. *See* IC 5-14-1.5-6.1(b)(5); IC 5-14-1.5-6.1(b)(6). Also, collective bargaining discussions are for strategy purposes only. IC 5-14-1.5-6.1(b)(2)(A). It is difficult to see how the elementary task force, not even a recommending body, could engage in legitimate strategy discussions regarding collective bargaining.

I find that the elementary task force of the Elwood Community School violated the Open Door Law when it met in executive session on seven occasions between November, 2004 and June, 2005. These violations of the Open Door Law are actionable under IC 5-14-3-7(a). If you prevail in an action under IC 5-14-3-7(a), you would be entitled to attorney fees, court costs, and other reasonable expenses of litigation because you sought and received this informal inquiry response. *See* IC 5-14-1.5-7(f).

Sincerely,

Karen Davis
Public Access Counselor

cc: Superintendent Thomas Austin