

August 16, 2006

L'Sana DJahspora
501 E. 52nd Avenue
Gary, IN 46410

Re: Formal Complaint 06-FC-124; Alleged Violation of the Access to Public Records Act and Open Door Law by the Lake County Board of Elections and Voter Registration

Dear Mr. DJahspora:

This is in response to your formal complaint alleging that the Lake County Board of Elections and Voter Registration (“Board”) violated the Access to Public Records Act and the Open Door Law by refusing your request for minutes of a meeting and holding an illegal meeting. I find that the Board denied your request for copies of minutes in violation of the Access to Public Records Act, but did not hold an illegal meeting.

BACKGROUND

You have filed a formal complaint with the Office of the Public Access Counselor, alleging that the Board denied you copies of minutes of the June 2006 Board meeting. The Board also denied your request for “scheduled hearing dates for election violations” you reported at the May 2006 Board meeting. The Board denied you the minutes because the Board had not approved the minutes of the June meeting at the time of your request on July 6. In addition, you allege a violation of the Open Door Law because you contend that the official hearing dates and times have to be set at a prior meeting of the Board; hence, the Board’s July 18 meeting was illegal.

I sent a copy of your complaint to the Board. The Board through its counsel David Saks wrote a letter in response to your complaint, a copy of which is attached to this advisory opinion. The Board stated that it has a designated form to submit record requests, which you did not use. You did submit a request in writing to Assistant Director Michelle Fajman. The request was “not processed under the [Access to Public Records Act]” as would have been the case had you

followed the requirement that a request form be used. As a result, you received an oral response. The Board's oral response was that no records existed. There were no minutes for the June 2006 meeting until July 18, 2006, when they were approved by the Election Board. The agenda for the July 18 meeting was created and posted pursuant to the Open Door Law on July 12, 2006. The list was created and posted as provided by law. Thus, the individual speaking with Mr. DJahspora at the counter told him that there was nothing that could be given to him.

ANALYSIS

Access to Public Records Act

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." IC 5-14-3-1.

The Board is clearly a public agency for the purposes of the APRA. IC 5-14-3-2(1). Accordingly, any person has the right to inspect and copy the public records of the Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. IC 5-14-3-3(a). A request for a record may be required to be on or in a form provided by the public agency. IC 5-14-3-3(a)(2).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. IC 5-14-3-9(b). If a request is hand-delivered, a denial occurs 24 hours after the agency fails to respond. IC 5-14-3-9(a). If the public agency denies a written request for records, the public agency is required to deny the request in writing by including a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record. IC 5-14-3-9(c).

The Board has stated that you received an oral response that no records existed that were responsive to your request, although the Board implied that it owed you no written denial because your request was not on the form designated by the public agency. In the event that you refused to submit your request on the Board's form, the Board could tell you or write you that the request must be submitted on the form, providing a copy of the form. In any event, the Board told you in person that it did not have any responsive records, and if true, this response would have been adequate under the APRA.

However, you did not make your request for minutes contingent on receiving only Board-approved minutes. Memoranda from a meeting are required to be maintained during the meeting. IC 5-14-1.5-4(b). Further, 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. IC 5-14-1.5-4(c). Draft minutes are a disclosable public record. Hence, the Board's statement to you on July 6 that minutes from the June meeting did not exist was a denial of access if the Board had draft minutes of the meeting. Board approval of minutes is not a prerequisite to making those minutes available for inspection and copying.

If there was a draft document such as an agenda that showed the dates and times of upcoming hearings of the Board, those too would have been disclosable. It is possible that the agenda showing the upcoming hearing dates and times did not exist on July 6 when you requested the record. If not, no denial of access would have occurred with respect to any document other than the June meeting minutes that showed upcoming hearing dates and times.

Open Door Law

You surmise that if the Board had *not* set the hearing dates and times, including the July 18 meeting, at the June 2006 meeting, the July 18 meeting was illegal because it was held without public notice. You do not include any citation to authority for this proposition.

Under the Open Door Law, 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. IC 5-14-1.5-5(a). Public notice shall be given by posting a copy of the notice at the principal office of the public agency holding the meeting, or, if there is no principal office, at the building where the meeting is to be held. IC 5-14-1.5-5(b). A governing body is not required to post notice for a reconvened meeting 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. IC 5-14-1.5-5(a).

You claim that the Board had to set official hearing dates at the June 2006 meeting. The Board stated that notice of the July 18 meeting was posted on July 12, more than 48 hours in advance of the meeting. Unless a statute sets more stringent requirements for notice of hearings conducted by the county election boards, the Open Door Law would apply. The Open Door Law permits but does not require a governing body to dispense with notice when the governing body has announced the reconvened meeting and recorded the date, time and place of the reconvened meeting in the minutes. The Board posted notice 48 hours in advance of the July 18 meeting. Also, there is no indication that the July 18 meeting was reconvened from the June meeting. Accordingly, the notice posted on July 12 was sufficient under the Open Door Law. You have not sustained your allegation that the July 18 meeting was held illegally.

CONCLUSION

For the foregoing reasons, I find that the Lake County Board of Elections and Voter Registration denied you the minutes of the June 2006 meeting. However, the Board did not hold an illegal meeting on July 18, 2006.

Sincerely,

Karen Davis
Public Access Counselor

cc: David Saks