

July 12, 2006

Kelly Catanzarite
P.O. Box 10008
South Bend, IN 46680

Rosemary Penn
224 E. David Street
South Bend, IN 46637

Michael G. Schalk
138 Murray Street
South Bend, IN 46637

*Re: Formal Complaint 06-FC-96; Alleged Violation of the Open Door Law by the
Roseland Town Council*

Dear Mr. Schalk and Ms. Penn and Ms. Catanzarite:

This is in response to your formal complaints alleging that the Roseland Town Council (“Council”) violated the Open Door Law by removing you from a meeting. I find that the Council may deny a person the right to observe and record a meeting only if the person’s removal from the meeting is reasonable under the circumstances.

BACKGROUND

You have filed these formal complaints with respect to a June 8, 2006 meeting of the Council in which several persons were removed from the meeting or prevented from returning to the meeting. Ms. Catanzarite alleged that Town Council President Dorothy Snyder announced during the meeting that anyone who stepped outside the meeting room would not be allowed to return to the meeting. Ms. Catanzarite alleges that four “officers” were instructed to enforce this new directive. The officers refused people access to the meeting in accordance with this directive. In addition, when questioned about the policy of not allowing persons who left the building during the recess back in, Ms. Snyder amended the policy to state that persons who left

before the recess were not allowed to return, but those who left the building during recess could return to the meeting.

According to Ms. Penn, she was escorted out of the building at the Council President's direction on June 8, although Ms. Penn had only turned in her seat to determine where a noise had come from. She alleges that she did not say anything. Mr. Schalk confirms Ms. Penn's version of events. When Mr. Schalk spoke up to protest Ms. Penn's removal, Mr. Schalk was also removed, in accordance with the Council's policy. No warning was issued prior to his removal, according to Mr. Schalk.

I sent a copy of the three complaints to the Council. Council Attorney Edward Hearn wrote a letter explaining the Council's actions. I have enclosed a copy of the letter for your reference. Mr. Hearn stated:

"First, you should understand that the Roseland Council Meetings have repeatedly been the subject of disruptive behavior by members of the audience. At one meeting within the last year, it took over two hours to establish order so that the Council could conduct business. Nearly every meeting of the Council has an occurrence where someone attempts to disrupt the conduct of the Council's business. Some meetings have been required to be cancelled entirely due to disorderly conduct by the audience. Accordingly, Mrs. Snyder has routinely admonished all audience members at the beginning of meetings of the Town Council that Robert's Rules of Order are following by the Council. This occurred at the beginning of the June 8 meeting as well. All three of these Complaints (sic) are very familiar with the fact that disruptive outbursts at Council Meetings will result in expulsion from the Meeting by the Chairman as a violation of these Rules."

With respect to the individual complainants, Mr. Hearn stated the following:

"Rosemary Penn: President Snyder presided at this meeting of the Town Council and has indicated that she heard a disturbance in the audience that came from the direction of Mrs. Penn. Mrs. Snyder has indicated that she observed, at that moment, Mrs. Penn turned around in her seat and appeared to be speaking to the person behind her. Mrs. Snyder made the determination that she believed Mrs. Penn to be speaking without being recognized by the Chair in direct violation of Robert's Rules of Order. Accordingly, Mrs. Penn was declared to be out of order by the Chair and was directed to be removed from the meeting by the Sargeant-At-Arms." Mr. Hearn further explained that Robert's Rules of Order provides that all rulings of the Chair may be appealed by one of the members of the Council. However, none of the other council members challenged the Chair's ruling with respect to Ms. Penn.

"Michael Schalk: Mr. Schalk admits in his complaint that he spoke without being recognized by the Chair. He was out of order in direct violation of Robert's Rules...Roseland disputes Mr. Schalk's statement that he was not warned. This is not correct." Mr. Hearn also stated that Mr. Schalk has repeatedly been removed from prior Council meetings for outbursts.

“Kelly Catanzarite: Ms. Catanzarite appears only to complain about a ruling that President Snyder made during this meeting as a result of multiple individuals walking in and out of the meeting and speaking on their way out and then on their way into the meeting in the hallway outside the Council Chamber. As a result of these disruptions, Mrs. Snyder announced that anyone else who left the Council Chamber and exited the building would not be allowed to return. To Mrs. Snyder’s knowledge, no one who left thereafter attempted to re-enter the meeting and Ms. Catanzarite does not claim that this was the situation for her. Moreover, restroom facilities are present inside the Council Chamber and would have been available for use at any time during the meeting or during any recess. Mrs. Snyder did also announce that anyone who left the Council Chamber during one particular recess would not be allowed to return. After consultation with [Mr. Hearn], Ms. Snyder quickly rescinded this order. No one who left during the recess was prevented from returning. Ms. Catanzarite was ejected later in this same meeting for disrupting the meeting by speaking out of turn and without recognition by the Chair. However, it does not appear that she complains of this ruling according to the Complaint Form filled out by her.”

ANALYSIS

The intent and purpose of the Open Door Law is 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." Ind. Code § 5-14-1.5-1. The provisions of the Open Door Law are to be "liberally construed with the view of carrying out its policy." IC 5-14-1.5-1. The Council is a governing body subject to the Open Door Law. IC 5-14-1.5-2(a)(2). Therefore, all meetings of the Council "must be open at all times for the purpose of permitting members of the public to *observe and record* them." IC 5-14-1.5-3 (emphasis added). Although the Open Door Law provides the public with an opportunity to attend and record public meetings, it does not require the governing body to provide the public with an opportunity to speak at public meetings.

You have not complained that you had a right to address the Council at the June 8 meeting, and indeed, the Open Door Law guarantees no such right. Your complaints are directed to what you perceive to be an unreasonable use of the Council’s discretion to conduct its meetings, particularly with respect to the behavior of those members of the public in attendance. In this respect, the information that I have before me is not crystal clear as to what transpired with any of you.

I have stated in the past that a governing body may regulate the conduct of individuals in attendance at a public meeting so that the governing can conduct the public business free of undue interference and interruption. Indeed, the right of the public to observe and record a meeting could be denied if a governing body failed to maintain decorum during the meeting. If a person attending a public meeting continues to disrupt the business of the governing body and refuses to desist from that behavior after being requested to, it is not a violation of the Open Door Law to have that person removed, in my opinion.

However, it seems obvious that unbridled discretion of the governing body to remove persons from a public meeting could work to deprive that person of his or her right to attend a

meeting under the Open Door Law. Hence, the governing body must exercise its discretion in a manner that is not arbitrary and capricious or unreasonable.

Here, the Council has urged me to consider Robert's Rules of Order, which have been invoked to maintain order during the Council's often-contentious meetings. The Council has not provided me with a specific rule or rules, and in any case, the Open Door Law does not endorse or prohibit a body from following Robert's Rules of Order to conduct meetings under the Open Door Law. I would not offer any opinion as to whether the Council has properly followed those rules, since my purview is solely the Open Door Law.

It is my opinion that if one of the complainants disrupted the meeting by speaking out to the Council without being recognized by the Council, the person could be removed after being warned to desist. This action would not be a violation of the Open Door Law. It is not clear to me that all the complainants created a disruption. By her account as well as the Council's, it appears that Ms. Penn may have been speaking to someone in the audience, if at all. The Council does not state that Ms. Penn was responsible for any loud noise or outburst, only that she was turned in her seat speaking with someone without being recognized by the Chair. In addition, as the Council appears to concede, refusing to readmit individuals who leave the building during a recess of Council is not tailored to prevent or prohibit disruptions during a meeting. The fact that individuals heeded Ms. Snyder's warning not to return does not validate her action under the Open Door Law.

As well, a ruling from the Council that states that no one may return to a meeting once he or she leaves Council Chambers during a meeting cannot be applied absent otherwise disruptive behavior. Although the Council may prefer strict bright-line rules, it is my opinion that requiring someone's involuntary removal during a meeting that the body is required to conduct in the open must be done sparingly and in circumstances that warrant such removal in order to maintain order during the proceedings.

CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council may deny a person the right to observe and record a meeting only if the person's removal is reasonable under the circumstances and is necessary to prevent disruption of the meeting.

Sincerely,

Karen Davis
Public Access Counselor

cc: Edward W. Hearn