



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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February 9, 2011

Mr. Eric M. Cox
The Banner
24 N. Washington St.
P.O. Box 116
Knightstown, IN 46148

Re: Formal Complaint 11-FC-19; Alleged Violation of the Open Door Law by the Charles A. Beard Memorial School Board Finance Committee

Dear Mr. Cox:

This is in response to your formal complaint on behalf of *The Banner* alleging the Charles A. Beard Memorial School Board Finance Committee ("Committee") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* My office forwarded a copy of your complaint to the Committee, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that the Committee provided *The Banner* with a schedule of its meetings for the 2010-2011 school year. All but one of the meetings were scheduled for 9:00 a.m. on the Monday two days prior to the school board's monthly meetings, which are held on the third Wednesday of each month. According to the schedule, the Committee was supposed to hold its December 2010 meeting on December 13th.

A few minutes before 8:30 a.m. on December 13th, the Committee facsimiled a notice to *The Banner* stating that the Committee's meeting would instead be held at 9:00 a.m. on Wednesday, December 15th. At the regular school board meeting on December 15th, however, you learned that the Committee had gone ahead and met on December 13th as originally scheduled. The board president and superintendent informed you that the revised notice had been sent due to a belief that a scheduling conflict would prevent one Committee member from attending on December 13th. That conflict did not occur, however, and the Committee proceeded to meet at the originally scheduled date and time on December 13th.

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. Accordingly, except as provided in section 6.1 of the ODL, 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). Based on the apparent efforts of the Committee to comply with the ODL, it appears that the Committee is a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

The ODL requires that 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). The ODL does not specify what procedures must be followed when cancelling or rescheduling meetings. However, it is instructive that the ODL specifies that governing bodies must provide notice of rescheduled meetings 48 hours in advance. In practice, if a governing body reschedules a meeting, the second notice nullifies the first notice. If a governing body wishes to reschedule a meeting that was already rescheduled, it should provide a third notice at least 48 hours in advance.

To apply these principles to the circumstances here, in my opinion the Committee “rescheduled” its December 13th meeting when it sent notice that the meeting would be held on December 15th. For purposes of ODL notice, if the Committee ultimately decided to hold the meeting at a date other than December 15th, the Committee should have provided another notice of that rescheduling. I realize that it was impossible for the Committee to provide 48-hour notice of its December 13th meeting if the Committee decided to proceed with that meeting the same morning. If governing bodies are permitted to cancel or reschedule a meeting and then hold it at the originally scheduled date and time, members of the public who wish to attend the meeting would be confused by the conflicting notices and would likely be deprived of the opportunity to attend the meeting. Because such an interpretation would fail to comport with the ODL’s intent that citizens have the opportunity to attend meetings of the governing bodies of public agencies, it is my opinion that a governing body may not hold a meeting at the originally scheduled date and time if a second notice has already been distributed advertising the meeting’s cancellation or rescheduling. I.C. § 5-14-1.5-1; *see also Op. of the Public Access Counselor 06-FC-179* (Counselor Davis, opining, “I could not condone an action where the governing body intentionally misleads the public by announcing that a meeting is cancelled by indicating it on the posted notice and then holding the meeting anyway....”).

CONCLUSION

For the foregoing reasons, it is my opinion that the Committee violated the ODL by failing to provide notice of its rescheduled December 13, 2010, meeting at least 48 hours in advance.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Jena Schmidt