



Sunshine Laws

Area Agency on Aging
Open Meetings in Iowa

Government belongs to the people

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The Liberties of the People . . .

“The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.”

• *Patrick Henry*

History

Presumption of openness

“Ambiguity in the construction or application of this chapter should be resolved in favor of openness.”

(Iowa Code Section 21.1)

History

First enacted July 1, 1967

Tweaked from the 1970's on

Iowa Public Information Board

Created July 1, 2012 and activated July 1, 2013

To provide “an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22”

But to secure it in “an efficient, informal and cost-effective” process

(Iowa Code Section 23.1)

Governmental Bodies

We believe it [An Area Agency on Aging] to be “a governmental body” and subject to the open meetings requirements. It is a “multimember body”, “formally”, and “directly created” by the Iowa Commission on Aging.

1984 Iowa Op. Atty. Gen. 140, 1984 WL 472994 (Iowa A.G.)

Government Body

Committees created by the boards, councils, commissions, etc., covered by Chapter 21 also are covered by law if

- involve a majority of the members of the governmental body itself, or
- they are formally and directly created by the governmental body and exercise some policy- or decision-making authority.

Government Body

An advisory board, advisory commission, advisory committee, task force, or other body created by

- statute or
- executive order of this state or
- created by an executive order of a political subdivision of this state

to develop and make recommendations on public policy issues.

Iowa Code § 231.33 Area agencies on aging duties

6. Establish an advisory council.

Open Meetings 101

Best Practices

- While some ad hoc committees, advisory board or task forces etc. may not be required to be open, they are often encouraged to do so as a matter of good public policy. Allowing the public to observe the deliberations will add to the “buy in” necessary to enact any decision or recommendation made by the group.

What is a meeting?

Meeting

“...a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter with the scope of the governmental body’s policy –making duties.”

21.2 (2)

House File 2019 -

This bill eliminates the requirement that the open meeting law only applies when such deliberations or actions of a governmental body relate to the governmental body’s policy-making duties.

What is a meeting?

FAQ

Can members get together socially?

Yes, but they cannot discuss business. The Attorney General has said that a gathering becomes a “meeting” when a quorum of officials engage in discussion on matters over which they exercise judgment.

The purpose of the law is to allow citizens to see how their officials arrive at a decision. Citizens need to see the discussion and hear the opinions. Even retreats are public meetings.

What is a meeting?

FAQ

Can members e-mail each other concerning governmental business?

While technically serial e-mailing is not illegal because a quorum is not present, it does violate the spirit of the law. Citizens become suspicious of decisions made at a meeting that are not preceded by discussion.

E-mails concerning public business are public records even if non-public computers, software, tablets or cell phones are used in the communication.

Public Comment

FAQ

Do members of the public have the right to speak at an open meeting?

While most bodies have a time noted on their agendas for public comment, the public has no right to participate in the discussion of an item unless they are on the agenda.

Notice

Meetings must –

Be preceded by a public notice of at least 24 hours giving the date, time, place and a tentative agenda.

The notice must be posted in a prominent place accessible to the public at the government office. If no office is available, notice should be prominently placed where the meeting will be held.

Notice must be sent to any news organization requesting it.

(21.3, 21.4)

Open Meetings 101

Best Practices

- Email a copy to members of the public who request it and place it on your web site.
- Post any notice in an area, door, bulletin board etc. where the public is most likely to see it for **at least 24 hours** preceding a meeting with continuous access if at all possible.

Agenda

FAQ

What needs to be included in the agenda?

Barebones agenda information such as “approval of old minutes, old business, new business” would **not** be sufficient, nor would using the same agenda for meeting after meeting.

Guidelines provided by the Iowa Supreme Court

(KCOB/KLVN v. Jasper County Board of Supervisors, 1991, and Barrett v. Lode, 1999):

- The tentative agenda can be subject to change under certain circumstances.
- The law allows discussion and action on emergency items, but if action can reasonably be deferred to a later meeting, it should be.
- The information on the agenda must be reasonably sufficient to alert interested people as to the subject matter to be considered.
- The agenda must specifically state any issues the board intends to discuss in open or in closed sessions.

Minutes

Minutes

Minutes should show, at a minimum, the date, time and place, the members present and the action taken at any meeting. Votes by each member must be noted individually but a unanimous vote can be so noted as long as all present vote. Minutes become public record and must be published as required by law, in the appropriate newspaper. They can also be made available on- line.

(21.3)

Secret Vote?

FAQ

Can secret or preliminary votes be taken?

No, all votes must be recorded.

Closed Sessions

Closed sessions may be held **only** by the vote in open session of **two-thirds** of the members of the body or all members present and only after citing one of the following reasons-

- To review or discuss a record which is required or authorized by state or federal law to be kept confidential or as a condition to retain federal funding. (a)
- To discuss application for a patent. (b)
- To discuss strategy with counsel on matters that are currently or may imminently be in litigation. (c)
- To discuss contents of a licensing examination, initiate disciplinary investigation or proceeding if the body is involved with licensing or examining. (d)

Closed Sessions

- To conduct a hearing or discuss whether to conduct a hearing to suspend or expel a student unless the student and/or parent wants the meeting to remain open. (e)
- To discuss records concerning security procedures and emergency preparedness for the protection of government employees, visitors, people under the care and protection of the government and its property. (k)
- To discuss patient care quality and process improvement initiatives in a meeting of a public hospital that if disclosed might harm the hospital's competitive position. (l)
- Other sections of the Iowa Code may permit a government agency to close a meeting OR exempt meetings from the requirements of the open meetings law. (For example, Ch. 279 exempts some meetings and records involving the termination of a teacher from the sunshine laws.)

Closed Sessions

Procedure during the closed session-

- No additional topics can be discussed.
- The session must be recorded and minutes must be taken. These records shall be sealed.
- Final action must happen in open session.

Closed Sessions

When can Iowa Code Section 21.5 be used to close an open meeting for an employee evaluation?

For a session to be closed, ALL of the following must occur:

1. The discussion must involve an evaluation of the professional competency of an individual.
2. The discussion must involve consideration of the appointment, hiring, performance, or discharge of the individual.
3. The discussion must be such that if conducted during an open meeting it would cause needless and irreparable injury to that person's reputation AND
4. The individual must request the closed session.

Open Meetings

But perhaps the most important thing to remember-

Nothing in this law requires a governmental body to hold a closed session to discuss or act upon any matter.

21.5(5)

Penalty for Violations of Ch. 21

Penalties for not following these laws 21.6

- A court can issue an injunction ordering a government body to comply, assess damages between \$100 and \$500. (3)(a)
- If a member of a governmental body knowingly participated in a violation, damages increase to \$1,000-\$2,500. (3)(a)
- If found in violation, the member is responsible for payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter(3)(b)

**Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section.

The Public Information Board

The Iowa Public Information Board provides an official, efficient and free legal resource for citizens and government officials with questions about Iowa open meetings and records laws, and for citizens with complaints about alleged violations of the laws. The board is also one of the few such agencies in the nation with the authority to not only advise but to enforce the state sunshine laws.

Chapter 23

The Public Information Board

The nine board members are appointed by the governor subject to confirmation by the Iowa Senate. No more than three members shall represent the media, and not more than three represent cities, counties or other local governments. The members serve staggered four-year terms, and the board is balanced by political party and gender. The board appoints a chair from among its members, and it is authorized to hire at least one employee, an attorney who serves as executive director.

The board is an independent agency.

Chapter 23

The Public Information Board

The board is authorized by statute 23.6 ...

- To issue advice, or declaratory orders with the force of law, regarding the applicability of the open records and open meetings laws.
- To receive and investigate complaints alleging violations of the laws and seek resolution through informal assistance, mediation and settlement.
- If a complaint cannot be resolved informally, and the board has probable cause to believe the law has been violated, to prosecute the government body or official in a contested-case proceeding under the Administrative Procedures Act.

The Iowa Public Information Board

The board is authorized by statute 23.6 ...

- To issue subpoenas to investigate complaints and prosecute cases, and to issue orders with the force of law to require compliance with the sunshine laws.
- To offer training in Chapters 21 and 22 to government bodies, to disseminate information to the public, and to submit an annual report to the governor and Legislature, making recommendations relating to access to government information.

The Iowa Public Information Board

The board does not have jurisdiction over the judicial or legislative branches, or over the governor and governor's office. 23.12

The board also is limited to addressing issues involving Chapters 21 and 22 of the Iowa Code 23.1

Complaints must be made within 60 days of the alleged violation of those laws 23.7 (1)

Declaratory orders issued by the board, determining the applicability of the open meetings or records law to specific fact situations, have the force of law.

The Iowa Public Information Board

Amendments to both Chapter 21 and 22 that become effective July 1, 2013, provide protection to government officials who rely on written advice of the Public Information Board, the attorney general or the government body's attorney.

The board can assess damages, void action taken in violation of the open meetings law, and require a government body or official to take any appropriate remedial action. 23.10(3)(b)

The board does not have the authority to unilaterally remove a person from office, but it may file an action to remove someone from office under Chapters 21 or 22, which include “two strikes and you're out” provisions that direct the court to order the removal of an official upon his or her second violation during a term. 23.10(3)(c)

Chapter 23

The Iowa Public Information Board

Any person, the attorney general or county attorney seeking to enforce open meetings and records laws can bring the complaint before the board, or the individual can bring an action in state district court, as under current law. If more than one party simultaneously brings an action before the board and in court, the court shall stay the case pending resolution of the complaint by the board. A final board order is subject to judicial review.

23.5

Chapter 23

OPENNESS

To repeat –

“Ambiguity in the construction or application of
this chapter should be resolved in
favor of openess.”

Suggested Iowa Resources

Iowa Public Information Board

Website www.ipib.iowa.gov ;

email IPIB@iowa.gov or phone 515-725-1781

The attorney for the government body or
government association

The county attorney

Suggested Iowa Resources

Iowa Office of Citizens' Aide/Ombudsman: 515-281-3592.

Office of the Iowa Attorney General: 515-281-5165 or www.iowaattorneygeneral.gov . The Attorney General's website also includes copies of the office's "Sunshine Advisories" on open meetings and records issues, and outlines of Chapters 21 and 22 with applicable case and AG's opinion citations.

The Iowa Freedom of Information Council: Kathleen Richardson, executive director; 515-271-2295 or kathleen.richardson@drake.edu; www.ifoic.org

Suggested Iowa Resources

Iowa League of Cities: 515-244-7282 or www.iowaleague.org

Iowa State Association of Counties: 515-244-7181 or www.iowacounties.org

Iowa Association of School Boards: 1-800-795-4272 or www.ia-sb.org

Iowa judicial branch: www.judicial.state.ia.us

Thank you.

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