

Citizens' Aide/Ombudsman Office

Overview Open Meetings Law

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Course will cover

- General rule of the Open Meetings Law
- Persons and agencies subject to the OML
- Requirements of closed and open sessions
- Accessibility
- Emergency meetings
- Electronic Meetings
- Minutes
- Who is responsible for training and information
- Violations/Enforcement

The Rules: (21.1 and 21.3)

- "Meetings of governmental bodies shall be preceded by public notice...and shall be held in open session unless closed session is expressly permitted by law." (21.3)
- Declaration of Intent—"This chapter seeks to assure, through a requirement of open meetings...that the basis and rationale of government decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction of application of this chapter should be resolved in favor of openness." (21.1)

To whom does it apply? (21.2)

- Definition of Governmental Body
- Multimember board, council, commission or other governing body of this state or political subdivision expressly created by statute or executive order or political subdivision.
- And, advisory bodies created by the Governor, General Assembly, or other body formally created by statute or executive order or political subdivision to develop and make recommendations on policy making issues.
- And, some intercollegiate athletic bodies as well as non-profits conducting pari-mutual wagering or gaming.

Is it a meeting or ministerial? (21.2)

Three components of a "meeting"

1. Gathering of the majority
2. Where there is discussion, deliberation, or action or recommendations
3. Regarding any matter within policy-making duties

Ministerial Components

1. Purely ministerial or social purposes
2. No discussion "that focuses at all concretely on matters over which they exercise judgment or discretion." *Hettinga*
3. No intent to avoid the purpose of this chapter

Public Notice (21.4)

• **Notice of a meeting shall include the following:**

1. Time, date, place, and tentative agenda
- **Where should it be provided?**
 1. To those who have requested it.
 2. Bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose.
 3. At the principal office of the body and/or the building where the meeting will be held
- **When should it be provided?**
 1. At least 24 hours in advance

Accessibility (21.4)

- Each notice should be easily accessible to the public
- Each meeting shall be:
 - At a place reasonably accessible to the public
 - At a time reasonably convenient
- Special access to the meeting should be granted to persons with disabilities

Emergency Meetings (21.4)

- Only when 24-hour notice is impossible or impractical.
- And, you must provided as much notice as reasonably possible.

Departure of the normal requirements, such as emergency meetings or meetings that are not accessible to the public should only take place when there is good cause and the nature of the good cause is justified in the minutes.

Electronic Meetings (21.8)

- Only when impossible or impractical.
- Only when there is public access to the conversation (unless closed session).
- Must be preceded by notice.
- Articulate all the reasons for an electronic meeting in the minutes. Why was a gathering in-person impossible or impractical?

Minutes (21.3, 21.4, 21.8)

- Time, date, place, persons present
 - Action taken
 - How each member voted
 - There is a historical value of documenting more information
 - Publishing minutes (only required by some)
 - If condensed identify them as such
 - Within 15 days
- And, when appropriate the minutes should state:
- Why an electronic meeting was necessary
 - Section used for going into closed session
 - Why 24-hours notice was not possible
 - Why the meeting was not accessible

Meeting Decorum (21.7)

- Anyone may record an open session.
- The government body may make and enforce reasonable rules to keep the meeting orderly and free from interference or interruption.

Who can speak at a meeting?

- The body may allow members of the public to speak.
- Oftentimes, bodies provide 2-5 minutes for the public to speak at the beginning of the meeting or on a particular item.

Going into Closed Sessions (21.5)

- Exempt Session (limited to 21.9 and 20)
- Closed Session (all others)
- May hold a closed session only to the extent necessary for one of twelve sections in Iowa Code section 21.5(1)(a-l).
- By affirmative vote of 2/3 of body or all members present
- State publicly and in minutes the "specific exemption" (a-l)

In the Closed Session (21.5)

- Audio record the meeting
- Keep minutes
- Maintain minutes and audio recording for at least one year (5 years for cities, 372.13)
- Stay on topic!

Closed Session Examples

- A. To discuss records otherwise confidential by law
- C. to discuss strategy with counsel regarding litigation or where litigation is imminent.
- I. to evaluate the professional competency, when the individual requests the closed session, and to prevent needless and irreparable injury to that individuals reputation.
- J. To discuss the purchase of particular real estate where premature disclosure would increase purchase price.

After the Closed Session (21.5)

- Final action shall be done in open session unless some other provision of the Code expressly permits such actions.
- Final action does not include negotiation strategy by government body and attorney.
- Public does not get access to the minutes or recording; however, the person who would otherwise have access to the closed session does get access to minutes and recording even though they were not present for the closed session.
- Citizens' Aide/Ombudsman may review for administrative investigation.
- Court may review and permit public access.

Violations

- Any aggrieved person, taxpayer or citizen of Iowa, County Attorney, or the Attorney General's Office may seek judicial enforcement.
- **If a violation is found, the court shall:**
 - Order compliance or refrain from future violations.
 - Assess the members damages of not more than \$500 nor less than \$100.
 - Order payment of all costs and reasonable attorney fees in trial and appellate courts.
 - Order removal from office for the third violation with damages.
 - Void any action taken, if suit brought within six months.

Violations

- **Violators shall not be assessed damages if:**
 - the person voted against the closed session
 - had good faith reasons to believe in compliance.
 - relied upon a court decision or the opinion of the attorney general or the attorney for the body.

Who is responsible for training?

- Iowa law (21.10) requires information to be provided by the authority which appoints members of governmental bodies about Chapters 21 (Open Meetings) and 22 (Public Records).

Things to Remember

- Establish policies to ensure compliance.
- Provide notice, take minutes, and allow public access.
- In open session state the specific exemption for closed session.
- When in doubt get some legal advise, seek formal opinion of the attorney general.

Thank you

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