Understandings and Implications

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“Official Meetings Open to Public”
Iowa Code Section 21

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Intent – Declaration of Policy

Iowa Code Section 21.1

“This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.”
Definitions
I.C.A. 21.2

1. “Governmental body” means:

   b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
      ◦ School Boards are the governing body of a political subdivision of the State of Iowa.

   h. 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.
Committees

A word of caution regarding committees:

If the Open Meetings Law applies, committees cannot deliberate or act in private, unless there are grounds to close a session.

Committees that make recommendations, but otherwise lack decision-making authority, are not subject to the Open Meetings Law (with narrow exceptions as explained below.)

Certain advisory committees are subject to the Open Meetings Law because they are specifically included by statute, even though they lack decision-making authority. Any “advisory body” expressly created by statute, executive order, formal resolution or ordinance of a political subdivision (e.g., a city council, school board, or county board of supervisors) to develop and make recommendations on public policy issues will be subject to the open meetings rules.

Any committee that consists of a quorum of the full Board also triggers application of the Open Meetings Law, because a quorum of the Board has decision-making authority to act for the full body.
2. “Meeting” means 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 within the scope of the governmental body’s policy-making duties.

- Note: a quorum for purposes of conducting Board business is a majority of members. I.C. 279.4
Definition-Meeting

To constitute a “meeting”, the following elements must be present:
- a gathering either informal or formal (including by electronic means);
- of a majority of the members of a Board and
- deliberation or action upon any matter within the scope of the Board’s policy-making duties.

- Excluded are gatherings for purely ministerial or social purposes where there is no discussion of policy or no intent to avoid the purposes of the law.
Meetings

Although a gathering for ‘purely ministerial purposes’ may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body’s policy making duties. Caution is warranted in these situations because the nature of any such gathering will change if either ‘deliberation’ or ‘action’ occurs.

A ‘meeting’ may develop if a majority of the members of a Board engage in any discussion that focuses at all concretely on matters over which they exercise judgment or discretion.

A Note Regarding Email Communications: where the “Reply All” feature is used, or there is a series of emails that involves a quorum of Board members, this may be found to constitute a “meeting” which would violate the Open Meetings Law.
3. “Open session” means a meeting to which all members of the public have access.

Public “access” does not equate to public “participation.” There is no legal right for an individual to speak at a Board meeting, “open” means that the public is able to observe and listen to the proceedings.
Meetings

I.C.A. § 21.3

Meetings must be preceded by public notice and shall be held in open session unless closed sessions are expressly permitted by law.

Minutes must be kept of all meetings showing the date, time and place, the members present, and the action taken at each meeting.

The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.
Public Notice

I.C.A. § 21.4

Generally, the Board shall give notice of the time, date, and place of each meeting including a reconvened meeting, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information.

Reasonable notice shall include advising the news media who have filed a request for notice with the Board and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the District, or if no such office exists, at the building in which the meeting is to be held.
Public Notice

Notice shall be given at least 24 hours prior to the commencement of any meeting unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.

Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.

When it is necessary to hold a meeting on less than 24 hours’ notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.
Public Notice - Exceptions

Exceptions to Notice requirement:

A meeting **reconvened within 4 hours of the start of its recess**, where an announcement of the time, date, and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting **and there is no change in the agenda**.

Note; If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by the Board, compliance with that section shall constitute compliance with the notice requirements of Iowa Code Ch. 21.

◦ (Example: Teacher termination hearings are governed by §§ 279.15 to 279.19 and therefore do not require notice pursuant to the media under the Open Meetings Act.)
Public Notice – Tentative Agendas

A tentative meeting agenda must be provided as part of the Public Notice requirement. (This applies even to Closed Sessions).

That agenda must provide information reasonably sufficient in the context of surrounding circumstances to alert interested people as to the subject matter to be considered at the meeting of the Board.

Board Policy will likely guide how the meeting agendas are prepared and to what level of specificity.

Although a Board may discuss and take action on emergency items that are first ascertained at the meeting, if the item can be reasonably deferred, it should be.

The IASB has sample agendas available on its website:

www.ia-sb.org
A Board may hold a closed session only by affirmative public vote of either two-thirds of the members or all of the members present at the meeting.

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Closed Session

Although nothing in the statute requires a school board to hold a closed session to discuss or act upon any matter, there is generally good reason to do so when one of the allowed reasons exists.

The specific reason for holding the closed session must be announced publicly in open session and entered into the minutes.

Discussion at the closed session can only relate directly to the specific reason announced as justification for the session.
Closed Session-Allowable Reasons

A closed session may only be held to the extent necessary for the reasons set out in Iowa Code Section 21.5. Some of those reasons generally applicable to School Boards are:

- To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for possession or continued receipt of federal funds (e.g. education records protected by FERPA).

- To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the Board in that litigation.
Closed Session-Allowable Reasons

- To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

- To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual’s reputation and that individual requests a closed session. (All of these factors must be met for the meeting to be closed. There is no requirement that the individual at issue be allowed into the meeting, but he or she could be invited by the Board).

- To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the Board would have to pay for that property or reduce the price the Board would receive for that property. NOTE: The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
Closed Session-Allowable Reasons

- To discuss information concerning security procedures or emergency preparedness information developed and maintained for the protection of employees, visitors, students, or property under the jurisdiction of the Board, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.

  ◦ Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures to attack.

Note: for the exception to apply, the Board needs to have adopted a rule or policy identifying the specific records or class of records to which this subsection applies.
Closed Session – Who can attend?

Only those persons necessary to the discussion can be in attendance. The Board has the discretion to determine who this is. It can include the Board’s attorney when discussing litigation that is pending or imminent where disclosure otherwise would likely prejudice or disadvantage the Board.

Staff may be included as needed, for example, to present investigative findings or other confidential records necessary to the discussion.

Note: there is some guidance from the A.G.’s office that a school board member who is absent during a closed session that the member would have had the right to attend, subsequently may obtain and review the minutes and recording of the session without resort to a court order.
Closed Session-Votes in Open Session

The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes.

- The Board shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

Final action on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.
Closed Session - Minutes

Detailed minutes of all discussion, persons present, and action occurring at a closed session must be kept and an audio recording of the session must be kept.

The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection. [Note: however, that upon order of a court in an action to enforce the Open Meetings law (and sometimes in other litigation), the minutes and audio recording shall be unsealed and examined by the court. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of the law. The court will balance the prejudicial effects of any disclosure against the probative value of the record as evidence in the litigation.]

The minutes and audio recording of any closed session must be kept for a period of at least one year from the date of the meeting, except as otherwise required by law.

Remember: there is no guarantee of confidentiality for closed sessions.
Rules of Conduct at Meetings

The public may use cameras or recording devices at any open session.

However, a Board may make and enforce reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

The process for allowing public comment is generally managed by Board policy/procedure.
Electronic Meetings

A Board may conduct a meeting by electronic means only in circumstances where such a meeting in person is **impossible or impractical** and only if the Board complies with all of the following:
Electronic Meetings-Requirements

a. Provide public access to the conversation of the meeting to the extent reasonably possible. E.g. Speaker phone or video-conference technology. (This will not be required or may be discontinued when the meeting is or moves into a closed session).

b. Comply with the Public Notice provisions. (For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation).

c. Keep minutes of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

The statute governing "electronic meetings" does not apply when less than a quorum participates electronically, but nothing in the law prohibits a single member from participating this way. The governmental body should assure that any member participating electronically is audible and is accountable to the public for all discussion and votes. You will also want to see if your Board Policy addresses this.
Exemptions from Open Meetings Law

A meeting of a Board to discuss strategy in matters relating to employment conditions of employees who are not covered by a collective bargaining agreement. I.C. 21.9

Certain negotiating sessions or a strategy meetings when the meeting falls within the exemption of the Public Employment Relations Act. I.C. 20.17(3)

Hearings to discuss with a teacher a superintendent’s recommendation to terminate a contract with that teacher. I.C. 279.15

Meeting between the Board and its superintendent to discuss reasons for a proposed termination of contract. I.C. 279.24

If exempt, the open meetings requirements of notice, minutes, are not mandatory, however, there may be other reasons to provide notice (avoiding the appearance of meeting “behind closed doors.”)
Implications

ENFORCEMENT/PENALTIES
Enforcement

Any of the following can take action to enforce the Iowa Open Meetings law:

1. Any aggrieved person.
2. Any Iowa taxpayer.
3. Any citizen of the State of Iowa.
4. The Iowa Attorney General.
5. The County Attorney.
Enforcement- Penalties

Upon a finding by the preponderance of the evidence ("more likely than not") that a Board has violated the Open Meetings law, a court:

Shall assess *each member* of the Board who participated in its violation damages in the amount of not more than $500 and not less than $100.

However, if a member of the Board *knowingly* participated in such a violation, damages shall be in the amount of not more than $2500 dollars and not less than $1000.

The court will also award costs and attorney fees to a party who is successful in proving a violation of the law. Those cost and fees are to be paid by the Board members who have been assessed damages as stated above.
Enforcement—Additional Penalties

If the violation involved a closed session, the court shall void the action taken if the enforcement action is brought within 6 months and public interest in open meetings outweighs public interest in sustaining the action taken in the closed session.

A court shall order the removal of a member of a Board from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member.

(2 strikes and your out rule).

A court may issue a mandatory injunction punishable by civil contempt ordering the members of the offending Board to refrain for one year from any future violations of this chapter.

Note: Ignorance of the legal requirements of this chapter is no defense to an enforcement proceeding. If there is any doubt about the legality of closing a particular meeting, the Board should seek a formal opinion from an attorney for the Board, the attorney general, or the IPIB. The Board would also be authorized to bring suit in the district court of the county of its principal place of business to ascertain the propriety of any such action.
Enforcement—When Penalties Are Not Imposed

A member of a Board found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session;

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter; or
Enforcement- Penalties Not Imposed

(3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa Public Information Board (after July 1, 2013), the Attorney General, or the attorney for the Board, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa Public Information Board, the Attorney General, or the attorney for the Board, given in writing.

Note: A Board may not reasonably rely on advice of counsel to go into closed session where it failed to follow the proper procedures to close the meeting and made no effort to record the session. (Iowa Ct. of Appeals case 1999).
Know what a “meeting” is under the law and avoid situations where a “meeting” might inadvertently be created. (Be cautious about using email to discuss school business. Do not use “Reply All” when corresponding via email with a majority of other Board members to discuss policy matters).

Work with your Board Secretary and Superintendent to understand the procedural aspects of Board meetings, agendas, public access, closed sessions and Board minutes.

Understand the Board policies that might guide your meeting process.

When in doubt about the appropriateness of a closed session, obtain a written opinion from an appropriate party such as your Board attorney.

Remember the companion law to the Open Meetings Law is the Open Records Law.

Finally, keep in mind that the public policy of Iowa’s Sunshine Laws is to promote openness in government.
Resources

Board Superintendent
Board Secretary
Board Attorney
Iowa Association of School Boards
Iowa Public Information Board  https://www.ipib.iowa.gov
Iowa Attorney General Sunshine Advisories  https://www.iowaattorneygeneral.gov/about-us/sunshine-advisories
Questions?
Thank you!

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