

PROVIDING QUALITY LEGAL SERVICES TO CITIES ACROSS IOWA

Avoiding Liability Issues in Municipal Government: The Open Meetings Law

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- 28E and Other Sharing Agreements
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HOW TO AVOID A LAWSUIT UNDER THE OPEN MEETINGS LAW



Patrick J. O'Connell, Lynch Dallas, P.C.



WARREN COUNTY CASE



IOWA CODE CHAPTER 21



Chapter 21 is commonly called the “Open Meetings Law.”

“This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of government 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.”

IMPORTANT TENANTS OF CHAPTER 21

Public Notice: Chapter 21.4(1) and (2a)

“...A governmental body shall give notice of the time, date, and place of each meeting... And the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information.”

“...shall be given at least 24 hours prior to the commencement of any meeting...”



IMPORTANT TENANTS OF CHAPTER 21, CONTINUED

Chapter 21.3 – Meetings of Governmental Bodies
“...shall be held in *open session* unless” the closed sessions is “expressly permitted by law.”



**Secrecy is the thing
that makes every evil
far worse than it
would have been.**

IMPORTANT TENANTS OF CHAPTER 21, CONTINUED

Chapter 21.5 Closed Session

“A governmental body may hold a closed session only by affirmative public vote of **either two thirds of the members of the body or all of the members present at the meeting.**”

“**only to the extent...necessary**” for the *enumerated reasons*.



IMPORTANT TENANTS OF CHAPTER 21, CONTINUED



Commonly Allowed Closed Session under 21.5(1):

“c. 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 governmental body in that litigation.”

“i. 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.”

IMPORTANT TENANTS OF CHAPTER 21, CONTINUED



Commonly Allowed Closed Session under 21.5(1):

“j. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of the session closed under this paragraph shall be available for public examination when the transaction discussed is completed.”

COMMON ERRORS CITIES MAKE UNDER CHAPTER 21

Voting (21.5 (2)):

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



COMMON ERRORS CITIES MAKE UNDER CHAPTER 21

Non-germane Discussion (21.5(2)):

"The governmental body 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."



COMMON ERRORS CITIES MAKE UNDER CHAPTER 21



Rolling Caucuses: Small groups of council members meeting in secret, deliberating or voting, and then meeting with other council members and repeating the process. This is ILLEGAL.

Why?

A “meeting” is “A gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body whether there is **deliberation** or **action** upon any matter within the scope of the governmental body's policymaking duties.”

“...A governmental body shall give **notice** of the time, date, and place...” Chapter 21.4(1) and (2a).

COMMON ERRORS CITIES MAKE UNDER CHAPTER 21

Voting in Closed Session

"Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the code expressly permit such actions to be taken in closed session." Chapter 21.5(3).



LIABILITY



Chapter 21.6 (1) and (4):

“Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter...in the district court...”

"Ignorance of the legal requirements of this chapter shall be no defense..."

LIABILITY, CONTINUED



- 1. Burden on the government body and its individual members to demonstrate compliance**
- 2. Individual liability**
- 3. Court “shall assess” up to \$500 (\$2500 for knowing participation) Chapter 21.6(3)(a)**
- 4. Court “shall order” costs and attorney fees Chapter (21.6(3)(b).**

LIABILITY, CONTINUED

5. Court order removing from office for second violation in same term of office

Chapter 21.6(3)(d)

6. Injunction punishable by civil contempt

Chapter 21.6(3)(e)



DEFENSES



1. Vote against the closed session;
2. Good faith belief that facts, if true, would have indicated compliance;
3. Reliance on written decision or as memorialized in minutes, of court, Attorney General opinion, Iowa Public Information Board, opinion from City Attorney Chapter 21.6 (3)(a)(1, 2 and 3).



EXEMPT SESSION

Iowa Code 20.17 PROCEDURES.

(3). Negotiating sessions, strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21.

