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20AO:0005 Informal Guidance

DATE: August 21, 2020

SUBJECT: Private/public entities and open meetings and public records laws

RULING:

Charles Vandenberg
Pen City Current
534 Avenue E
Fort Madison, Iowa 52627
editor@pencitycurrent.com

Mr. Vandenberg,

We are writing in response to your message dated July 9, 2020, requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code chapter 23 and Iowa Administrative Code rule 497-1.3. At the IPIB meeting on August 20, 2020, the board directed me to answer your question informally.

We note at the outset that IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, as well as rules in Iowa Administrative Code chapter 497.

BACKGROUND:

You provided the following background information:

"Lee County has agreed to give a private ambulance service (Lee County EMS) \$900,000 this fiscal year to subsidize their operations. Without the subsidy, the service would likely have folded. As part of the contract agreed to in return of the subsidy, the county created an advisory board to regularly review financials/operations and move forward with a plan to purchase the service at the end of the fiscal year and make it a public service.

"The advisory committee created by resolution of the county board, met July 9 at 11 a.m. and indicated financials of Lee County EMS wouldn't be discussed in open session because they are a private enterprise. I'm looking for clarification on the 21.5 closed session allowances and how they would apply in this situation, and whether the subsidy would create an adhoc [sic] public/private partnership, and if so, does that bring the private partnership records into public light."

QUESTIONS POSED:

- I. Does a subsidy from a public body to a private entity subject the private entity to disclosure of financial statements in discussions of a public advisory committee created by contract that resulted in the subsidy?
- II. Does this constitute a public/private partnership, and if so, would it subject the private interest to open meetings laws, specifically, chapter 21.5 exemptions for closed sessions?

OPINION:

I.

Does a subsidy from a public body to a private entity subject the private entity to disclosure of financial statements in discussions of a public advisory committee created by contract that resulted in the subsidy?

You are asking whether this private entity is a governmental body required to follow Iowa Code chapter 22. A subsidy, in and of itself, from a public body to a private entity does not subject the private entity's records to public records laws. As such, Iowa Code chapter 22 makes no mention of subsidies and their effect on records.

In order for records to be subject to the open records laws found in Iowa Code chapter 22, they must meet the definition of public records. Public records are defined in Iowa Code section 22.1(3)(a-b).

If the financial statements at issue qualify as public records, then they could be released unless they qualify as confidential records as defined in Iowa Code section 22.7(1-73).¹

II.

Does this constitute a public/private partnership, and if so, would it subject the private interest to open meetings laws, specifically, chapter 21.5 exemptions for closed sessions?

You are also requesting a determination on whether a public/private partnership must follow Iowa Code chapter 21, which governs the open meetings laws for governmental bodies. In order for the laws within Iowa Code chapter 21 to apply to an entity, it must qualify as a governmental body as defined in section 21.2(1)(a-j). If an entity, public or private, falls under one of the 21.2(1) definitions, then it would be subject to open meetings laws, including those covering closed sessions in section 21.5.

¹ Documents that are discussed and made viewable to the public at a public meeting are public records and shall not be treated as confidential under Iowa Code section 22.7. IPIB AO 2015-08, ipib.iowa.gov/node/366

Usually, a private organization that is not defined as a governmental body pursuant to Iowa Code section 21.2(1) will not qualify as a governmental body subject to open meetings laws. In rare instances, courts have determined that a non-profit organization can be considered a governmental or government body if the private organization is formed primarily to perform a governmental function.

In *Gannon v. Board of Regents*, 692 N.W.2d 31 (Iowa 2005), the Iowa Supreme Court held that a non-profit foundation was considered a government body for the purposes of chapter 22. The foundation at issue in *Gannon* was created for the purpose of soliciting and providing funds for Iowa State University. Because of the contractual arrangement that resulted in a "highly interwoven and symbiotic relationship" between the government body and private organization, the foundation was found to be performing a government function and subject to open records laws.

Sincerely,

A handwritten signature in blue ink that reads "Zachary S. Goodrich". The signature is written in a cursive, flowing style.

Zachary S. Goodrich
Legal Counsel