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IPIB AO 2016-02

January 21, 2016

SUBJECT: Contract Nullification

Kevin Kilgore
1695 115th Street
Diagonal, Iowa 50845

Dear Mr. Kilgore:

This opinion is in response to your letter of December 30, 2015, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. We note at the outset that IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You inform us that Iowa Code chapters 26 and 331 both contain public notice requirements as part of public construction bidding and county bonding projects. You also inform us that Iowa Code chapter 21 contains public notice requirements for governmental meetings and that Iowa Code section 21.6 provides that one of the actions that may be taken to address a violation of Iowa Code chapter 21 is the voiding of governmental action.

QUESTIONS:

Based on your factual statement you ask us the following questions:

1. Is the failure to provide public notice under Iowa Code chapter 26 prior to issuing a public improvement contract grounds for contract nullification under Iowa Code section 21.6(3)(c)?
2. What process exists to reverse a bond sale or other debt obligation entered into subsequent to contract approval in the event of contract nullification?
3. Is the failure to provide public notice prior to bond sales or incurring noncurrent debt under Iowa Code chapter 331 grounds for nullification of the action by immediate repayment or liquidation of the debt?
4. Does failure to provide public notice constitute malfeasance, misfeasance, or nonfeasance by the parties involved?

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitl

OPINION:

As you were notified in IPIB AO 2015-02, the Board does not have jurisdiction to interpret or enforce notice provisions in Iowa Code chapter 331. As you were notified in IPIB Complaint No. 15FC:0086, the Board does not have jurisdiction to interpret or enforce notice provisions contained in Iowa Code chapter 26. As part of your opinion request you stated that failure to follow the public notice provisions in Iowa Code chapters 26 and 331 should be deemed to be automatic violations of the public notice requirements in Iowa Code sections 21.3 and 21.4. However, as was stated in IPIB AO 2015-2, the posting of notice for a public hearing is not the same as the posting of a public notice for a public meeting.¹

The four questions you pose to us are not under the statutory jurisdiction for the Board to answer. While you do raise the provisions of Iowa Code section 21.6(3)(c), that enforcement mechanism deals with actions taken in a “closed session” of a governmental body under Iowa Code section 21.5. Iowa Code section 21.6(3)(c) also includes that this “paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.” Your opinion request does not raise the issue of whether or not a governmental body has improperly conducted a closed session under Iowa Code section 21.5 for purposes of applying the enforcement provisions in Iowa Code section 21.6.

In closing, we note that this opinion is limited to addressing the questions you raised and does not speak to whether or not any governmental body has complied with Iowa Code chapters 26 and 331.

BY DIRECTION AND VOTE OF THE BOARD

Suzan Stewart, Chair
Kathleen Richardson, Vice Chair
Robert Andeweg
Anthony Gaughan
Jo Martin
Andrew McKean
Gary Mohr
William Monroe
Peggy Weidl

Submitted by: W. Charles Smithson, IPIB Director

¹ That opinion also discussed the fact that Iowa Code section 21.4(4) provides that if a different Code section requires “giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.”