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IPIB AO 2015-03

May 21, 2015

SUBJECT: Are There Limits on Who May Attend Closed Session?

Kevin Kilgore
1695 115th Street
Diagonal, Iowa 50845

Dear Mr. Kilgore:

This opinion is in response to your letter of April 28, 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 advise us that Iowa Code section 21.5 permits a government body to hold a closed session for certain reasons and that the statute sets out certain procedures pertaining to a closed session. However, the statute is non-specific as to who is permitted to attend a closed session except for the members of the government body. You also advise us that some of the exceptions for a closed session would indicate that another individual be present, but you are concerned about a government entity being able to arbitrarily include some individuals at the exclusion of others.

QUESTION:

Are the allowable attendees at a closed session limited or is attendance at the discretion of the members of the government body?

OPINION:

We first note that in your opinion request you included an example that is also the subject of a separate complaint.¹ For purposes of this opinion, we are addressing the general legal question you have raised and not speaking to the merits of any complaint that is currently before the Board.

¹ That complaint is 15FC:0029.

Board Members

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

In reviewing Iowa Code section 21.5, we agree with your statement that Iowa Code section 21.5 is silent as to who may attend a closed session other than the members of the governing body. We also agree with your statement that the statute implies that certain other persons may also be present depending on the reason for the closed session.²

As Iowa Code section 21.5 is silent as to who may be invited to attend a closed session, we are of the opinion that it is at the discretion of the governing body as to who it may invite to attend.³ This Board lacks the authority to read into the statute a laundry list of who can be invited to attend a closed session and who cannot. Such a determination would require an amendment to the statute by the legislative branch or an interpretation of the statute by the judicial branch.

BY DIRECTION AND VOTE OF THE BOARD

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

Submitted by: W. Charles Smithson, IPIB Director

² In fact, the Iowa Court of Appeals on March 25, 2015, opined in James W. Olinger and Larry C. Meyer v. Robert Smith, Walter Utman and Gaylord Pitt, Harrison County Iowa and Utman Drainage District (Case No. 14-0751) that a governmental body must have its legal counsel present for purposes utilizing Iowa Code section 21.5(1)(c) to go into closed session to “discuss strategy with counsel.”

³ Other than the situation discussed in footnote #2 that IPIB will adopt the holding of in a future rule making.