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IPIB AO 2015-07

November 19, 2015

SUBJECT: Mandated Penalties for Government Same as for Individual Acting on Behalf of Government

Kevin Kilgore
1695 115th Street
Diagonal, Iowa 50845

Dear Mr. Kilgore:

This opinion is in response to your letter of November 2, 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 section 20.17 sets out a collective bargaining process for government and public employee unions. That statute requires two meetings that are subject to the open meetings laws in Iowa Code chapter 21. You are concerned that it appears that only one public meeting was held in a particular instance.

QUESTION:

Based on this factual situation you ask us if mandated penalties for government are the same for an individual who is acting on behalf of government?

OPINION:

In the materials you provided, the agenda demonstrates that there was one public meeting that was properly noticed and otherwise complies with the requirements of Iowa Code chapter 21.¹ IPIB does not have jurisdiction over Iowa Code section 20.17. As such, IPIB lacks the statutory jurisdiction to mandate that a second public meeting should have been held under the provisions of Iowa Code section 20.17. If the parties, or their agents, make the determination to only have one public meeting under Iowa Code section 20.17, that is not an issue that IPIB can resolve.

¹ As part of the agenda of that meeting, it appears that the collective bargaining process was collapsed into one meeting.

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IPIB has the authority to ensure that a meeting held under Iowa Code chapter 21 is done so within the requirements of that chapter. In addition, if a governmental body conducted a meeting that should have been subject to Iowa Code chapter 21 and the meeting was not done so, then IPIB would have jurisdiction. However, the situation you raise falls under a statute that is not under IPIB's jurisdiction and involves the alleged fact that no meeting occurred at all.

Although the factual scenario you raise involving Iowa Code section 20.17 is not under our jurisdiction, we can answer your specific legal question as it applies to Iowa Code chapter 21. The penalties for violating Iowa Code chapter 21 apply solely to the members of a "governmental body" as that term is defined in Iowa Code section 21.2(1) and would not apply to individuals acting on behalf of, or as agents of, a governmental body.

In closing, the Board notes that we are not speaking to whether the materials you included with your opinion request are true or false or raise any issue not under the jurisdiction of IPIB. Rather, the opinion is issued to address your specific legal question and not to rule on any submitted documents.

BY DIRECTION AND VOTE OF THE BOARD

Suzan Stewart, Chair
Kathleen Richardson, Vice Chair
Robert Andeweg
Anthony Gaughan
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Andrew McKean
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William Monroe
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Submitted by: W. Charles Smithson, IPIB Director