

## **IPIB Monthly Column**

January 5, 2020

### **Q&A from the Iowa Public Information Board**

By Margaret E. Johnson, Executive Director

**Question: When does an advisory board or committee have to comply with the open meetings law?**

**Answer:** Determining when an advisory group is a governmental body as defined by Iowa Code section 21.2(1) can be difficult and a murky area of the law. The answer in large part is determined by how these groups are formed and their “charter” or purpose. The applicable statutory provisions are found in Iowa Code Section 21.2(1), the relevant portions of which are as follows:

#### *21.2 Definitions*

##### *1. “Governmental body” means:*

*a. A board, council, commission, or other governing body expressly created by the statutes of this state or by executive order.*

*b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.*

*c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs “a” and “b” of this subsection.*

*\* \* \**

*e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.*

*\* \* \**

*h. An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.*

*\* \* \**

*j. An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues.*

#### **Board Members**

Joan Corbin ● E. J. Giovannetti ● Barry Lindahl ● Keith Luchtel ● Monica McHugh  
Frederick Morain ● Julie Pottorff ● Suzan Stewart ● Stan Thompson

Most advisory boards, committees, task forces, etc. fall under subparagraph 1(c), 1(h), or 1(j). The governing body of a local government entity that formally forms such a group would be construed to be doing so by executive order since in most instances the executive and legislative authority resides in the one governing body.

The answer may also depend upon the role given the group. The crux of the matter is the meaning of the clause “to develop and make recommendations on public policy issues.” Some have inferred from a statement made by the Iowa Supreme Court in a 2005 decision that it means more than just giving advice:

*“Thus, “policy-making” is more than recommending or advising what should be done. ‘Policy-making’ is deciding with authority a course of action.”* Mason v. Vision Iowa Bd., 700 N.W.2d 349, at 354 (Iowa 2005).

*“The notion that policy-making commonly denotes something more than advice is illustrated by our prior cases applying the open meetings law. In Donahue, we held that an advisory board ‘exercises no policy-making power.’ 474 N.W.2d at 539. In an earlier case in which we held an entity was subject to the open-meetings requirement, this court noted that the entity at issue was ‘a powerful decision-making and policymaking body’ and was ‘not a mere study or advisory group.’ Greene v. Athletic Council, 251 N.W.2d 559, 561 (Iowa 1977), superseded by statute as stated in Donahue, 474 N.W.2d at 539.”* (at 355)

From the context of the statement giving rise to that inference, if the specific issue is presented to the Court a likely resolution would be to examine whether public policy is influenced and to what degree. The test could be to examine how the creating governmental body intends to use the product it expects to receive from the group.

If the creating body plans to take formal action on the product itself, subparagraphs 1(h) or (j) would clearly apply to make the group subject to the open meetings law. But, if the charge given the group is to merely gather information, without recommendation, for use by the parent governmental body in its development of public policy, the open meetings law would not apply.

Note that if a majority of members of the parent governmental body participate in a meeting of the group, whether or not as members of the group, the open meetings law would apply.

Also, that if a group does not come within the purview of the open meetings law, it may still hold public meetings. This is recommended as good practice to promote government transparency.

***Did You Know*** that the Iowa Public Information Board staff is available to assist you with questions or problems involving open meetings and public records in Iowa? During the month of December 2020, 56 contacts were made with the Iowa Public Information Board office.

<b>TYPE</b>	<b>December 2020</b>
<b>Formal complaint</b>	<b>9</b>
<b>Advisory opinions</b>	<b>1</b>
<b>Declaratory orders</b>	<b>0</b>
<b>Informal complaints</b>	<b>2</b>
<b>Informal requests</b>	<b>32</b>
<b>Miscellaneous</b>	<b>12</b>
<b>TOTAL:</b>	<b>56</b>

**Who can contact the IPIB and how long does it take?** Any person can contact the IPIB for assistance by telephone (515-725-1781), by email, or on the IPIB website. In 2020, 743 identifiable people contacted the IPIB. Of these, 365 were private citizens, 284 were government officials or employees, and 94 were members of the media. In 2020, 68% of the incoming contacts were resolved the first day, 12% were resolved in one to five days, and 20% were resolved in six or more days. Opinions, rulings, FAQs, reports, and training documents are available on the IPIB website – [www.ipib.iowa.gov](http://www.ipib.iowa.gov).