

Iowa Public Information Board

In re the Matter of: Dan Klever, complainant And concerning: City of Pleasanton, City Council	Case Number: 15FC:0049 PROBABLE CAUSE REPORT
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SUMMARY: Complainant alleges violation of Chapter 21, open meetings by the City Council of Pleasanton, Iowa. Complaint was accepted, in part, by the Iowa Public Information Board. Informal resolution is not possible, due to resignations within the City government and other issues. Recommend a limited finding of probable cause and dismissal of complaint.

On June 10, 2015, Dan Klever filed a formal complaint with the Iowa Public Information Board (IPIB), alleging the Pleasanton City Council (Council) violated Chapter 21 of the Iowa Code. Specifically, he cited six issues:

1. Failure to read minutes out loud.
2. Failure to post proper notice “usually a few hrs.”
3. Failure to post minutes.
4. Failure to put all discussion in minutes.
5. Failure to take minutes during meetings.
6. Failure to produce copies of minutes upon request.

Numbers 1, 3, and 4 are not violations of Chapter 21. As to the remaining issues, further investigation revealed the following:

Number 2: The city clerk responded that meeting notices are properly posted at the location of the meetings at least 24 hours prior to a council meeting. Mr. Klever disagreed and submitted photos that he states were notices not properly posted. It is difficult to determine whether notice was properly posted. The city clerk posted the notice for the June meeting as I directed, yet Mr. Klever complained that it was improperly posted. He was out of town during the posting period. The issue is complicated by the fact that council meetings are held on weekends and not necessarily held on a consistent date. It is difficult to establish there is probable cause to pursue an improper notice violation.

Number 5: There is no evidence that minutes are not being taken during meetings. I was provided with copies of meeting minutes I requested.

Number 6: Mr. Klever requested copies of 2015 meeting minutes on May 12, 2015. He requested the copies from the city attorney, as the last line of a letter discussing retrieval of other minutes. He did not request the records from the mayor, city clerk or a city council member. The city attorney did not consider it to be a public records request, as he is not the custodian of the records. Once the city attorney received a copy of the complaint (on June 10th), he contacted the city and provided copies of the minutes to me and to Mr. Klever on June 15th. Mr. Klever has served as mayor; he is aware of where minutes are retained.

In the course of reviewing the minutes provided by the city attorney, I noticed a discrepancy in the minutes. For at least four meetings in 2015, the minutes do not “show the results of each vote taken and information sufficient to indicate the vote of each member present.” (Iowa Code section 21.3) The minutes simply say AFFIRMED without noting if unanimous or listing a roll call vote. This was brought to the attention of the city clerk and city attorney and has been remedied. The city attorney is also determining if past minutes should be amended to reflect actual votes. The only minutes within the IPIB 60-day jurisdictional limitation would be the April 18th and May 15th minutes. (Note: There is no date on the April minutes; I was able to determine independently that this meeting was held on April 18, 2015.) On July 16, 2015, the IPIB accepted the complaint as to issues 2, 6 and 4 (only as to how votes are recorded in the minutes). Pursuant to Iowa Code section 23.9, discussions were attempted to reach an informal resolution.

Informal resolution is not possible. Subsequent to the IPIB acceptance, the Mayor of the City resigned. At least a one council person has resigned. The city clerk stated he is resigning, as well as possibly one or two other council members. Mr. Klever indicated on August 5, 2015, by telephone, that there is “no resolution” he can support.

I reviewed the minutes for the June meetings. One vote did not list the names and votes that occurred. The rest of the minutes are in compliance.

The City is sharply divided over the issue of whether to remain as an incorporated city. The population of the city is 49 people, according to the Iowa League of Cities. The City faces many challenges, including its budget and its ability to maintain a city government.

Until it is determined if there will be a city government and who will the members be, it is difficult to develop any kind of remedial plan. The current city clerk has received copies of the Iowa Freedom of Information Council Handbook. The League of Cities is available to assist the City with its many issues. The IPIB has offered training opportunities when the City is operational again.

IPIB Action

The IPIB has several options upon receipt of a probable cause report. According to Iowa Administrative Rule 497 - 2.2(4):

“Board action. Upon receipt and review of the staff investigative report and any recommendations, the board may:

- a. Redirect the matter for further investigation;
- b. Dismiss the matter for lack of probable cause to believe a violation has occurred;
- c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or
- d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding”.

Probable cause is not specifically defined in Chapters 21, 22 and 23. A different section of the Iowa Code defines probable cause as “reasonable suspicion”; it is defined in legal dictionaries as the *“apparent facts discovered through logical inquiry that would lead a reasonably intelligent and prudent person to believe that an accused person has committed a crime, thereby warranting his or her prosecution, or that a cause of action has accrued, justifying a civil lawsuit.”*

Recommendation

Based upon investigation of the complaint, I recommend that the IPIB determine probable cause exists to believe that the Pleasanton City Council has violated Iowa Code Chapter 21 by failing to maintain minutes that “show the results of each vote taken and information sufficient to indicate the vote of each member present” as required by Iowa Code section 21.3. (Issue 4, modified.)

As to issues 2 and 6, I recommend that the IPIB determine that probable cause does not exist to believe that these violations occurred.

I further recommend that this complaint be dismissed in its entirety with the following findings:

Issue 2 – Dismissed for lack of probable cause.

Issue 4 – Probable cause exists for the modified complaint, but is dismissed as the violation has been remedied and the City is no longer capable of entering into a remedial plan.

Issue 6 – Dismissed for lack of probable cause.

Respectfully submitted this 11th day of August, 2015.

Margaret E. Johnson, JD
Deputy Director

Cc: IPIB
Dan Klever
Pleasanton City Council
Verle Norris, attorney