

Iowa Public Information Board

In re the Matter of: Russell Rock and Dick Quackenbush, complainants And concerning: City of Jesup	Case Numbers: 15FC:0022 and 15FC:0023 PROBABLE CAUSE REPORT
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RE: Formal Complaints accepted and informal resolution attempted unsuccessfully. Recommend finding of probable cause and dismissal of complaints.

Background Information

On April 8, 2015, a formal complaint was filed by Russell Rock (15FC:0022) with the Iowa Public Information Board (IPIB) alleging that the City of Jesup (City) violated Iowa Code section 21.4(1) by failing to provide notice to news media of an April 1, 2015, special meeting of the city council. A separate complaint was filed by Dick Quackenbush (15FC:0023) on April 8, 2015, alleging the same violation. Prior to these complaints, the City had self-reported this violation on April 7, 2015. There was no evidence that any other notice provisions of the Iowa Code were violated. Although some concerns were raised about information posted on the City website and action taken during this meeting, those concerns are beyond the scope of Iowa Code Chapter 21.

The special meeting on April 1, 2015, involved some complaints concerning a city employee. The complainants all alleged that the city clerk intentionally neglected to forward electronic notice to the media and others due to her relationship to that employee. The City would normally also forward electronic notice to a non-media distribution list, however that is not required by Iowa law.

The City acknowledged that the media was not properly notified. All other notice requirements, agenda and minutes concerning this meeting were compliant with Chapter 21. The only votes taken during the meeting concerned accepting the agenda and adjourning the meeting. The City did post the video of the April 1, 2015, meeting on its website, along with minutes and agenda.

On April 24, 2015, eight other complaints were filed regarding this incident and substantiating the incident. These complaints were consolidated into the two earlier complaints. No other allegations of Chapter 21 violations were raised. Although the Jesup city clerk is cited in the complaints as the responsible party, under Chapter 21, the governmental body, the City, has ultimate responsibility to ensure meetings are conducted properly.

The two filed complaints were accepted by the IPIB on May 19, 2015.

Iowa Code section 23.9 requires the IPIB to “promptly work with the parties, through employees of the board, to reach an informal, expeditious resolution of the complaint.” Pursuant to that directive, I drafted a remedial plan. The terms of the plan were:

A. The Mayor, City Council Members, City Clerk and Deputy Clerk will review the power point presentation on the Iowa Public Information Board website, “Iowa Sunshine Laws”.

B. The City Clerk and Deputy Clerk will review the IPIB powers and duties training presentation on the IPIB website.

C. The City Clerk and Deputy Clerk will attend training July 29-31, 2015, at the Iowa Municipal Professionals Academy through Iowa State University. The City Clerk and Deputy Clerk will review materials being presented by IPIB staff, titled; “The Iowa Public Information Board and Open Meetings and Records Laws.”

D. The Mayor, City Council Members, Clerk and Deputy Clerk will receive and review a copy of the Iowa Open Meetings, Open Records Handbook prepared by the Iowa Freedom of Information Council for future use.

E. The City Clerk and Deputy Clerk will require a Request Delivery and Read Receipt on e-mails sent to any news organization requesting a notice of council meeting.

F. The City Clerk and Deputy Clerk will develop a checklist and follow-up schedule for posting and confirming delivery of council meeting notices and agenda postings and provide a copy of that document to IPIB.

The proposed plan was sent to complainants and to the city attorney’s office by email on June 23, 2015. The City responded on June 24, 2105, agreeing with the proposal.

When I had received no response from the complainants, I attempted to contact them by telephone. I left messages for both individuals on June 30, 2015. I reached Mr. Quackenbush by cell phone later that date. He was initially unaware that he had submitted a formal complaint. During our discussion, it was apparent that he had not received any emails from the IPIB office, as the case file had an incorrect email address (“itt.net” rather than “jtt.net”) because the automatic underlining in the complaint form obliterated the lower part of a letter. I resent all previous emails to Mr. Quackenbush.

All emails were resent to Mr. Rock on June 30, 2015, in addition to a telephone message left at his contact number.

At no time were any emails sent to either complainant from the IPIB returned as undeliverable.

By email on June 30, 2015, Mr. Quackenbush indicated he would not agree to any informal resolution that did not remove two city employees from their positions. The IPIB can only enact sanctions against governmental bodies under Chapter 21. The city employees are not governmental bodies as defined by Chapter 21.

Mr. Rock responded on July 2, 2015, with a telephone call. Because the city clerk could not be fired by the IPIB, he declined to participate any further with his complaint or any resolution.

The City has completed all the requirements of the proposed remedial plan and provided verification of each requirement.

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”.

Recommendation

Based upon investigation of the complaint, I recommend that the IPIB determine probable cause does exist to believe that a violation has occurred. Because appropriate remediation has been completed, the two cases can be dismissed (IAR 497 – 2.2(4)(c)) as an exercise of administrative discretion. If the IPIB determines that further investigation is needed (IAR 497 – 2.24(a)), then suggestions for resolution would be welcomed.

Respectfully submitted this 30th day of July.

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Cc: IPIB
Russell Rock
Dick Quackenbush
Carter Stevens, city attorney
City of Jesup (Mayor Dave Bishop)