

Open Meetings and Open Records

Iowa's open meetings and open records statutes are not likely a new topic for county officials. But it's still an area that generates many questions. I've had a couple of timely or particularly nuanced questions on these issues lately, so I thought it might be helpful to discuss those here. Also, for those of you that may not have been able to attend our district meetings, there were a few changes to Iowa's open meetings and open records statutes this year. You can find a summary of those changes in ISAC's Summary of Legislation book on our website. If you have an issue that comes up related to open meetings and open records, there are a lot of resources out there on this topic – for example, the sunshine bulletins put out by the Iowa Attorney General's office or the reports released by Iowa's Citizen's Aide / Ombudsman. In addition, various groups do trainings on these matters, such as the Freedom of Information and Openness Training webinars last month, at which ISAC's Linda Hinton was a speaker. You should also be sure to consult with your county attorney on these matters.

Open Records

With the 2012 elections approaching, several counties have received or may receive requests for records that counties might have related to candidates. You may wonder if inquiries that have underlying political motivations must be treated the same way as other record requests. The answer is yes. The open records statute applies in the same manner to all requests, regardless of the motivation behind such request, and there is no exemption from the open record requirements for requests that are partisan in nature.

In addition, because Iowa is often at the forefront of elections, some of these requests may come from groups and individuals outside of the state of Iowa. You, however, should treat all requests the same, regardless of the source, as the open records rules apply equally to non-Iowa residents' rights to obtain information. Moreover, a county official cannot require that a person be present to receive records – Iowa Code §22.3 states the county official “shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill a request for a copy of a public record received in writing, by telephone, or by electronic means.”

That being said, you can charge your actual expenses (including your time to compile and determine if records are confidential, and to redact any confidential information) for fulfilling these requests. And to the extent a request asks for documents that may be confidential records under Iowa Code §22.7, you should consult with your county attorney to determine what records should be provided.

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Open Meetings

Many counties work with economic development entities designed to help attract businesses to the area. These economic development entities may be structured in a variety of ways and the level of county involvement may widely differ as well. Because of the nature of the work done by such economic development entities, having these meetings open to the public can be a cause for concern in some instances. When making a determination of whether meetings of economic development entities must be open to the public, you and your county attorney should consider the way your economic development entity is set-up in relation to the definition of “governmental body” in Iowa Code §21.2(1), which states:

‘*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.
- d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.
- 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.
- f. A nonprofit corporation other than a fair conducting a fair event as provided in chapter 174, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.
- g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.
- 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.

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House would consider SF 522. Upon taking up the bill for debate, the House amended the contents of HF 691 into SF 522, and then passed SF 522. SF 522 now included the House commercial property tax reform proposal and none of the language pertaining to the Senate's proposal.

While the House stood their ground on the commercial property tax rollback, the Senate also remained firm on their plan to create a business property tax credit, and negotiations continued. Throughout the remainder of May and June and through endless attempts to compromise, the commercial property tax language continued to be amended by both chambers, eventually ending up in a 700-page omnibus budget bill, and finally the standings appropriations bill where an amendment was adopted during a late-night conference committee to strike the language altogether. Commercial property tax reform was dead for the year.

Looking Ahead

Even though last-ditch negotiation efforts failed, the House and Senate did make changes to each of their proposals in an attempt to compromise. The following bullet points detail their positions in the final days of session, and the legislation that was considered but not enacted. It's unclear whether these ideas or compromises will hold true for the 2012 session, but they're probably good indicators of what lies ahead.

Rollback vs. Business Property Tax Credit

- The House remained firm on reducing the value at which commercial, industrial and rail property is taxed, but did amend their proposal to roll back the value to 75% instead of 60%.
- The Senate remained firm on not rolling back commercial, industrial, and rail values, and continued their push for a new

business property tax credit for each of these classes of property. The Senate did set a floor on residential property values to roll back no less than 50%. The House showed interest in the Senate proposal, but not enough to accept it and give up the commercial, industrial and rail rollback.

Replacement Dollars

- To make up for the loss in local government property tax revenue, in a final piece of legislation, the House created a Commercial and Industrial Property Tax Replacement Fund and appropriated from the state's General Fund \$30 million per year, up to \$150 million. This was an improvement over earlier House bills that did not include replacement dollars, or included language that specified it would be their "intent" to appropriate funding.
- The Senate's proposal of creating a new business property tax credit did not require the need for replacement dollars. Their proposal appropriated \$50 million annually up to \$200 million to a newly created Business Property Tax Credit Fund.

Revenue Limitations

- In a final piece of legislation, the House eliminated the supplemental levy, but allowed counties to levy for supplemental purposes within revenue limitations. The Senate did not eliminate the supplemental levy.
- The Senate provided that counties could exceed their revenue limitation if approved at a second public hearing instead of a special election, as proposed by the House. The Senate also said that the new limitation would take effect with budgets starting July 1, 2013 as opposed to 2012 like the House proposed.
- The Senate compromised with the House on the ending fund balance language, with some exception to the terminology used.

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- The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in Iowa Code §468.3, regardless of how the district is organized.
- 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.

If it appears your economic development entity would fall under this definition – most likely through subsection "c" or "j," – then your economic development entity should work

closely with your county attorney to know and understand when Iowa Code §21.5 will allow a meeting to be closed. If the proper procedure is followed, meetings can be closed to discuss the purchase or sale (with the "or sale" being a new addition in 2011) of particular real estate, where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. Proper use of the statute allowing a meeting to be closed may help alleviate concerns of making sensitive economic development negotiations public.