

OPEN MEETINGS LAW - IOWA CODE CHAPTER 21

Julie F. Pottorff, Deputy Attorney General
Iowa Department of Justice
Hoover State Office Bldg.
Des Moines, Iowa 50319

August 15, 2011

I. ELEMENTS - GOVERNMENTAL BODIES

A. Governmental Bodies - applies only to "governmental bodies" defined as:

1. A board, council, commission, or other governing body expressly created by the statutes of this state or by executive order. Iowa Code § 21.2(1)(a) (2011).
 - a. Policy-Making - The definition of "meeting" under section 21.2(2) includes a requirement that "the body act in its policy-making role." Policymaking, in turn, "is more than recommending or advising what should be done. Policy-making is deciding with authority a course of action." Mason v. Vision Iowa Board, 700 N.W.2d 349 (Iowa 2005). But see Iowa Code §§ 21.2(1)(e) and 21.2(1)(h) (2011).
 - b. Recommendations - Bodies under § 21.2(1)(a), (b), or (c) must be "governing bodies" which have authority to make a decision binding on a party or group unless and until it is overridden by a superior authority. A body which studies and investigates for the purpose of giving advice or making recommendations is not a governing body. 1980 Op.Att'y.Gen. 148. But see Iowa Code §§ 21.2(1)(e) and 21.2(1)(h) (2011).
 - c. Expressly Created - "Expressly created" means to direct the constitution not to authorize or permit discretion to form. 1980 Op.Att'y.Gen. 148. See Donahue v. State of Iowa et al., 474 N.W.2d 537 (Iowa 1991).
2. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state. Iowa Code § 21.2(1)(b) (2011).
3. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to §§ 21.2(1)(a) and (b).

Iowa Code § 21.2(1)(c) (2011).

a. Formal and Direct Creation - "Formally and directly created" means fully constituted and appointed by a body covered in § 21.2(1)(a) or (b); it does not mean constituted and appointed by an intermediary such as an executive director. 1980 Op.Att'y.Gen. 148.

b. Designation - Designation of a nonprofit corporation by the Iowa Commission on Aging as the Iowa Lakes Area Agency on Aging constitutes formal and direct creation of the body. 1984 Op.Att'y.Gen. 140.

c. Review Committee - A school board's review committee is not subject to the open meetings law when the review committee does not have any policy-making duties, but merely advises the board on what should be done where there was no showing the review committee had responsibility for anything more than simply recommending or suggesting to the school board the development proposal it should accept for the site of a demolished school building. Hummel v. Des Moines Independent Community School Dist., No. 08-0763, 2009 WL 777929 (Iowa App. Mar. 26, 2009). But see Iowa Code § 21.2(1)(h) and 1994 Op.Att'y.Gen. 59(L).

4. 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 state universities. Iowa Code § 21.2(1)(d) (2011).

5. 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. Iowa Code § 21.2(1)(e) (2011).

Advisory Bodies - An advisory board, advisory commission, or task force "created by the . . . the general assembly" under § 21.2(1)(e) does not include those bodies created by statute. 1992 Op.Att'y.Gen. 7 [#91-2-3(L)]. Compare Iowa Code § 21.2(1)(h) (2011).

6. 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. Iowa Code § 21.2(1)(f) (2011).

7. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F. Iowa Code § 21.2(1)(g) (2011).

8. 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. Iowa Code § 21.2(1)(h) (2011).

Advisory Bodies - Advisory bodies created by school boards and county boards of supervisors to develop and make recommendations on public policy issues are included within the definition of governmental bodies subject to the Open Meetings Law, despite the phrase "created by executive order of a political subdivision." The term "executive order" confines the authority to create advisory committees to those elected entities with final executive authority for the political subdivision, rather than restricting the manner in which such advisory committees are created. 1994 Op.Att'y.Gen. 59(L).

9. The governing body of a drainage or levee district as provided in chapter 468, including a board as defined in section 468.3, regardless of how the district is organized. Iowa Code § 21.2(1)(i) (2011).

10. 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. Iowa Code § 21.2(1)(j) (2011).

B. Examples - includes/excludes the following:

1. Hearing panels of the Faculty Judicial Commission at the University of Iowa are not governmental bodies because they are not formally and directly created by the Board of Regents and they are advisory bodies which do not exercise any policy-making authority. Donahue v. State of Iowa et al., 474 N.W.2d 537 (Iowa 1991); 1980 Op.Att'y.Gen. 167. Compare Iowa Code §§ 21.2 (1)(e) and 21.2(1)(h) (2011).

2. Retreats by a governmental body are subject to all requirements of the Open Meetings Law where there is deliberation or action upon policy matters within the agency's jurisdiction. 1994 Op.Att'y.Gen. 26.

3. County magistrate nominating commissions established under Iowa Code § 602.6501 are subject to the Open Meetings Law. 1990 Op.Att'y.Gen. 37.
4. A 28E entity created through execution of a 28E agreement by one or more cities or counties is a governmental body under § 21.2. 1988 Op.Att'y.Gen. 11.
5. Regional Coordinating Councils are "expressly created" by statute when requirements regarding the size of the council (6 members), its representation ("of the region") and its membership ("from state and local government, business, and education") are set forth in the statute and formation of the Council is a condition precedent to receipt of certain grant funds. 1986 Op.Att'y.Gen. 133.
8. Independent Subscriber Nominating Committees which are expressly created under chapter 514 are subject to the open meetings law. 1984 Op.Att'y.Gen. 152.
9. A peer review committee of the Board of Engineering Examiners which has been delegated no policy-making or decision-making authority is not a "governmental body" within the meaning of § 21.2(1)(c). 1980 Op.Att'y.Gen. 148. Compare Iowa Code §§ 21.2(1)(e) and 21.2(1)(h) (2011).
10. A board of directors of a nonprofit corporation formed under chapter 504A is not expressly created by statute and is not a "governmental body" within the meaning of § 21.2(1)(a). 1980 Op.Att'y.Gen. 167. But see Iowa Code §§ 21.2(1)(f) and 21.2(1)(g) (2011).
11. To the extent that the advisory committees of the State Educational Radio and Television Facility Board are not delegated decision-making authority, they are not "governmental bodies." 1980 Op.Att'y.Gen. 167.
12. Agricultural Associations must be expressly created by statute to be subject to the Open Meetings Law. This requirement excludes such groups as Iowa Dairy Association, Iowa Beef Producers Association, and Iowa Corn Growers Association but includes such groups as Soybean Promotion Board, Corn Growers Promotion Board, Iowa Turkey Marketing Council and Dairy Industry Commission. 1980 Op.Att'y.Gen. 183.
13. A county board of supervisors in charge of a drainage district is a governmental body under § 21.2(1)(a) and a board of trustees created by the supervisors to be in charge of a drainage district may be a governmental body under § 21.2(1)(c). 1980 Op.Att'y.Gen. 228.

14. Civil Service Commissions which are created under chapter 400 are subject to the open meetings law. 1980 Op.Att'y.Gen. 270.

15. The Professional Teaching Practices Commission which is created under chapter 272A is subject to the open meetings law. 1980 Op.Att'y.Gen. 444.

16. Compensation commissions, which determine the damages that result from the condemnation of property, when convened to view property and receive evidence. Iowa Code § 6B.14(2) (2011). Note: This statute overrides Op.Att'y.Gen. # 97-5-1 which had opined that compensation commissions were not “expressly created” by statute where, upon written application, the chief judge of the judicial district draws lots from a pool of eligible residents to form a commission.

C. Information: The authority which appoints members of a governmental body shall provide the members with information about the Open Meetings Law and the Public Records Law. The county auditor shall provide this information to members of elected governmental bodies. Iowa Code § 21.10 (2011).

II. ELEMENTS - MEETING

A. Meeting - requires all of the following:

1. Gathering in person or by electronic means; either
2. Formal or informal; of a
3. Majority of the members of a governmental body; with
4. Deliberation or action upon any matter within the scope of the governmental body's policy-making duties. This excludes gatherings for purely ministerial or social purposes where there is: (1) no discussion of policy; or (2) no intent to avoid the purposes of chapter 21. Iowa Code § 21.2(2) (2011).

B. Principles - means the following:

1. "Gathering" by "electronic means" includes telephone conference calls. 1980 Op.Att'y.Gen. 703.
2. "Formal or informal" means the law reaches informal, social gatherings which meet other criteria. 1980 Op.Att'y.Gen. 164.

3. "Ministerial" acts means acts which do not involve an exercise of discretion or judgment. 1980 Op.Att'y.Gen. 148.

4. "Deliberation" upon "any matter within the scope of the governmental body's policy-making duties" means discussion and the evaluation processes of bodies in arriving at an eventual decision or policy involving an exercise of discretion or judgment. 1980 Op.Att'y.Gen. 164.

C. Examples - includes/excludes the following:

1. A committee of the city council which is not itself a governing body, but which holds a meeting at which a majority of the city council is present, becomes a governmental body subject to the open meetings law if there is deliberation or action upon any matter within the scope of the city council's policy-making duties. 1982 Op.Att'y.Gen. 423.

2. An informal gathering of a majority of the members of a governmental body, which is solely for the purpose of eliciting a clarification of a point of law from the county attorney, does not involve any deliberation or action on pending matters within the scope of the body's policy-making duties and does not demonstrate any intent to violate chapter 21, does not constitute a meeting subject to the open meetings law. Hettinga v. Dallas County Board of Adjustment, 375 N.W.2d 293 (Iowa App. 1985). See KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

3. The Open Meetings Law is not applicable to a canvass of an election by a county board of supervisors which is a ministerial function. Other provisions of law, however, require canvasses under chapter 50 to be public and minutes to be kept. 1990 Op.Att'y.Gen. 65(L).

4. Assuming that a majority of the members of a city council gathered to view the scene of a city sewer excavation, no "meeting" occurred where no discussion took place at the scene and the members later individually reported their opinions. Gavin v. City of Cascade, 500 N.W.2d 729 (Iowa App. 1993).

5. A gathering by a majority of the members of a board of adjustment on private property is a "meeting" where the board had announced that it would assemble on the property to view a proposed kennel site and subsequently voted in an open meeting to approve the property owners' request to operate a kennel on the site. Wells v. Dallas County Board of Adjustment, 475 N.W.2d 680 (Iowa App. 1991).

6. Deliberation or action occurs when the Civil Rights Commission, a governmental body charged with a statutory duty to conduct investigations, gathers at the Iowa State Penitentiary to obtain information on the civil rights concerns of inmates for investigative purposes. 1982 Op.Att'y.Gen. 41. See Wells v. Dallas County Board of Adjustment, 475 N.W.2d 680 (Iowa App. 1991). Compare KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

7. Interviews with applicants for the position of city manager conducted by one or two city council members who constitute less than a quorum do not constitute meetings subject to the open meetings law. Telegraph Herald v. City of Dubuque, 297 N.W.2d 529 (Iowa 1980). See Gavin v. City of Cascade, 500 N.W.2d 729 (Iowa App. 1993).

8. Review of a preliminary draft of a report conducted by representatives of a consulting company by gathering with members of a board of supervisors either in pairs or individually is not a meeting subject to the open meetings law where less than a quorum of the board is present at a time and the members did not engage in deliberation or policy making, but only asked questions and elicited clarification about the draft report. “We do note . . . [the consultant] sought feedback, opinions, and input from the members on the draft. Given that this project was to be voted on at a public meeting, gathering for this purpose appears dangerously close to “deliberation.” Even absent any intention to deliberate, such discussions could arise effortlessly. We believe that the board's decision to review the draft in this fashion was a poor one. . . .” Dooley v. Johnson County Board of Supervisors, No. 08-0195, 2008 WL 5234382 (Iowa App. Dec. 17, 2008).

9. A city, county, mayor, and respective board and council members did not violate the Iowa Open Meetings law when each met or conversed with a board member in order to sign a letter. Serial communications through separate phone or e-mail contacts did not constitute “deliberation” when contacts between the various board and council members occurred separately to obtain signatures on a letter to a neighboring city about a potential airport. Fleener v. City of Oskaloosa, No. 09-0230, 2009 WL 4116568 (Iowa App. Nov. 25, 2009).

10. Generally, school boards are subject to the open meetings law. The Public Employment Relations Act (PERA), however, exempts certain negotiating sessions and strategy meetings of public employers or employee organizations from the provisions of the open meetings law. See Iowa Code § 20.17(3). Accordingly, when conducting certain negotiating sessions or strategy meetings under PERA, a school

board does not hold a meeting subject to the open meetings law. 1982 Op.Att'y.Gen. 162.

11. A "meeting" of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is not subject to the open meetings law. Iowa Code § 21.9 (2011).

III. PROCEDURE - NOTICE

A. **Public Notice** - requires notice 24 hours prior to commencement of meeting unless, for good cause, 24 hours notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Notice must be reasonably calculated to advise the public of the following elements:

1. Time;
2. Date;
3. Place; and
4. Tentative agenda. Iowa Code § 21.4(1) (2011).

a. **Definition** - The term "tentative" is defined as "not fully worked out or developed." KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

b. **Sufficiency** - The sufficiency of the detail on the tentative agenda must be viewed in the context of surrounding events. Where the tentative agenda lists "Industries Council - Mr. Jack Lipovac" and the subject was the firing of a custodian, the tentative agenda is sufficiently detailed in the context of evidence that the issue had been on a previous agenda and discussed, Lipovac had appeared at a previous termination hearing, it was well known in the community that the Industries Council had been hired to set up termination hearings, and the termination had been well publicized in the community. KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991). See Barrett v. Lode et al., 603 N.W.2d 766 (Iowa 1999).

c. **Adequacy** - The adequacy of notice turns on what words would mean to a typical citizen or member of the press. If the tentative agenda lists "Building

Closing Study” and the subject is closing a specific school building, the agenda is detailed enough in the context of evidence that the superintendent had discussed the issue in newspapers, the meeting had been publicized by flyers and approximately 200 people attended the meeting. Vandaele v. Board of Education, No. 01-0234, 2002 WL 575666 (Iowa App. Mar. 13, 2002) (unpublished opinion).

B. Distribution - providing notice must include:

1. Advising the news media who have filed a request for notice; and
2. Posting a copy on bulletin board or prominent place easily accessible to public and clearly designated for that purpose at the principle office of the governing body or, if no office exists, at the building where meeting will be held. Iowa Code § 21.4(1) (2011).

a. News Media/Postage - A governmental body cannot refuse notification to news agency which has filed a request on grounds that the news agency must pay postage. 1980 Op.Att'y.Gen. 88.

b. Minimum Notice - The statute sets minimum notice requirements which must be met. A body can elect to add more notice, e.g., newspaper publication, but must comply with the minimum requirements set out. 1980 Op.Att'y.Gen. 73.

c. Notice Violations/Remedies - The failure to post and send notice as required under Iowa Code section 21.4 renders a subsequent meeting a “closed session” and makes applicable remedies for closed session violations. Hawkeye Communications, Inc. v. Carlson et al., No. 04-1674, 2005 WL 3940279 (Iowa App. Dec. 21, 2005)(unpublished opinion). But see 1980 Op.Att'y.Gen. 430 (actions taken at a meeting held in violation of the notice requirements are not voidable under § 21.6(3)(c).

C. Good Cause - When necessary to meet on less than 24 hours notice, or at a place not reasonably accessible or at a time not reasonably convenient to the public, good cause for departing from these requirements shall be in the minutes. Iowa Code § 21.4(2) (2011).

1. Specificity - To be reasonable, an agenda must be somewhat specific. An agenda which merely states: "approval of minutes, old business, new business" is not reasonable. 1980 Op.Att'y.Gen. 269. For example, an agenda item that refers only

to “mid-semester review of administrative performance” is sufficient to inform the public the performance review of the superintendent will be discussed but is not sufficient to inform the public the school board will take up general administrative needs for the next school year. Barrett v. Lode et al., 603 N.W.2d 766 (Iowa 1999).

2. Emergency Items - A governmental body may discuss and take action on "emergency items that are first ascertained at a meeting for which proper notice is given. Including emergency items on a tentative agenda is not required. But, “if action can be reasonably deferred to a later meeting, this should be done." Intent, therefore, is relevant in determining the omission of an item from an agenda. KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

D. Reconvened Sessions - a governmental body that reconvenes a meeting must give notice of the time, date, and place and tentative agenda of the reconvened meeting in compliance with Iowa Code section 21.4, *unless*: the meeting reconvenes within four hours of the start of the recess; the time, date, and place of the reconvened meeting is announced in open session at the original meeting and recorded in the minutes; and and there is no change in the agenda. Senate File 289, 84th G.A., 1st Sess., § 4 (Iowa 2011).

E. Subunits - A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by § 21.4 during a lawful meeting of the parent governmental body, during a recess in that meeting of up four hours, or immediately following that meeting if:

1. The meeting of the subunit is publicly announced in open session at the meeting of the parent governmental body; and

2. The subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body. Iowa Code § 21.4(3) (2011), as amended by, Senate File 289, 84th G.A., 1st Sess., § 4 (Iowa 2011).

F. Alternative Notice - If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section. Iowa Code § 21.4(4) (2011).

IV. PROCEDURE - CONFERENCE CALL

A. Electronic Meeting - This is available only when meeting in person is impossible or

impractical and must meet the following requirements:

1. Provide access to conversation to extent reasonably possible;
2. Comply with notice requirements of § 21.4;
3. Record minutes and include a statement explaining why a meeting in person was impossible or impractical; and
4. Comply with procedures for closed meetings when applicable. Iowa Code § 21.8 (2011).

B. Participation with Quorum - The requirements of § 21.8 apply only if the majority of a governing body participate by electronic means. Whether less than a quorum can join a meeting by electronic means is controlled by the body's rules. 1980 Op.Att'y.Gen. 703.

V. PROCEDURE - MINUTES

A. Minutes - The minutes must show date, time, place, members present and action taken at each meeting:

1. Minutes must show result of each vote taken and information sufficient to indicate the vote of each member present. Iowa Code § 21.3 (2011).
2. The vote of each member present shall be made public at the open session. Minutes are public records open to public inspection. Iowa Code § 21.3 (2011).

B. Principles - means the following:

1. Minutes of closed sessions are not public records open to public inspection, even if the session was closed illegally. Telegraph Herald v. City of Dubuque, 297 N.W.2d 529 (Iowa 1980).
2. Minutes of a closed session with counsel pursuant to § 21.5(1)(c) may be discoverable in a civil action pursuant to Iowa Rule of Civil Procedure 122(a) when the minutes constitute direct evidence of an issue in litigation. Dillon v. City of Davenport, 366 N.W.2d 918 (Iowa 1985).
3. The requirement that minutes include a statement of good cause justifying a departure from the requirements of section 21.4(2) applies where less than twenty-

four hour notice is given. KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

VI. PROCEDURE - CLOSED SESSION

A. Grounds - available only to extent necessary for any of the following reasons:

1. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds. Iowa Code § 21.5(1)(a) (2011).
2. To discuss application for letters patent. Iowa Code § 21.5(1)(b) (2011).
3. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Iowa Code § 21.5(1)(c) (2011).

Attorney Client Privilege - Attorney client privilege applies in certain situations to protect communications between public agencies or public officials and their lawyers; however, privilege does not extend to all communications between agencies or officials and government attorneys. Application of the privilege must be determined on a case-by-case basis. Tausz v. Clarion-Goldfield Community School Dist., 569 N.W.2d 125 (Iowa 1997).

4. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigation or proceedings if the governmental body is a licensing or examining board. Iowa Code § 21.5(1)(d) (2011).
5. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor. Iowa Code § 21.5(1)(e) (2011).
6. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A. Iowa Code § 21.5(1)(f) (2011).

Municipal Civil Rights Commissions - Where Iowa Code section 216.19 requires cities to “maintain an independent local civil rights agency or

commission consistent with commission rules adopted pursuant to chapter 17A” and local civil rights commissions cooperate with the Iowa Civil Rights Commission in the investigation and prosecution of civil rights actions so that these commissions largely pattern their procedures after the state commission and chapter 17A, the local proceeding amounts to “a contested case conducted according to the provisions of chapter 17A” and may close to deliberate under Iowa Code section 21.5(1)(f). Botsko v. Davenport Civil Rights Com'n, 774 N.W.2d 841 (Iowa 2009)

7. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection. Iowa Code § 21.5(1)(g) (2011).
8. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law. Iowa Code § 21.5(1)(h) (2011).
9. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session. Iowa Code § 21.5(1)(i) (2011).
10. To discuss the purchase or sale of particular real estate only 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. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed. Iowa Code § 21.5(1)(j) (2011), as amended by, Senate File 289, 84th G.A., 1st Sess., § 5 (Iowa 2011).
11. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50. Iowa Code § 21.5(1)(k) (2011).
12. To discuss patient care quality and process improvement initiatives in a meeting of a public hospital or to discuss marketing and pricing strategies or similar proprietary information in a meeting of a public hospital, where public disclosure of such information would harm such a hospital's competitive position

when no public purpose would be served by public disclosure. The minutes and the audio recording of a closed session under this paragraph shall be available for public inspection when the public disclosure would no longer harm the hospital's competitive position. For purposes of this paragraph, "public hospital" means the same as defined in section 249J.3. This paragraph does not apply to the information required to be disclosed pursuant to section 347.13, subsection 11, or to any discussions relating to terms or conditions of employment, including but not limited to compensation of an officer or employee or group of officers or employees. Iowa Code § 21.5(1)(l) (2011).

B. Procedures - must comply with following statutory procedures:

1. A session may close only on affirmative vote of 2/3 members or of all members present. Iowa Code § 21.5(1) (2011).
2. The vote of each member on the question of holding the closed session must be announced publicly and entered in the minutes. Iowa Code § 21.5(2) (2011).
3. The reason for holding the closed session must be announced publicly and entered in the minutes. Iowa Code § 21.5(2) (2011).
4. Any business discussed during a closed session must relate directly to the specific reason announced as justification to close the session. Iowa Code § 21.5(2) (2011).
5. Final action on any matter discussed during a closed session must be taken in open session unless a specific provision of the Code expressly permits final action in closed session. Iowa Code § 21.5(3) (2011).
6. Detailed minutes must be kept on the following:
 - a. all discussion;
 - b. persons present; and
 - c. action occurring. Iowa Code § 21.5(4) (2011).
7. Closed sessions must be recorded. Iowa Code § 21.5(4) (2011).

8. Minutes and audio recording must be sealed and retained for at least one year, except as otherwise required by law. Iowa Code § 21.5(4) (2011), as amended by, Senate File 289, 84th G.A., 1st Sess., § 6 (Iowa 2011).

C. **Principles** - means the following:

1. A school superintendent is not a “member” of the school board and, therefore, cannot be subject to remedies for violations of the Open Meetings Law. But actions of the superintendent may generate factual questions as to whether the superintendent’s actions were within the knowledge of board members and on that basis could establish violations by board members. Barrett v. Lode et al., 603 N.W.2d 766 (Iowa 1999).

2. There may be a factual question whether a governmental body holds a “de facto” closed session in violation of the Open Meetings Law where members of the public are told there will be a closed session and asked to leave, even if the session is not actually closed after all members of the public depart. Barrett v. Lode et al., 603 N.W.2d 766 (Iowa 1999). But see Vanwyk Farms, L.C. v. Poweshiek County Bd. of Sup'rs, No. 07-1958, 2009 WL 778086 (Iowa App. Mar. 26, 2009)(“We further find no error in the district court's conclusion that the ‘huddle’ at the Supervisors' July 20,2006 meeting did not constitute a de facto closed meeting.”).

3. Substantial compliance with the procedural requirements of § 22.5(2) occurred where the Board of Supervisors asked the secretary to leave, voted to go into closed session but, due to the secretary's absence, failed to take minutes of the vote of each member or the reason for going into closed session. KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

4. Despite language of section 21.5(5) that “nothing” in section 21.5 “requires a governmental body to hold a closed session to discuss or act upon any matter,” a county civil service commission abused its discretion in denying a request for a closed hearing under § 21.5(1)(i) where the hearing concerned allegations of private sexual misconduct and of association with a convicted criminal. Feller v. Scott County Civil Service Commission, 435 N.W.2d 387 (Iowa App. 1988), *aff'd on remand*, 482 N.W.2d 154 (Iowa 1992).

5. Under open meetings statute, student had right to open meeting on his proposed suspension by school board, even though teacher's aide who was involved in incident leading to student's proposed suspension requested that

meeting be closed. Schumaker v. Lisbon School Board, 582 N.W.2d 183 (Iowa 1998).

6. "Final action" on a hearing occurs when a written decision is approved, signed, and dated or an oral decision is announced on the record with a brief statement of supporting facts and law. 1980 Op.Att'y.Gen. 444.

7. "Final action" on a hearing must be taken in open session even if the hearing itself is conducted in closed session. 1982 Op.Att'y.Gen. 390.

8. A school board member, who is absent during a closed session the member would have had a right to attend, subsequently may obtain and review the minutes and tape recording of the closed session without resort to a court order under Iowa Code section 21.5(4). Op.Att'y.Gen. # 01-11-1(L).

VII. VIOLATIONS - ENFORCEMENT

A. Availability - can be enforced by any of the following persons:

1. Any aggrieved person;
2. Taxpayer to the State of Iowa;
3. Citizen of the State of Iowa;
4. Attorney General; or
5. County Attorney. Iowa Code § 21.6(1) (2011).

B. Remedies - can be imposed for violation of any provision of chapter 21. Upon finding by a preponderance of the evidence that a governmental body has violated any provision a court shall:

1. Assess damages against each member who participated in the violation in the amount of not more than \$500 and not less than \$100. Iowa Code § 21.6(3)(a) (2011).
2. Assess damages against each member who *knowingly* participated in the violation in the amount of not more than \$2,500 and not less than \$1,000. Senate File 289, 84th G.A., 1st Sess., § 7 (Iowa 2011).

3. Order payment of all costs and attorney fees to the party successfully establishing a violation. Iowa Code § 21.6(3)(b) (2011).

a. Attorney Fees - The court shall order payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation. Iowa Code § 21.6(3)(b). These costs and fees are to be paid by the members of the government body who are assessed damages. If all members have a lawful defense to assessment of damages, the costs and fees are to be paid from the budget of the governmental body or its parent. Note: This statute changes the result in Schumaker v. Lisbon School Board, 582 N.W.2d 183 (Iowa 1998), which had held that the Open Meetings Law did not authorize an award of appellate attorney fees.

b. Pro Se Litigants - A pro se attorney litigant may not seek an award of attorney fees under section 21.6(3)(b) of the Open Meetings Act. Fritzsche v. Scott County, No. 09-0860, 2010 WL 2383913 (Iowa App. June 16, 2010).

c. State or County - Recovery of attorney fees does not include compensation for performance of official duties by either the attorney general or the county attorney. 1980 Op.Att'y.Gen. 430.

4. Issue an order removing from office a member of a governmental body if that member engaged in a prior violation of chapter 21 for which damages were assessed against the member during his or her term. Iowa Code § 21.6(3)(d) (2011).

If the violation is an illegally closed session, the court additionally shall:

5. Void any action taken in violation of chapter 21 if: (1) the suit for enforcement is brought within six months of the violation; and (2) the court finds under the facts of the particular case that the public interest in the enforcement of the policy of chapter 21 outweighs the public interest in sustaining the validity of the action taken in closed session. This remedy is not applicable to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election, or public sale has been held regarding the bonds or evidence of indebtedness. Iowa Code § 21.6(3)(c) (2011).

In addition to these remedies the court may:

6. Issue a mandatory injunction punishable by civil contempt ordering of the offending governmental body to refrain for one year from future violations of chapter 21. Iowa Code § 21.6(3)(e) (2011).

C. Defenses - It is a defense against assessment of damages upon proof that the member did any of the following:

1. Voted against the closed session.

2. Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with chapter 21.

3. Reasonably relied upon a decision of a court, a formal opinion of the attorney general, or the attorney for the governmental body, given in writing, or memorialized in the minutes of the meeting at which the formal oral opinion was given, or an advisory opinion often attorney general or the attorney for the government body, given in writing. Iowa Code § 21.6(3)(a)(1)-(3) (2011), as amended by, Senate File 289, 84th G.A., 1st Sess., § 7 (Iowa 2011).

a. Reasonable Reliance - A governmental body may not have “reasonably relied” on advice of counsel to go into closed session where the members failed to follow the proper procedures to close a meeting and made no effort to record the closed session. Grell v. Building Appeals Board, No. 98-1992, 1999 WL 1255744 (Iowa App. Dec. 27, 1999)(unpublished opinion).

b. Formal Opinion - It remains an open question whether oral advice from counsel for the governmental body in the course of the meeting can constitute a formal opinion for purposes of a defense. Grell v. Building Appeals Board, No. 98-1992, 1999 WL 1255744 (Iowa App. Dec. 27, 1999) (unpublished opinion).

D. Principles - means the following:

1. The exclusive mechanism for enforcement of the open meetings law is an original action in the district court for the county in which the governmental body has its principal place of business. An enforcement action cannot be joined in a petition for judicial review. Keeler v. Iowa State Board of Public Instruction, 331 N.W.2d 110 (Iowa 1983).

2. Procedures imposed on county governmental bodies under the open meetings law are measured by substantial, rather than absolute, compliance. KCOB/KLVN et al. v. Jasper County Board of Supervisors, 473 N.W.2d 171 (Iowa 1991).

3. It is unlikely that the open meetings law itself provides remedy when a governmental body refuses to close a meeting pursuant to § 21.5(1)(i). Feller v. Scott County Civil Service Commission, 482 N.W.2d 154 (Iowa 1992).

4. The failure to post and send notice as required under Iowa Code section 21.4 renders a subsequent meeting a “closed session” and makes applicable remedies for closed session violations. Hawkeye Communications, Inc. v. Carlson et al., No. 04-1674, 2005 WL 3940279 (Iowa App. Dec. 21, 2005)(unpublished opinion). But see 1980 Op.Att’y.Gen. 430 (actions taken at a meeting held in violation of the notice requirements are not voidable under § 21.6(3)(c)).