



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

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Auditor of State

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Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 242-6134

May 30, 2012

Winneshiek Medical Center
901 Montgomery Street
Decorah, Iowa 52101

Re: Chapter 21 of the Code of Iowa

To the Board of Trustees:

We have reviewed the response provided on your behalf by your legal counsel, Ms. Diane Kutzko and affidavit of Ben Wyatt, Board Chair in regard to compliance with Chapter 21 of the Code of Iowa. We accept the Board's response and have no additional findings or recommendations except in regard to the Board meeting in Rochester, Minnesota on November 30, 2010.

Although the Board met out of state on only one occasion, we nevertheless caution the Board in the future to ensure the Board is able to demonstrate compliance in all matters pertaining to Chapter 21 of the Code of Iowa. Accordingly, the minutes of the meeting should include documentation explaining the reasons why the meeting is not being held at a place reasonably accessible to the public (to document good cause whereby such a place or time is impossible or impractical).

We commend the Board for its efforts to seek legal counsel, attend training sessions and recent changes made to your practices and procedures to address compliance with Chapter 21 of the Code of Iowa. To assist you in that effort, we have enclosed three relevant Sunshine Advisory Bulletins provided by the Iowa Attorney General dated November 2002, April 2003 and November 2004. Additional Sunshine Advisory Bulletins are available on the Iowa Attorney General's website at: http://www.state.ia.us/government/ag/sunshine_advisories/index.html.

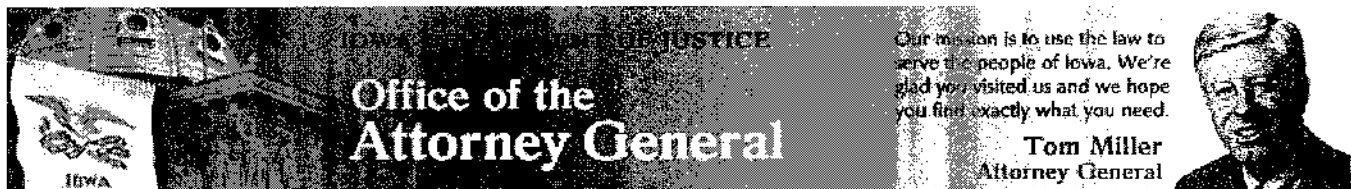
We consider this matter closed and thank you for your cooperation. No additional response is requested or required. If you have any questions or we can be of assistance at any time, please contact me at 515-281-5464.

Sincerely,

Susan D. Battani
Susan D. Battani, CPA
Director

Enclosure

Cc: Diane Kutzko, Attorney
Andrew VanDerMaaten, Winneshiek County Attorney


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Sunshine Advisory Bulletin

A Bulletin on Iowa Open Meetings and Public Records Laws
By Attorney General Tom Miller -- November 2002

Retreats and "Working Sessions" are Open Meetings

Public bodies occasionally schedule retreats or "working sessions" separate from regularly-scheduled meetings in order to discuss policy issues or examine new ideas. These events can help a public body to focus its mission. But **retreats and working sessions are covered by Iowa's Open Meetings Law** and cannot be held in private unless grounds exist to close the session.

Here are some legal guidelines for holding retreats or working sessions (Iowa Code Ch. 21):

- **Discussions of policy issues -- even when no votes are taken -- are covered by the Open Meetings Law.** A key purpose of Iowa's Open Meetings Law is to open the deliberative process to the public as well as votes. A meeting is covered if a quorum of the public body deliberates on matters within the scope of the body's policy-making duties.
- **Retreats and working sessions should be held at a location accessible to the public.** All meetings, including retreats and working sessions, must be held at a place reasonably accessible to the public. The public body may select a more casual location than is generally used for regularly-scheduled meetings, as long as the public has reasonable access.
- **Agenda materials should be provided to members of the public, unless confidential.** Copies of agenda materials should be provided to members of the public upon request -- just like agenda materials for any regularly-scheduled meeting. Documents may be withheld only if confidential under a specific provision of law.
- **Agendas may include a social break, such as lunch or dinner, in connection with retreats or working sessions.** As long as the social break is truly just social and not a continuation of deliberation on policy matters, the social break is not part of the meeting subject to the Open Meetings Law.

Officials and citizens alike should be familiar with the rules for holding retreats or working sessions to assure public access to the policy deliberations that often are the heart and soul of sound government.

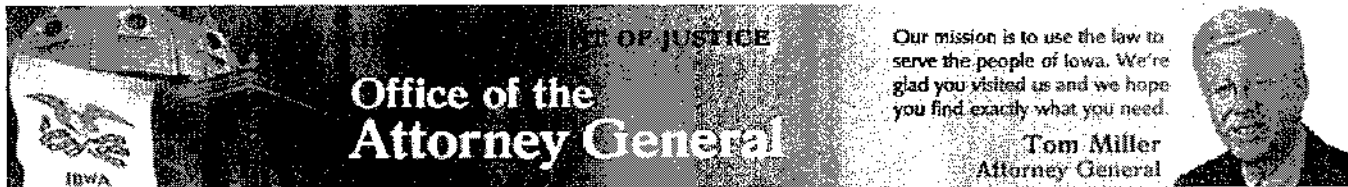
Citizens who have inquiries or complaints may call the Iowa Citizens' Aide/Ombudsman Office - toll-free at 888-IA-OMBUD (888-426-6283.)

"Sunshine Advisory" bulletins are designed to give information on Iowa's public records and open meetings laws - our "Sunshine Laws." Local officials should obtain legal advice from their counsel, such as the city or county attorney

Iowa Attorney General's Office: Hoover Building, Des Moines, Iowa 50319.

On the Web: www.iowaAttorneyGeneral.org. Sunshine Advisories are a general resource for government officials and citizens.

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Sunshine Advisory Bulletin

A Bulletin on Iowa Open Meetings and Public Records Laws
By Attorney General Tom Miller -- April 2003

Recording What Goes on Behind Closed Doors

It is very serious business when a governmental body goes into closed session and asks the public to leave. The body must vote to close the meeting and only can do so for certain reasons. (See July 2002 "Sunshine Advisory.") But closed meetings must be documented. How are they documented -- and when can the public have access to the information?

Public officials must document closed sessions and make a complete record:

- Government bodies must keep detailed minutes of all discussion, persons present, and actions occurring at a closed session, and must tape-record the entire closed session.
- The minutes and tape must be sealed and maintained for at least one year.

Minutes and tape of a closed session are not open for public inspection. However, the law provides situations in which minutes and tape recordings can be accessed:

- Members of the government body who were present at the closed session (or who were absent but lawfully could have been present) are entitled to access the tape and minutes.
- A court may permit inspection of minutes and tape by a party bringing an enforcement action for violation of the Open Meetings Law (IA Code Ch. 21.) The court must weigh the prejudicial effects to the public interest against the probative value of evidence in the action.

Remember, discussions in closed session are recorded for a purpose: Minutes and tapes may reveal later if the session was closed improperly, or if officials strayed into discussion of matters that should have been considered in open session. This could happen if a court ordered all or part of the closed session minutes and tape be disclosed to a party bringing an enforcement action. The law is designed to protect the public interest and assure that nothing improper goes on behind closed doors.

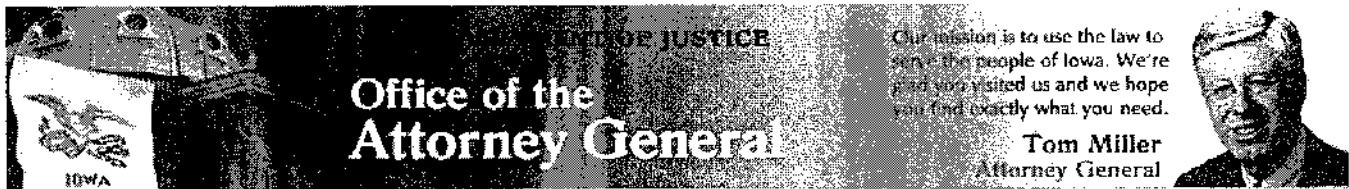
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Sunshine Advisory Bulletin

A Bulletin on Iowa Open Meetings and Public Records Laws
By Attorney General Tom Miller -- November 2004

Are Closed Sessions Confidential?

Yes, but tapes and minutes may be released.

Iowa's Open Meetings Law defines limited grounds for government bodies to hold closed sessions of government meetings. (Iowa Code sec. 21.5(1).) The law also requires a government body to maintain sealed tape recordings and minutes of closed sessions for at least one year. Does the public ever have access to these tapes and minutes? What reasons could justify release of sealed tapes and minutes, and what procedures must be followed?

A court order is needed to release closed session tapes and minutes. The following principles govern the reasons and the process under which such sealed records may be released:

- **Pending Litigation:** Generally, a person may access closed session tapes and minutes only in a court case brought to enforce the Open Meetings Law. A person who sues alleging violations of the Open Meetings Law may request access to the minutes and tapes as evidence. (Iowa Code sec. 21.5(4).) Courts have also allowed access to litigants involved in contract disputes with government bodies.
- **Court Inspection:** A judge will usually review the records personally to determine whether to allow access at all and, if so, how much of the records to release. The release of the records is to the litigants only -- the records do not become available to the public as open records. (Iowa Code sec. 21.5(4).)
- **Balancing Test:** A court decision to release sealed tapes and minutes is based on weighing the prejudicial effects to the public interest of the disclosure against the probative value of the records as evidence in the pending litigation. (Iowa Code sec. 21.5(4).) Courts do not allow parties in litigation to engage in "fishing expeditions" into sealed records.

In sum: Sealed tapes and minutes of closed sessions may be released by a court and admitted into evidence to hold government officials accountable. Government officials are not guaranteed confidentiality when they hold closed sessions under the Open Meetings Law.

Citizens who have inquiries or complaints about public records or open meetings may call the Iowa Citizens' Aide/Ombudsman Office -- toll-free at 888-IA-OMBUD (888-426-6283.)

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