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Advisory Opinion - Closed Meetings 14FO:0002

Date:

Thursday, February 20, 2014

Subject:

Request for Advisory Opinion concerning the law governing closed meetings when evaluation of the professional competency of public employees or applicants for public employment is discussed.

Ruling:

February 20, 2014

TO: Mr. Jedd Sherman

Re: Request for Advisory Opinion concerning the law governing closed meetings when evaluation of the professional competency of public employees or applicants for public employment is discussed.

Mr. Sherman:

You contacted this office recently for an Advisory Opinion concerning the interpretation of the use of Iowa Code Section 21.5 to close an open meeting for the purpose of discussing certain personnel issues relating to evaluation of the professional competency of an employee or potential employee by a governmental body.

Iowa Code subsection 21.5(1)(i) sets forth the specific procedures applicable to evaluation of professional competency by a governmental body in closed session. This subsection reads:

“i. 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.”

For a session to be closed, ALL of the following must occur:

1. The discussion must involve an evaluation of the professional competency of an individual.
2. The discussion must involve consideration of the appointment, hiring, performance, or discharge of the individual.
3. The discussion must be such that if conducted during an open meeting it would cause needless and irreparable injury to that person's reputation AND
4. The individual must request the closed session.

There is no statutory requirement that the subject individual must be allowed into the closed session. There is also no statutory provision that would bar attendance at the invitation of the governmental body.

While other subsections of 21.5 could be used to allow a closed meeting where there is discussion that involves a named individual who is an employee or a potential hire, a discussion that involves consideration of items one through three enumerated above may not occur in a closed meeting unless item four is also satisfied.

Code subsection 21.5(1)(a) allows a closed session to review or discuss records which are required or authorized by state or federal law to be kept confidential. The open meetings law, Code chapter 21, does not contain a definition or listing of records that would qualify. Section 22.7 of the open records law lists 66 records or types of records authorized to be kept confidential. An example relating to your inquiry is subsection 22.7(11). It provides that 'personal information' in confidential personnel records shall be kept confidential. There is no definition of 'personal information', but there is a listing of items that may not be kept confidential.

Other statutory definitions for the term 'personal information' include name, address and statistical data (Code chapter 421A – Tax return confidentiality) and name, address, date of birth, telephone number, driver's license number, employer/employee identification numbers, bank information, genetic information, fingerprints and credit card information (Code chapters 715A and 715C of the Criminal Code, dealing with identity theft).

Certainly there could conceivably be an occasion for discussing a confidential public record involving a specifically identified employee or potential hire that would not fall under the purview of subsection 21.5(1)(i).

However, Code subsection 21.5(1)(i) provides the exclusive process for the evaluation of the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered. The application of subsection 21.5(1)(i) cannot be avoided under the guise of a confidential record review or discussion during a closed session conducted pursuant to subsection 21.5(1)(a).

Code subsection 21.5(1)(a) is a general provision. Application of Code section 4.7 requires that the specific provisions of Code subsection 21.5(1)(i) govern the activity specifically addressed.

Pursuant to Iowa Administrative Code Section 497—1.3, this Opinion has been reviewed, approved and its issuance directed by action of the Iowa Public Information Board on February 20, 2014. Opinions issued pursuant to Section 497—1.3 are subject to modification or reconsideration within 30 days of issuance as provided in Subsection 497—1.3(3) and are not effective until 30 days have passed and any timely request for modification or reconsideration has been acted upon.

Sincerely,

Keith E. Luchtel, JD
Executive Director

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