

INFORMAL RESOLUTION

21FC:0009

Kim Swearingin/Wayne County Board of Supervisors

On February 14, 2021, Kim Swearingin, the Wayne County Treasurer, filed formal complaint 21FC:0009, alleging that the Wayne County Board of Supervisors (Board) violated Iowa Code chapter 21.

In support of her complaint, Ms. Swearingin alleged that on February 8, 2021, one member of the three members of the Board visited her office to discuss the budget. When she asked to have the budget discussion in a public forum, the board member left. Later that day, two members of the Board visited her office, again to discuss the budget. This time a discussion ensued concerning her budget request for an additional \$40,000 to pay for overtime and an additional staff person.

Later that day, Ms. Swearingin received an email from the county auditor with the \$40,000 budget increase removed. This revised budget was signed by the two board members who visited her office.

The county attorney responded to the complaint on February 26, 2021. In his response, he stated that the Board is required to meet with every county officer or department head pursuant to Iowa Code section 331.433. He added that because no action was taken to delete the requested budget increase during the meeting with Ms. Swearingin, there was no meeting as defined by the Iowa Code.

The county attorney also stated that during this meeting Ms. Swearingin was advised that the additional \$40,000 would not be approved because the two board members considered it for the political purpose of grooming a successor.

Iowa Code section 21.2(2) defines a meeting for the purposes of open meetings:

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

Iowa Code section 331.433 refers to county budget estimates:

331.433 Estimates submitted by departments. 1. On or before January 15 of each year, each elective or appointive officer or board, except tax certifying boards as defined in section 24.2, subsection 2, having charge of a county office or department, shall prepare and submit to the auditor or other official designated by the board an estimate, itemized in the detail required by the board and consistent with existing county accounts, showing all of the following: a. The proposed expenditures of the office or department for the next fiscal year. b. An estimate of the revenues, except property taxes, to be collected for the county by the office during the next fiscal year. 2. On or before January 20 of each year, the auditor or other designated official shall compile the various office and department estimates and submit them to the board. In the

preparation of the county budget the board may consult with any officer or department concerning the estimates and requests and may adjust the requests for any county office or department.

Iowa Code section 331.433 allows a board of supervisors to consult with officers or department heads to discuss budget estimates. It does not exempt such action from complying with the requirements of Iowa Code chapter 21. Therefore, any time members of a governmental body gather with a county official or department head to deliberate or take action on a policy-making duty, that gathering is subject to the requirements of open meetings laws.

From the information provided by both parties, it appears that the February 8, 2021, gathering of the two board members with Ms. Swearingin concerning her budget request resulted in deliberation even if a final vote did not occur.

The meeting should have been held pursuant to Iowa Code chapter 21 but it was not properly noticed and open to the public.

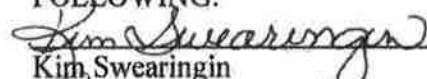
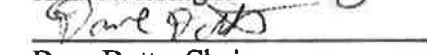
The Iowa Public Information Board (IPIB) accepted the formal complaint on March 18, 2021, as to the violation of Iowa Code chapter 21 and specifically 21.3, violation of the requirements for meetings of governmental bodies.

Pursuant to Iowa Code 23.9, the parties negotiated and reached an informal resolution. The parties agree to the following terms:

1. The Board will acknowledge during an open meeting that the requirements for holding an open meeting on February 8, 2021 was not met when two members of the Board deliberated on matters within their policy-making duty, and this acknowledgement be recorded in the minutes of said meeting.
2. The Board shall conduct training during an open meeting for all Board members and county officials, on Iowa Code chapters 21 and 22 (Sunshine Laws). The Board may utilize the powerpoint training available on the IPIB website. The Board shall work with the county attorney to provide the training to the Board and officials.
3. The Board shall approve this resolution during an open meeting and include the full text in the minutes of said meeting. Said minutes shall be provided to the IPIB.

The terms of this informal resolution will be completed within 60 days of acceptance by all parties. Upon showing proof of compliance, the IPIB shall dismiss this complaint as successfully resolved.

THIS INFORMAL RESOLUTION HAS BEEN REVIEWED AND APPROVED BY THE FOLLOWING:


 Kim Swearingin

 Dave Dotts, Chair

3-25-21
 Date
4-19-21
 Date of Meeting

IPIB:

 Chair

 Date