



# Iowa General Assembly

## 2005 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### OPEN MEETINGS LAW VIOLATION

Filed by the Iowa Court of Appeals  
November 9, 2005

Hawkeye Communications, Inc. v. Carlson  
No. 5-453/ 04-1674

<http://www.judicial.state.ia.us/appeals/opinions/20051109/04-1674.asp>

**Background Facts and Procedure.** The Montgomery County Board of Supervisors (Board) held an open meeting the evening of February 21, 2003, to discuss the county budget. Subsequently, the Board posted a special agenda meeting notice indicating that the Board would continue the budget discussions and convene on February 24, 2003, at 9 a.m., break at noon, and if necessary, reconvene at 1 p.m. On February 22, 2003, a revised agenda was posted by Board member Stoldorf upon consultation with Board chairperson Benskin and Board member Carmichael. The revised agenda cancelled the 9 a.m. and 1 p.m. meeting times on February 24 and rescheduled the meeting for 2 p.m. that same day.

On February 24, 2003, a quorum of Board members (Benskin, Carmichael, and Carlson) met at 9 a.m. and discussed the county budget. Board member Stoldorf joined the meeting by phone and expressed concern about the 9 a.m. meeting being held in violation of Iowa's open meetings law. Despite this concern, the meeting continued without Stoldorf. The meeting then adjourned until 1 p.m. that same day. All four Board members were present at the 1 p.m. meeting. At that time, Stoldorf restated her concern about continuing the budget discussions and moved to reconvene at 2 p.m. Her motion failed and the members proceeded to continue their discussions about the county budget. The Board adjourned shortly before 2 p.m. but took no formal action. The Board reconvened at 2 p.m., briefly discussed the budget, and took formal action on the budget.

In August of 2003, the plaintiffs in this case, certain print and radio media, filed a petition against the Board and against Board members Benskin, Carmichael, and Carlson individually alleging that the 9 a.m. and 1 p.m. Board meetings held on February 24, 2003, were in violation of Iowa Code §21.4, Iowa's open meetings law. Prior to trial, the Board and Benskin entered into a consent agreement that enjoined the Board and Benskin from violating the open meetings law for one year and required Benskin to pay \$300 toward the plaintiffs' attorney fees. Upon trial, the district court found the notice provisions of Iowa Code §21.4 had been violated and ordered Carlson and Carmichael to each pay \$300 in damages and to jointly pay \$22,645.93 toward the plaintiffs' attorneys fees. Carlson appealed this ruling.

**Issue.** Whether a violation of Iowa's open meetings law occurred when certain members of the Montgomery County Board of Supervisors met at 9 a.m. and 1 p.m. on February 24, 2003.

**Analysis.** Iowa Code §21.2 provides that a meeting is "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." In accordance with this law, the Board was required to give proper public notice of the meeting to include the date, time, place, and tentative agenda.

The Iowa Court of Appeals (Court) first addressed Carlson's contention that the issuance of the revised agenda constituted an invalid public notice because the revised agenda was not issued by a majority of the Board members upon a formal motion during a previously noticed open meeting. The Court noted that pursuant to Iowa Code §331.213, Board meetings must be held as scheduled by the Board and in compliance with Iowa Code chapter 21. The Court concluded

that the action of the Board members in posting the revised agenda did not constitute a meeting under Iowa Code §21.2 as the members' revision of the meeting time on February 24 did not involve deliberation of or action upon policy under Iowa Code §21.1. In response to Carlson's argument that an alternate provision under Iowa law provides that the Board "shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance," the Court concluded that calling a meeting and posting a revised agenda does not constitute a "power" or a "duty." See Iowa Code §331.302.

The Court next addressed Carlson's contention that failure to give reasonable notice did not render the 9 a.m. and 1 p.m. meetings closed sessions because members of the public attended and no one was denied access to the meetings. In noting that an open meeting is characterized as a meeting in which all members of the public have access, the Court stated that reasonable notice is what assures this access under the law. In this case, the Court found that the revised agenda canceling the 9 a.m. and 1 p.m. meeting times on February 24 effectively denied the public access to those meetings that in fact took place, although a few county employees had special notice of the meeting times but who did not attend until the 2 p.m. meeting.

**Conclusion.** The Court concluded that the record substantially supported the district court's finding that a violation of Iowa's open meetings law occurred and that Carlson participated in policy discussions during those meetings. The Court further found that the damages and attorney fees assessed against Carlson, despite his claim of excessiveness, were reasonable given the experience of the attorneys involved, the subject matter, and the extent of the litigation.

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