



# Iowa General Assembly

## 2005 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us>

**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

Filed by the Iowa Supreme Court

July 15, 2005

Timothy Mason, Harlan Dettman, and Ronald Klienow v. Vision Iowa Board of the State of Iowa and its Negotiating Committee on the Marquette-McGregor Legacy Project

No. 69/ 04-0491

<http://www.judicial.state.ia.us/supreme/opinions/20050715/04-0491>

**Background Facts and Procedure.** The Vision Iowa Board (Board) administers the Vision Iowa Program, which assists in the development of tourism projects through the awarding of monetary grants, and the Community Attraction and Tourism Program (CAT) which assists in the development of tourism projects smaller in size or scope. The Iowa Department of Economic Development (IDED) is authorized by law to provide assistance to the Board in several areas, including administrative functions and contract negotiation.

In April of 2001, the communities of McGregor, Strawberry Point, and Guttenburg (Marquette-McGregor Project) submitted an application to IDED seeking a grant of over \$6 million. A CAT review committee recommended that the Board consider whether the Vision Iowa Program or CAT Program should provide funding for the Marquette-McGregor Project. Subsequently, the Board appointed a negotiating committee to determine a potential award amount and to recommend whether the funding should come from the Vision Iowa Program or the CAT Program. The number of Board members enlisted to serve on the negotiating committee as well as who was to serve was left to the discretion of the Board chairperson. The negotiating committee, which was comprised of essentially the Board chairperson and another member of the Board, recommended an award of \$5 million from the Vision Iowa Program subject to several contingencies, including a development agreement acceptable to the Board. The negotiating committee was responsible for reviewing the development agreement.

Concerns about the viability of the project were raised during negotiations with the developer, and the negotiations continued through 2002. Immediately prior to the Board's meeting on March 12, 2003, the negotiating committee met with proponents of the project in a closed meeting. Several members of the public, including plaintiffs Dettmen and Klienow, were not permitted to attend the meeting. At the Board meeting held on April 9, 2003, the negotiating committee reported that it had not been able to reach terms acceptable to both sides as to certain issues but that there was agreement on other issues, so the negotiating committee recommended the issues that were agreed upon be severed from the Vision Iowa Project and be considered as a CAT project. Based upon the recommendation of the negotiating committee, the Board concluded the conditions of the grant could not be met, so the Board withdrew its support for the Project under the Vision Iowa Program.

On April 1, 2003, the plaintiffs filed a petition against the Board and the negotiating committee alleging the negotiating committee was a governmental body as defined in Iowa Code §21.2 and that the negotiating committee's meeting held on March 12, 2003, was a public meeting as defined in Iowa Code §21.2(2), which, as a closed meeting, was held in violation of Iowa Code §21.3, Iowa's open meetings law. The plaintiffs sought damages, a mandatory injunction, and award of attorney's fees.

The defendants filed a motion for summary judgment opposing the plaintiff's claims. The district court granted the defendant's motion for summary judgment, ruling the negotiating committee was not a governmental body and did not hold a meeting within the scope of Iowa Code chapter 21. The plaintiffs have appealed.

**Issue.** Whether the negotiating committee's March 2003 meeting was a governmental meeting which should have been held in open session as provided in Iowa Code §21.3.

**Analysis.** Iowa Code §21.3 provides, in relevant part, that "[M]eetings of governmental bodies shall be preceded by public notice....and shall be held in open session unless closed sessions are expressly permitted by law." A "meeting" is defined in Iowa Code §21.2 (2) as "a gathering in person or by electronic means... of a majority of the members of a governmental body where there is a deliberation or action upon any matter within the scope of the governmental body's policy-making duties."

The Iowa Supreme Court (Court) focused first on the determination of whether the negotiating committee's deliberations and actions were in furtherance of any policy-making duties. As the term "policy-making duties" is not specifically defined in Chapter 21, the Court looked both to the common meaning and to Iowa case law for guidance and determined that "policy-making" involves activity more than recommending or advising what should be done; it involves deciding with authority a course of action. The Court noted that in both 1989 and 1993 the Iowa General Assembly added certain advisory groups to the statutory definition of the term "governmental body," in Iowa Code §21.2(1)(e) (1989 Iowa Acts ch. 73, §1) and Iowa Code §21.2(1)(h) (1993 Iowa Acts ch.25, §1), and concluded that the amendments were specific to the definition of "governmental body" and should not be extended to the statutory definition of "meeting," and should not effectively eliminate the "policy-making duties" qualification from the latter definition. The Court determined that the General Assembly intended to make the advisory groups added to the definition of "governmental body" subject to the open meetings requirement in Iowa Code §21.3 in instances where such advisory groups deliberate or act within the scope of their duty to develop and make recommendations on public policy issues. As to all other governmental bodies, the definition of "meeting" including the requirement that the governmental body act within the scope of the governmental body's policy-making duties, remains unchanged.

**Conclusion.** The Court concluded that the negotiating committee in this case could not be characterized as an advisory group created by the governor, general assembly, statute, or state or political subdivision executive order, and intended by the General Assembly to be subject to the open meetings law. The Court further concluded that the negotiating committee had only the responsibility for recommending or suggesting to the Board what course of action to take on the Marquette-McGregor Project, and that the Board had the final decision on the course of action to take on the project. The Court thus concluded that the March 2003 meeting was not required to be open to the public and agreed with the district court's summary judgment ruling that the undisputed facts established as a matter of law that the negotiating committee did not have any policy-making duties, and thus its meetings were not subject to the open meetings law.

**LSA Contact:** Rachele Hjelmaas, Legal Services, (515) 281-8127