

Legal Overview of Boards and Commissions

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Mission & Authority

TIP: Bring a copy of the main laws governing your commission to each meeting.

Boards and commissions are created by statute, sometimes called an “enabling act.”

The Commission for the Blind enabling act is in **Iowa Code chapter 216B**.

Commissions only have that authority granted by law.

Commissions are guided by various laws in addition to the law that creates the commission.

Commissions may not expand their authority beyond that granted by law.

Mission & Authority cont...

The law may be very specific about how decisions shall be made or may grant a commission discretion within specified limits.

New members should read--and reread--the laws governing the commission.

Staff, other commission members, prior minutes of meetings, and websites are good sources of information.

New commission members bring a new perspective and vitality.

Mission & Authority cont...

A commission's mission is always a public purpose.

When serving on a commission, you are representing the citizens of Iowa. Be inclusive and listen, but always make decisions with the commission's public purpose in mind.

Don't rely exclusively on what others tell you about the mission of the commission or its authority.

Rulemaking cont...

TIP: Bring a copy of your rules to each meeting.

Most boards and commissions have rulemaking authority.

The Commission for the Blind's grant of rulemaking authority is in Iowa Code § 216B.6.

Rules are in a very real way the commission's laws.

The Department for the Blind and the Commission for the Blind's rules are at Iowa Administrative Code chapter 111.

Rules must be authorized by and consistent with statutes.

Rulemaking is a powerful authority.

Rulemaking cont...

The Governor, Legislature, Attorney General, and the public all have a role to play when commissions adopt rules--there are many checks and balances. All commissions and other agencies are required to review rules on a five-year rolling cycle.

Rules **SHOULD**:

Describe the organization and procedures of the commission.

State how the commission will implement laws.

Inform people about guidelines and policy choices that impact their legal rights and duties.

Rulemaking cont...

Rules should also be:

Easy to read and understand.

Tied to specific needs and objectives.

Sensitive to costs - benefits should outweigh costs.

Effective.

Developed with input by those affected.

Fair - use rulemaking power wisely.

Decisionmaking

TIP: Before you vote determine if there is a quorum and how many “ayes” are needed.

No single commission member makes decisions for commission.

Commission make decisions by taking votes at commission meetings.

A “quorum” of the commission is needed to take a vote. A “quorum” for the Commission for the Blind is a **majority of the Commission members, meaning two members of the Commission.**

Once a quorum is attained, most commission action is taken upon a majority vote of those participating – **but there are important exceptions:**

The commission may only go into closed session upon a public vote by two-thirds of the members or all members present.

Decisionmaking cont...

The votes of all members must be public and clear during the meeting and in the minutes.

Only take a voice vote when the vote is unanimous.

Use roll call votes whenever voting to go into closed session or when any member abstains or votes “nay.”

Never use a secret ballot.

Commssion Meetings & The Public

Count Heads! If you have a quorum (in person or electronically), do not discuss commission business **unless** you are at a commission meeting preceded by proper notice to the public and a posted agenda.

Purely social or ministerial gatherings are not meetings as long as no commission business is discussed, but be careful to avoid even the appearance of holding an illegal meeting.

Agendas are a commission's invitation to the public to watch the commission in action.

Post agendas at least 24 hours in advance.

Commission Meetings & The Public

The open meetings law only applies when there is a “meeting” of a quorum of the commission to discuss commission business. However, strict physical presence is not required to constitute a “meeting.” A meeting may occur:

Electronically—**Beware of REPLY ALL!**

If overlapping subsets of commission members meet close in time.

Through a proxy or agent, such as the commission administrator.

When in doubt, commission deliberation and decision making should take place in the light!

Commission Meetings & The Public

It is acceptable to ask the commission administrator to distribute discussion materials to other commission members. But don't ask your commission administrator to communicate your **views** on particular commission matters to enough other members to constitute a quorum.

The Attorney General's Office and Iowa Public Information Board have both issued guidance to educate public officials and the public about Iowa's Sunshine Laws:

<https://www.iowaattorneygeneral.gov/about-us/sunshine-advisories/>.

<https://www.ipib.iowa.gov>.

Commission Meetings & The Public

cont...

Identify all topics on which votes will be taken and matters that will be discussed.

The detail needed will depend on the public's familiarity with the matter. The less familiar the public is, the more detail is needed.

Stick to the posted agenda. If a new idea comes up at a meeting and there is no emergency requiring immediate action (which would be very rare), place the topic on the agenda for the next meeting.

Commission Meetings & The Public

Lights! Camera! Action! The public has a right to observe the open sessions of your commission meetings and may record them or take photographs.

The public does not have the right to participate in your meetings, but boards and commissions typically provide an opportunity for public comment at meetings.

Commission Meeting Minutes

Minutes of Commission meetings create a permanent record of who met, when they met, what they discussed, what they decided, and by what votes.

Accurate minutes are a **key tool** for conducting the public's business in an open and accountable way.

Minutes are a vital organizational tool for boards.

Minutes are a crucial way for citizens to review public action taken on their behalf.

Commission Meeting Minutes cont...

Minutes of open sessions **must** include:

The date, time, and place of a meeting.

Which members were present.

Actions taken, with sufficient information to reflect members' votes.

Commission Meeting Minutes cont...

If a closed session is held, the minutes of the open session must include the legal grounds for a closed session, the vote of each member on whether to go into closed session, and any final action taken – no final votes may be taken in closed session.

When applicable, minutes must also explain the legal basis for holding a telephonic meeting, an emergency meeting (less than 24 hours notice), or a meeting at a time or place not reasonably accessible to the public.

Closed Sessions

Tip: You should always ask for legal advice if you are not confident you have grounds to vote to go into closed session. Get the advice in writing or make sure the advice is reported in the minutes of the meeting.

Closed sessions are **serious business!** Never ask the public to leave the meeting so the commission can talk in private—unless the commission has a legal basis to hold a closed session.

In order to go into closed session, a commission must first meet in open session with proper advance notice and posted agenda.

A commission can only close an open session if expressly authorized by statute. For example, a commission is authorized to go into closed session to discuss pending litigation with counsel or certain personnel matters.

Closed Sessions cont...

After announcing the legal basis for a closed session, take a roll call vote. Remember, a commission can only close a session upon an affirmative vote of two-thirds of the members or all members present.

While in closed session, commissions must:

- Record the session (and keep the recording at least a year).

- Take detailed minutes.

- Limit the discussion to the announced basis for the closed session.

Closed Sessions cont...

Final action must be taken in open session. When the closed session discussion is finished, return to open session and allow those who left the room for the closed session to return. Then make a motion and take a vote on any final action in open session.

Public Records

Tip: Practice the old adage -- only say what you would be comfortable reading on the front of your local newspaper.

Commission records are open to public examination unless specifically made confidential under the law.

Public records can be in any form, **including e-mail**. Commission members should not commingle official commission business emails with personal emails. Make separate folders for commission emails!

Assume any record you create or receive as a commission member is a public record that may be open to the public upon request.

Public Records cont...

Refer any public records request to the commission administrator. They will help you respond properly to a request.

Also find out if any of the commission records you create or receive are confidential.

There may be severe penalties for releasing some types of confidential records-- another good reason to refer all requests for records to the commission administrator!

Examples of records that may be fully or partially confidential include applications containing social security numbers or credit card numbers, mental health or other patient records, and criminal history background reports.

Sunshine Law Enforcement

Tip: When in doubt, ask!

Actions to enforce Iowa's Open Meetings and Public Records Laws can be brought by a citizen of Iowa, a person who pays taxes of any type to the state of Iowa, a person individually aggrieved by a violation, a county attorney, and the Attorney General. Such actions may be brought in court or before the Iowa Public Information Board.

Complaints about alleged violations may be made directly to the commission, its staff or counsel, or to the Ombudsman's Office, Attorney General, the Governor's Office, the Iowa Public Information Board or legislators.

Take all alleged violations seriously.

Sunshine Law Enforcement cont...

Remedies include removal from office upon a second violation, damages (up to \$2,500 for a knowing violation), expenses and attorney fees, and injunctive relief.

Even an honest mistake can be a violation of Iowa's Sunshine laws, but individual commission members can avoid personal liability when they rely upon the advice of counsel, formally given in writing or provided orally and memorialized in the minutes.

Additional Laws Governing Commission Members

Tip: Commission members acting in good faith in their official capacity are generally indemnified by the State.

Gift Law. Commission members may not accept gifts (*i.e.*, receiving something for free or for less than it is worth) from those they regulate or contract with. Ask your AAG, commission staff, or the Ethics and Campaign Disclosure Board (<http://www.iowa.gov/ethics>) for guidance on gift law compliance.

Sales or leases of goods or services If you sell or lease goods or services to those regulated by your commission, ask your AAG, commission staff, or the Ethics and Campaign Disclosure Board for guidance on applicable laws.

Additional Laws Governing Commission Members

Lobbyist. If a commission designates a member to represent the commission for the purpose of “encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official,” the member is required to register as a lobbyist under Iowa Code chapter 68B. Seek advice if this is a matter that may arise with your commission.

Conflicts of interest. Conflicts of interest should be avoided, but how and when they arise can be unique to certain boards and commissions, especially because the law often requires the appointment of at least some persons who are regulated by the commission. Anytime your objectivity may be impaired, seek advice.

Additional Laws Governing Commission Members

Judicial review. All commission action (or inaction) is subject to review in court on a variety of grounds including whether the action is:

Compliant with the U.S. or Iowa Constitution, statutes or rules.

Consistent, nonarbitrary, logical, and reasonable.

Supported by the facts and law.

Anti-trust: If your commission is controlled by those it regulates be especially cautious about actions that may impact competition—seek advice first!