

The Iowa Public Information Board

In re the Matter of: John Bandstra, Bert Bandstra, Jack Rempe, Drew Mcgee, Complainants And Concerning: South Central Regional Airport Agency, Respondent	Case Numbers: 23FC:0114, 23FC:0115, 23FC:0122, 23FC:0123 Consolidation and Acceptance Order
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COMES NOW, Erika Eckley, Executive Director for the Iowa Public Information Board (IPIB), and enters this Consolidation and Acceptance Order:

On November 6, 2023, John Bandstra filed formal complaint 23FC:0114, alleging that the South Central Regional Airport Agency (“SCRAA”) violated Iowa Code chapter 21. On November 10, 2023, Bert Bandstra filed formal complaint 23FC:0115 alleging the same. On November 17, 2023, Jack Rempe and Drew Mcgee filed formal complaints 23FC:0122 and 23FC:0123, respectively, alleging the same. Because these four complaints relate to the same events and contain substantially similar allegations, they should be consolidated.

Background

The SCRAA was established in 2012 pursuant to a joint powers agreement authorized by Iowa Code chapter 28E. Chapter 28E allows state agencies (including local units of government) “to provide joint services and facilities with other agencies and to cooperate in other ways of mutual advantage.” Iowa Code § 28E.1. The stated purpose of the 28E agreement is to provide for the “joint acquisition, construction, equipping, use and operation” of a new regional airport.

The original parties to the 28E agreement were the cities of Oskaloosa and Pella, along with Mahaska County. In 2022, the Iowa Supreme Court held that Article XI of the agreement, which prohibited Mahaska County from amending or terminating the agreement without the unanimous consent of the cities, was unconstitutional. *Landowners v. South Central Regional Airport Agency*, 977 N.W.2d 486, 501 (Iowa 2022). The Court therefore severed Article XI from the remaining

agreement, and Mahaska County subsequently withdrew. The current parties to the agreement are Oskaloosa and Pella.

The SCRAA is governed by a five-member board of directors. Three members are appointed by Pella, and two members are appointed by Oskaloosa. The current board members are Pamela Blomgren, Kevin Gaul, Doug Klahsen, David Corbin, and Jim Hansen.

Article V, section 1 of the 28E agreement created an Executive Committee “for the purpose of general oversight and administration of the Airport Facility within the policy perimeters [sic] established by the Board.” The 28E agreement states that the executive committee consists of the Board Chair and Vice Chair. The current Executive Committee consists of Jim Hansen (Board Chair) and Kevin Gaul (Vice Chair).

The SCRAA owns four parcels of land, which it has been leasing to private individuals for farming. The Executive Committee has held numerous private meetings regarding the farm leases. For example, in 2022, the executive committee met to review lease proposals and decide which lease proposals it would recommend to the Board for approval. The Board subsequently approved the four lease proposals the committee recommended.

On September 13 and November 21, 2023, the Executive Committee again held private meetings concerning, among other things, the farm leases.

The Complainants allege that the SCRAA violated chapter 21 by conducting its business in private. In support of this allegation, the Complainants point to the Executive Committee’s handling of the farm leases.

Analysis

Based on the allegations and the response, as well as the SCRAA Board agendas and meeting minutes posted on the SCRAA website, there is no indication that the *Board* violated chapter 21. Therefore, the analysis below is focused solely on whether the Executive Committee violated Chapter 21.

Is the executive committee a governmental body?

Chapter 21 applies to meetings of governmental bodies. “An advisory board, advisory commission, advisory committee, task force, or other body created by an entity organized under chapter 28E, or by the administrator or joint board specified in a chapter 28E agreement, to develop and make recommendations on public policy issues” is a governmental body subject to chapter 21. Iowa Code § 21.2(1)(j). The first issue to address is whether the Executive Committee is a governmental body under this definition.

In its additional response, SCRAA argued that the Executive Committee is not a governmental body under section 21.2(1)(j) because the Committee does not “develop and make recommendations on public policy issues” to the Board. However, the SCRAA Executive Committee makes recommendations regarding the leases and leaseholders to be approved by the Board.

The SCRAA also argues that the Executive Committee’s recommendations do not concern “public policy issues.” This argument fails for a number of reasons. First, if it were true that the Committee’s recommendations do not concern issues of public policy, there would be no reason for the Committee to submit these recommendations to the Board for deliberation and action in open session. Second, the Committee’s recommendations clearly do concern issues of public policy—they concern, for example, the leasing of publicly owned land to private individuals.

The Committee was created by the SCRAA, a 28E entity, and the Committee develops and makes recommendations on public policy issues to the SCRAA Board. Therefore, it is a governmental body under Iowa Code section 21.2(1)(j).

Did a meeting of the SCRAA Executive Committee occur?

Chapter 21 defines a “meeting” as:

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.*

Iowa Code § 21.2(2) (emphasis added). As the italicized portion of the statute highlights, in order for a chapter 21 meeting to occur, the governmental body in question must deliberate or act upon a matter within its policy making duties. However, the legislature has, over the years, added certain purely advisory groups to the statutory definition of “governmental body.” *See, e.g.,* Iowa Code §§ 21.2(1)(e), (h), (j). “These groups by definition ‘make *recommendations* on public policy issues’ as opposed to *making policy.*” *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 355 (Iowa 2005). Thus, the definition of a meeting under chapter 21 seemingly excludes meetings of such advisory groups, as they do not possess “policy-making duties” upon which to deliberate or act.

In *Mason v. Vision Iowa Board*, the Iowa Supreme Court dealt with this conflict between the legislature's definition of “meeting” and its subsequent inclusion of certain advisory groups in the definition of “governmental body.” The Court stated:

Notwithstanding the tension in the statute, we think it is clear the legislature intended to make the delineated advisory groups subject to the open meetings requirement. Otherwise, the legislature's act of including these entities in the definition of “governmental body”

would be a nullity because none of the restrictions and requirements imposed on “meetings” of a governmental body would apply. Thus, the specified advisory groups would be subject to the open-meetings requirement when they deliberate or act within the scope of their duty to develop and make recommendations on public policy issues.

Mason v. Vision Iowa Bd., 700 N.W.2d 349, 355 (Iowa 2005) (citations omitted). Thus, under the Court’s holding in *Mason*, if an advisory group is specifically included in the definition of a governmental body under section 21.2(1), then it is subject to the open meetings requirements when it a majority of its members gather to deliberate or act within the scope of its duty to develop and make recommendations on public policy issues.¹

Here, the SCRAA Executive Committee is a governmental body under Iowa Code § 21.2(1)(j). Thus, it is subject to the chapter 21 requirements when a majority of its members gather to deliberate or act within the scope of its duty to develop and make recommendations on public policy issues.

The Executive Committee currently consists of two members: Jim Hansen and Kevin Gaul. The SCRAA admits that both members of the Committee met on September 13 and November 21, 2023. The agendas of these meetings indicate that the Committee “deliberated or acted within the scope of its duty to develop and make recommendations on public policy issues.”²

Conclusion

Under Iowa Code § 21.2(1)(j), the SCRAA Executive Committee is a governmental body. Thus, it is subject to the chapter 21 open meeting requirements when a majority of its members gather to deliberate or act within the scope of its duty to develop and make recommendations on public policy issues.

On September 13 and November 21, 2023, the members of the Executive Committee gathered to deliberate or act upon matters within the scope of the Committee’s advisory duties. Neither of these meetings complied with the open meetings requirements of chapter 21. Therefore, the complaints should be accepted.

¹ On the other hand, any advisory group that is not specifically defined as a governmental body is not subject to the chapter 21 requirements when it meets.

² For example, the September meeting agenda included Item 3, “Discussion and approval of farm leases.” The November meeting again included a discussion of the leases. The SCRAA Board then approved the Executive Committee’s recommendations regarding the leases at its meeting on November 29, 2023.

Iowa Code § 23.8 requires that a complaint be within IPIB’s jurisdiction, appear legally sufficient, and have merit before IPIB accepts a complaint. Following a review of the allegations on their face, it is found that the complaints do meet those requirements.

IT IS SO ORDERED: Formal complaints 23FC:0114, 23FC:0115, 23FC:0122, and 23FC:0123 are consolidated and accepted pursuant to Iowa Code § 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), IPIB may “delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.” IPIB will review this Order on February 15, 2024. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director



Erika Eckley, J.D.

CERTIFICATE OF MAILING

This document was sent on February 7, 2024, to:

John Bandstra, Bert Bandstra, Jack Rempe, Drew Mcgee
Amy Beattie, attorney for SCRAA

First, the SCRAA wants to clarify the following:

The committee that met to prepare the agenda and move matters forward to the SCRAA Board, which Board was always the decision maker, is NOT the Executive Committee referred to in the 28E Agreement. The committee, in hindsight unfortunately, historically called itself an executive committee. But the Executive Committee named in the 28E Agreement exists ONLY for the general oversight and administration of an Airport Facility as defined in the Agreement. We are a long way from that happening.

This committee has operated in the same way since the inception of the SCRAA in 2012. Mahaska County always had a representative on that committee. It was not until Mahaska County withdrew from the SCRAA in 2022 that Mr. Bandstra, now that he no longer is on the committee, claims a violation of the Open Meetings law.

There is absolutely no intent to not comply with the law. SCRAA will make sure that if there are ever any more committee meetings, it will comply with Chapter 21.

But, second:

We do think it is VERY important that IPIB give all governmental entities clearer direction. For example, a footnote states: "On the other hand, any advisory group that is not specifically defined as a governmental body is not subject to the chapter 21 requirements when it meets." We now understand that the reason we are before you is because the 28E Agreement establishes an Executive Committee to act once there is an Airport Facility and we unfortunately called the current two representative committee an "executive committee". If we had called it an "agenda committee" we assume there would not have been any issue.

IPIB's position also creates confusion on what you consider to be "advisory" and what you consider to be "policy-making". It gives us no clear direction as to when a committee has to comply with Chapter 21. We never considered that preparing an agenda and discussing leases to put on it for Board discussion and action were either "advisory" or "policy-making". Keeping in mind that before there can be any violation, the Code requires both an "advisory" committee and committee recommendations on "public policy".

Third, we are proceeding as follows:

The City of Pella and the City of Oskaloosa will be amending and restating the 28E Agreement to reflect that they are the only two parties in the SCRAA and making appropriate changes, which includes removing any reference to an Executive Committee. This is a matter that has to be handled at the City level, and is not something that can be done by the South Central Regional Airport Agency. The cities are targeting a completion date of 60 days. Any amended and restated agreement requires approval of both City Councils.

The SCRAA also agrees to publish notice of any executive committee meeting. There have been no committee meetings since the last Board meeting and there are none planned in the foreseeable future.

We have seen Mr. Bandstra's request for the removal of Board members, the banning of Board members from serving, and the request for removal of the staff members. None of these matters are matters that can be handled by the SCRAA. Each of his requests would have to be taken up by the Cities of Pella and Oskaloosa who appoint the Board members and hire their staff.

Ms. Eckley Thank you for your time in this matter. We believe that the SCRAA has indeed violated the open meetings laws set by the state of Iowa. This was confirmed with the emails that were obtained by the Oskaloosa Herald. The only way to settle this, is not by rewriting an 28E agreement(which was not considered legal by The Iowa Supreme Court) between Oskaloosa and Pella, but to sell all the parcels of land and disband the SCRAA. Thank you,
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