

# Question: Did the recent Iowa Supreme Court decision involving the Warren County Board of Supervisors change the definition of an open meeting of a governmental body?

*Editor's Note: This is a monthly column prepared by the Iowa Public Information Board to update Iowans on the IPIB's activities and provide information on some of the issues routinely addressed by the board.*



**ANSWER:** The definition of a meeting found in Iowa Code section 21.2(2) was the subject of a recent Iowa Supreme Court decision published March 18, 2016: *Peg Hutchinson, Dan Johnson, Russ Nichols, Shawn Ripperger, Leigh Ann Swain, and Shelly Vander Tug vs. Douglas Schull, Steve Wilson, Dean Yordi, the Board of Supervisors for Warren County, Iowa, and Warren County, Iowa*. To determine whether a meeting occurred as defined by Iowa Code, the Iowa Supreme Court questioned whether the three-member Board of Supervisors held a statutorily defined 'meeting' when an administrator communicated information and opinions from one supervisor to another.

According to Iowa Code section 21.2(2), 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. 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."

In the Warren County case, the three-member board of supervisors each met separately with the same county administrator to discuss a reorganization plan for county employees. While each individual meeting did not create a quorum of the

elected supervisors, the county administrator communicated with each supervisor about the other supervisors' opinions and how each would vote on this issue. The county administrator met individually with each of the supervisors several times to facilitate a compromise on how the reorganization would occur and which positions would be eliminated. When the supervisors finally met in an open meeting, little discussion was needed for the Board to approve eliminating the positions of eleven county employees.

The Court questioned the meaning of the phrase "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body" when defining a meeting. The Court questioned whether "temporal proximity" between two of the three supervisors needed to exist in order to create a majority or quorum or whether the administrator, acting as a supervisor's agent, was the legal equivalent of the presence of a second supervisor, creating a quorum.

In answering the question of whether the administrator can legally be another supervisor's agent, the Court considered the common law of agency to resolve the ambiguity in the statute. The Court held support staff can function as an agent or proxy to a supervisor. The Court struck down the district court opinion for not including agency principles in its legal analysis and remanded for reconsideration of the question with agency prin-

ciples in mind. The Court held that supervisors using agents to deliberate on their behalf is the legal equivalent of an in-person gathering of a majority of supervisors and extended the definition of a meeting for purposes of Iowa Code section 21.2(2) to include an in-person gathering attended by a majority of supervisors, including an agent or proxy for one or more supervisors.

The decision has raised numerous questions and differing opinions concerning what the impact of the ruling will be on governmental bodies, particularly on those with smaller memberships. To what extent could this decision stifle the ability of staff to meet with board or council members to discuss projects or proposals outside formal open meetings? Could the decision impact the ability of a governmental body to work efficiently and effectively?

In an effort to address questions and concerns about the impact of the Warren County decision, the Iowa Public Information Board is preparing to issue an advisory opinion on the issue. Anyone with comments or information on the subject is invited to contact IPIB staff at 515-725-1781 or email ([ipib@iowa.gov](mailto:ipib@iowa.gov)).

Opinions, rulings, FAQs, monthly columns, and training documents are available on the IPIB website – [www.ipib.iowa.gov](http://www.ipib.iowa.gov). Questions for the IPIB can be posted on the website or by calling 515-725-1781.

## IPIB Facts and Figures

During the month of April 2016, 65 contacts were made with the Iowa Public Information Board office.

<u>TYPE</u>	<u>APRIL 2016</u>	<u>2016 YEAR-TO-DATE</u>
Formal complaints	11	42
Advisory opinions	2	8
Declaratory orders	0	1
Informal complaints	4	32
Informal requests	48	206
Miscellaneous	0	4
<b>TOTAL:</b>	<b>65</b>	<b>293</b>

### Who can contact the IPIB and how long does it take?

Any person can contact the IPIB for assistance by telephone (515-725-1781), by email, or on the website. So far, in 2016, 293 identifiable people have contacted the IPIB. Of these, 47% were private citizens, 40% were government officials or employees, and 13% were members of the media.

In the month of April 2016, 66% of the incoming contacts were resolved the same day, 13% were resolved in one to five days, and 21% were resolved in six or more days.