SUNSHINE ADVISORY

A Bulletin on Iowa Open Meetings and Public Records Laws
By Attorney General Tom Miller – August 2004

"But My Lawyer Said This Was Legal!"

Can legal advice shield sunshine violators?

Public officials who violate Iowa's Open Meetings or Public Records Laws are subject to paying monetary damages up to $500, as well as attorney fees and court costs. *(See, "What is the Cost for Noncompliance?", Dec. 2003 Sunshine Advisory.)* But what if a public official acted in reliance on advice of counsel? Reasonable reliance on legal advice may be a defense to individual liability, but governmental bodies remain subject to injunctive relief and attorney fees and costs.

The following principles address when individual public officials who reasonably rely on legal advice may defend against claims for monetary damages, attorney fees and costs:

- *Whose legal advice counts?* Public officials may rely on a decision of a court, or a formal opinion of the Attorney General or the attorney for the government body. Iowa Code sec. 21.6(3)(a)(3), 22.10(3)(b). Advice from a personal acquaintance who is a lawyer would not constitute a legal defense to monetary damages or attorney fees and costs.

- *Must legal advice be in writing?* As a practical matter, court decisions and formal opinions of the Attorney General are in writing. The Iowa Supreme Court has not yet decided whether oral advice from the "attorney for the governmental body" may constitute a legal defense.

- *Who pays attorney fees and costs?* When a violation is proven, all public officials who "reasonably relied" on legal advice (within the scope of the statutes) are shielded from liability for monetary damages, attorney fees and costs. Iowa Code sec. 21.6(3)(a)(3), 22.10(3)(b). If no public officials remain on whom liability can be imposed, attorney fees and costs are paid "from the budget of the offending governmental body or its parent." Iowa Code sec. 21.6(3)(b), 22.10(3)(c).

Remember: reliance on legal advice is a narrow defense to assessment of monetary damages against individual public officials, or payment of attorney fees and costs by them. But, if a violation is proven, governmental bodies remain accountable.

Citizens who have inquiries or complaints about public records or open meetings may call the Iowa Citizens' Aide/Ombudsman Office – toll-free at 888-IA-OMBUD (888-426-6283.)

"Sunshine Advisory" bulletins provide information on Iowa's public records and open meetings laws – our "Sunshine Laws." The bulletins are a resource for public officials and citizens. Local officials should obtain legal advice from their counsel, such as the city or county attorney**.**

Iowa Attorney General's Office: Hoover Building, Des Moines, Iowa 50319.
On the Web: www.IowaAttorneyGeneral.org . (Click on "open government.")