

HANDBOOK

Iowa Transportation Commissioners

September 2000

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CHAPTER 1

Introduction

Introduction

The purpose of this guide is to assist transportation commissioners and the director of the Iowa Department of Transportation in becoming familiar with their duties and responsibilities as defined in the laws, rules and policies of the Iowa Code, Iowa Administrative Code and the department's Policies and Procedures Manual.

Definitions/References

"Commission" means the state transportation commission. (IAC 761-1.1)

"Department" means the Iowa Department of Transportation. (IAC 761-1.1)

"Director" means the director of the Iowa Department of Transportation or the director's designee. (IAC 761-1.1)

"IAC" means the *Iowa Administrative Code*

"PPM" means the Iowa Department of Transportation's *Policies and Procedures Manual*

Appendix Contents

Found in the appendix of this handbook are copies of two important reference documents pertaining to the laws and rules which govern the way in which public officials are required to conduct business in the state of Iowa. Those documents are:

1. Iowa Gift Law, chapter 68B of the Iowa Code
2. Open Meetings Law, chapter 21 of the Iowa Code, and checklist

CHAPTER 2

Department of Transportation

Department of Transportation

The Department of Transportation is responsible for the planning, development, regulation and improvement of transportation in the state as provided by law. (Iowa Code section 307.2)

The Department of Transportation, created in section 307.2 of the Iowa Code, has primary responsibility for development and regulation of highway, railway, and air transportation throughout the state, including public transit. (Iowa Code section 7E.5)

Mission Statement

The mission of the department is to promote a transportation system to satisfy user needs and maximize economic and social benefits for Iowa citizens, to encourage and support programs to provide commodity movement and mobility for all citizens, and to promote financing of the transportation system through user and nonuser sources in an equitable manner. (IAC 761-1.2)

History

The 65th General Assembly created the Iowa Department of Transportation as of July 1, 1974, and transferred to it the duties and responsibilities formerly administered by the state highway commission; the Iowa aeronautics commission; the Iowa reciprocity board; the department of public safety relating to motor vehicle registration, motor vehicle dealer licensing, and operator and chauffeur licensing; and the Iowa state commerce commission relating to the regulation of railroads and motor carrier transportation. Certain duties and responsibilities relating to river transportation and public transit were also assigned to the department. (IAC 761-1.5)

Department of Transportation Contacts

General Number	515-239-1101
Director's Office Fax Number	515-239-1120
Mark F. Wandro, Director	515-239-1111
Cheryl White, Director's Administrative Assistant	515-239-1111
Connie Baker, Commission Recording Secretary	515-239-1242
Shirley Andre, Director, Motor Vehicle Division	515-237-3202
Tom Cackler, Director, Highway Division	515-239-1124
Mary Christy, Director, Director's Staff Division	515-239-1642
Dave Ferree, Special Assistant Attorney General, General Counsel	515-239-1509
Steve Gast, Director, Information Technology Division	515-239-1284
Ian MacGillivray, Director, Research Management Division	515-239-1646
Nancy Richardson, Director, Operations and Finance Division	515-239-1340
Dennis Tice, Director, Planning and Programming Division	515-239-1661
Neil Volmer, Director, Modal Division	515-239-1708

CHAPTER 3

Transportation Commission

Transportation Commission

There is created a state transportation commission which shall consist of seven members, not more than four of whom shall be from the same political party. The governor shall appoint the members of the state transportation commission for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate. (Iowa Code section 307.3)

The commission approves the departmental budget, develops a comprehensive transportation policy and plan for the state, identifies transportation needs, and develops programs to meet these needs. Other commission duties and responsibilities are broadly stated in Iowa Code chapters 307 and 307A. (IAC 761-1.6)

Gender balanced. All appointive boards, commissions, committees and councils of the state established by the Code if not otherwise provided by law shall be gender balanced. No person shall be appointed or reappointed to any board, commission, committee or council established by the Code if that appointment or reappointment would cause the number of members of the board, commission, committee, or council of one gender to be greater than one-half the membership of the board, commission, committee, or council plus one if the board, commission, committee, or council is composed of an odd number of members. If the board, commission, committee, or council is composed of an even number of members, not more than one-half of the membership shall be one gender. If there are multiple appointing authorities for a board, commission, committee, or council they shall consult each other to avoid a violation of this section. (Iowa Code section 69.16A)

Political Affiliation. All appointive boards, commissions, and councils of the state established by the Code if not otherwise provided by law shall be bipartisan in their composition. No person shall be appointed or reappointed to any board, commission, or council established by the Code if the effect of that appointment or reappointment would cause the number of members of the board, commission, or council belonging to one political party to be greater than one-half the membership of the board, commission, or council plus one. (Iowa Code section 69.16)

Terms of appointments. All terms of office of positions which are appointed by the governor, have a fixed term and are subject to confirmation by the senate shall begin at 12:01 a.m. on May 1 in the year of appointment and expire at 12:00 midnight on April 30 in the year of expiration. (Iowa Code section 69.19)

Note: The Iowa Code does not define term limits for commissioners.

Nonattendance Vacancy

Any person who has been appointed by the governor shall be deemed to have submitted a resignation from such office if either of the following events occurs:

1. The person does not attend three or more consecutive regular meetings. (This does not apply unless the first and last of the consecutive meetings counted for this purpose are at least thirty days apart. (Iowa Code section 69.15)
2. The person attends less than one-half of the regular meetings within any period of 12 calendar months beginning on July 1 or January 1. (This paragraph does not apply unless the commission holds at least four regular meetings during such period. This paragraph applies only to such a period beginning on or after the date when the person takes office as a member of the commission. (Iowa Code section 69.15)

If such person received no notice and had no knowledge of a regular meeting and gives the governor a sworn statement to that effect within 10 days after the person learns of the meeting, such meeting shall not be counted. (Iowa Code section 69.15)

The governor in the governor's discretion may accept or reject such resignation. If the governor accepts it, the governor shall notify such person, in writing, that the resignation is accepted. The governor shall then make another appointment to such office. Such appointment shall be made in the same manner and for the same term as in the case of other vacancies caused by resignation from such office. (Iowa Code section 69.15)

Other Vacancies on Commission

Any vacancy shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term. (Iowa Code section 307.5)

In the event the governor fails to make an appointment to fill a vacancy or fails to submit the appointment to the senate for confirmation as required by section 2.32, the senate may make the appointment prior to adjournment of the general assembly. (Iowa Code section 307.5)

Conflict of Interest

A person shall not serve as a member of the state transportation commission who has an interest in a contract or job of work or material or the profits thereof or service to be performed for the department. Any member of the state transportation commission who accepts employment with or acquires any stock, bonds, or other interest in any company or corporation doing business with the department shall be disqualified from remaining a member of the state transportation commission. (Iowa Code section 307.4)

For additional requirements defined in the Iowa Code that pertain to the conflicts of interest of public officers and employees, see chapter 68B, the "Iowa Public Officials Act."

Removal from Office

Any member of the commission may be removed for any of the causes and in the manner provided in chapter 66 of the Iowa Code and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state. (Iowa Code section 307.9)

Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons: (Iowa Code section 66.1)

1. For willful or habitual neglect or refusal to perform the duties of the office.
2. For willful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated.
7. Upon conviction of violating the provisions of chapter 56, "campaign finance."

Any appointive state officer may also be removed from office by a majority vote of the executive council for any of the following causes: (Iowa Code section 66.26)

1. Habitual or willful neglect of duty.
2. Any disability preventing a proper discharge of the duties of the office.
3. Gross partiality.
4. Oppression.
5. Extortion.
6. Corruption.
7. Willful misconduct or maladministration in office.
8. Conviction of felony.
9. A failure to produce or fully account for all public funds and property in the officer's hands at any inspection of settlement.

CHAPTER 4

Commission Members Compensation and Expenses

Commission Members' Compensation

Each member of the commission shall be compensated as provided in section 7E.6. (Iowa Code section 307.6)

Any position of membership on the transportation commission shall be compensated at an annual rate of ten thousand dollars. (Iowa Code section 7E.6)

Commission Members' Expenses

Members of the commission, the director, and other employees of the department shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the department shall be subject to the budget requirements of chapter 8 of the Iowa Code. (Iowa Code section 307.8)

The subsistence allowance for commission members effective January 1, 2000, is as follows. Commission members are allowed 1 and ½ times the rate state employees are allowed while on official business for the state.

Meals

The maximum reimbursable rates are as follows:

Breakfast	\$8.00
Lunch	\$9.00
Dinner	\$18.00
Total	\$35.00

Commission members are allowed the same flexibility in regard to meals as other state employees. Specifically, if a commission member is in travel status and entitled to be reimbursed for all three meals, he or she may claim the amount actually expended, up to \$35, on any combination of meals for that day. Commissioners are not limited to \$8 for breakfast, \$9 for lunch, and \$18 for dinner, only to \$35 for the day. If eligible for only breakfast and lunch, a commissioner can be reimbursed actual expenses, up to \$17 for those two meals.

If a meal is catered, the cost of this meal is included as a part of the \$35 per day maximum.

Breakfast can be claimed only if the commissioner spent the previous night outside their domicile or if they left their domicile prior to 7 a.m.

Dinner can be claimed only if the commissioner spent the night outside their domicile or if they return to their domicile after 6 p.m.

If the commissioner left and returned to their domicile on the same day with no overnight stay, their meals will be taxable. Meal claims for the day of and the day after an overnight stay are non-taxable.

Lodging

The maximum allowable rate for commission members for lodging is \$68 plus tax anywhere in the state. An original hotel receipt must be included with their travel voucher. Many hotels give a government discount, and commissioners will be entitled to receive that discount when traveling on state business. A list of hotels that provide state rates is available upon request.

Vehicle Use

Reimbursement for use of a personal car while on state business is 29 cents per mile.

The commission recording secretary shall make all hotel and flight arrangements for commission members. When attending meetings in Ames, the commission usually stays at the Gateway Holiday Inn. Commissioners who cannot attend the meeting or do not plan to stay overnight, must notify the commission recording secretary. Unless canceled in advance, commissioners will be charged for their rooms. Commissioners are responsible for paying for their meals and room which then are reimbursable.

Note: Out-of-state travel requires prior approval by the department, and in some instances by the state's Executive Council.

CHAPTER 5

Commission Office Location, Hours, Meetings, Orders and Proceedings

Office Location and Business Hours

The main office of the commission recording secretary is at 800 Lincoln Way, Ames, Iowa 50010; the recording secretary's phone number is 515-239-1242. Business hours of the department are 8 a.m. to 4:30 p.m, Monday through Friday, excluding legal holidays. Inquiries and requests may be submitted to the commission in care of the commission recording secretary at the address given.

Commission Meetings

The commission shall meet at the call of the chair or when any four members of the commission file a written request with the chair for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission. A majority of the commission members shall constitute a quorum. (Iowa Code section 307.7)

Elections. The commission shall meet in May of each year for the purpose of electing one of its members as chair. (Iowa Code section 307.3)

Time and Date. All regular meetings of the commission shall be held on a Tuesday of each month beginning at 8 a.m. At the first meeting after January 1 of each year, the Commission shall by majority vote set by Commission Order the Commission meeting dates for the period of May 1 through April 30. (PPM 300.07)

Location. All meetings, except the four conducted as part of a public input meeting, shall be held in the commission room at 800 Lincoln Way in the city of Ames. In the case of an emergency, a meeting may be held in some other place either within or without the confines of the Iowa Department of Transportation, to be designated by the chair of the commission and the director, in which case reasonable notice of the place of meeting shall be given to every member of the commission in the same manner as in the case with special meetings.

Informal meetings. When necessary, the commission chair may call a meeting of the commission on the day preceding the regularly scheduled meeting, normally a Monday evening. The starting time of the meeting is determined by the chair. Members of the commission meet informally during the meeting and no action is taken on transportation-related matters.

Informational workshops. Periodically, commission members will participate in informational workshops. The dates, times and locations of such workshops are determined by the commission and the director. No formal action shall be taken during these workshops.

Public input meetings. Four times each year the commission will conduct public input meetings around the state. The purpose of the meetings is to make it more convenient for representatives of Iowa metropolitan planning organizations, regional planning affiliations, cities, counties, chambers of commerce, economic development groups and other interest groups, as well as individuals, to present ideas and comments directly to the commission. Items that may be discussed at the meeting include Iowa Department of Transportation policies; the State Transportation Improvement Program; the Revitalize Iowa's Sound Economy (RISE) program; the Rail Economic Development program; transportation enhancement and safety programs; Iowa's clean air program; and related issues.

In conjunction with these public meetings, normally the day prior, the commission will meet informally and then tour transportation facilities in the region where the public meeting will occur. No action will be taken on transportation-related matters during the tour.

To obtain a scheduled time on the agenda of one of the commission's public input meetings, the public must contact the Iowa Department of Transportation's Office of Program Management, 800 Lincoln Way, Ames, IA 50010, telephone 515-239-1145, fax 515-239-1975, e-mail program_management@dot.state.ia.us. Statements, presentations, suggestions or questions are limited to 20 minutes or less.

Quorum

A quorum is such a number as must be present in order that business can be legally transacted. The quorum refers to the number present, not to the number voting.

The chair should not take the chair until a quorum is present, or there is no prospect of there being a quorum. The only business that can be transacted in the absence of a quorum is to take measures to obtain a quorum, to fix the time to which to adjourn, or to take a recess.

While a quorum is competent to transact any business, it is usually not expedient to transact important business unless there is a fair attendance at the meeting, or else previous notice of such action has been given to those absent.

Four members shall constitute a quorum, as based on a seven-member commission. A majority of the commission shall be required for the passage of any order or motion. (PPM 300.07)

When a quorum is present, either physically, telephonically, or through video conference, the commission is subject to the open meetings law.

Adjournment

A majority of those present may vote to adjourn any meeting. (PPM 300.07)

Open Meetings

Virtually every board and commission in Iowa is subject to the Open Meetings law, chapter 21 of the Iowa Code. The intent of the law is for every meeting of governmental bodies to be open to the public unless there are overriding reasons to close the meeting. In addition, the law stresses that the public is to be notified of all meetings well ahead of the meeting date.

Failure to comply with the provisions of the Open Meetings law can result in a fine being assessed against a commissioner personally; a commissioner could be liable for the legal fees incurred by the person bringing the action against the commission for violation of the Open Meeting law; a commissioner can be removed for repeated violations; and an injunction can be issued to order the commission to refrain from further violations of the Open Meetings law. Violation of the injunction would be punishable by civil contempt.

A copy of chapter 21, "Official Meetings Open to Public (Open Meetings)" is located in the appendix of this guide.

Electronic Meetings

The commission may conduct a meeting by electronic means only in circumstances where a meeting in person is impossible or impractical. Such meetings shall be conducted in accordance with Iowa Code section 21.8. (PPM 300.07)

Emergency Meetings

Emergency meetings of the commission may be called at any time by the chair after giving such notice as the chair deems reasonable under the circumstances:

1. during the existence of a state of emergency proclaimed pursuant to the provisions of any federal or state acts.
2. whenever, in the opinion of the chair, an emergency exists.

An emergency meeting need not be held at the ordinary place of meeting of the commission, and may be conducted telephonically or electronically.

At an emergency meeting only such business shall be transacted as arises out of or is incidental to the emergency.

Commission Orders

Items of business shall be submitted to the commission for approval when such approval is required by law. (PPM 300.01)

The director and the staff of the department have a duty to abide by and implement the commission action taken on these items. (PPM 300.01)

The submission of other items of business to the commission for review or approval shall be at the discretion of the director. (PPM 300.01)

Tentative topics for future commission meetings shall be submitted to the commission recording secretary at least one month in advance of the meeting date. (PPM 300.01)

Proposed commission orders shall be submitted to the commission recording secretary ten working days in advance of the meeting date. (PPM 300.01)

All legal orders of the commission are public record, and a copy of each order adopted by the commission shall be appended to the official minutes of the meeting at which it was adopted. A copy of each order shall also be filed for ready reference by the commission's recording secretary.

Order of Proceedings of the Commission

As soon after the hour fixed for a meeting of the commission as a quorum is present, the chair shall take the chair and call the members to order.

In case the chair is not in attendance, the vice-chair if present will take the chair. If he/she also is not present, the director shall call the meeting to order and the commission shall elect a presiding officer to preside over that meeting and while so acting the vice-chair or presiding officer shall have all the powers and discharge all the duties of the chair.

If no quorum is present one-half hour after the time appointed for a meeting of the commission, the recording secretary shall call the roll and record the names of the members present and the meeting shall stand adjourned until a quorum is available.

When a meeting of the commission is duly constituted, the minutes of the preceding meeting shall be adopted as distributed or read by the recording secretary of the commission.

Approval of Organization and Operating Procedures

At the first meeting after January 1 of each year, the commission shall, by majority vote, set by commission order the commission meeting dates for the period of May 1 through April 30. The meeting schedule may be amended by commission order. The commission shall hold at least one meeting each month, with additional meetings as deemed necessary. (PPM 300.07)

At the first meeting on or after May 1 of each year, the commission shall by majority vote choose one of its members as chair and one as vice-chair for the ensuing 12 months or until their successors are elected and qualified. Any occurring vacancy shall also be filled by majority vote. (PPM 300.07)

Rules of Order

Robert's Rules of Order shall prevail unless otherwise provided herein.

- a. All motions shall require a second.
- b. Any member may request a roll call vote on any question. No written ballots shall be permitted.
- c. Minutes of the previous meeting shall be presented for approval at the following meeting.
- d. There shall be unlimited debate unless the previous question is voted by a majority of the commission.
- e. Official acts of the commission shall be by written order, are normally submitted by the director, and may be introduced and adopted upon request of any commissioner at any time.
- f. A record shall be kept of all acts of the commission at all meetings and such record shall be distributed to the commission and staff.
- g. Time shall be allocated at each meeting for items not on the agenda. (PPM 300.07)

Agenda of Commission Meetings

The agenda and information pertaining to the commission orders are mailed to members the Wednesday before the regularly scheduled meeting of the commission.

1. No one shall present any matter to the commission for its consideration unless:
 - a. The matter appears on the agenda for that meeting of the commission or,
 - b. Leave is granted to present the matter on the affirmative vote of not less than two-thirds of the members present.

2. The general order of business at every regular meeting shall be as follows:

Call to order

Adopting and confirming commission minutes from last meeting

DOT staff comments

Director's comments

Commission comments

Commission organization (May meeting of each year)

Administrative rules requiring a motion

Presentations for informational purposes only

Commission orders requiring a motion of which notice has been given

40-year service award(s)

Commission orders requiring a motion of which notice has been given and a delegation is present

Transfer(s) of jurisdiction

Announcements

Adjournment

3. All communications and petitions shall be considered by the commission as a whole but communications may, at the discretion of the director, be referred in advance to an appropriate department staff as information.

4. The business shall in all cases be taken up in the order in which it stands, unless otherwise determined upon by a vote of two-thirds of the members present, and without debate thereon; or upon determination by the chair that a change in the order would facilitate the orderly conduct of the meeting or delegations scheduled to attend.

5. Any materials handed to the recording secretary of the commission in time to be read at a meeting of the commission shall be deemed to be given to the commission at such meeting, and the recording secretary of the commission shall mail a copy thereof with the commission minutes.

Public Participation in Open Meetings

It is commission policy to allow the public the opportunity to present their views at commission meetings. (PPM 300.07)

Members of the public who wish to present their views at a commission meeting shall contact the director in writing. Such written requests shall outline the subject to be addressed at the meeting. (PPM 300.07)

Unless otherwise requested, the presentation shall be placed on the agenda for a regularly scheduled commission meeting that is reasonably convenient to both the presenter and the commission. (PPM 300.07)

However, if the director in consultation with the commission chair determines the subject to be presented is not an appropriate matter for commission consideration, the director may deny the request and shall inform the commission of such denial. (PPM 300.07)

At the commission meeting, 20 minutes shall generally be scheduled for each presentation. At the discretion of the director or commission, the time may be increased or decreased depending upon the topic/issue to be discussed. (PPM 300.07)

The director, or a designee, shall notify the requesting party of the exact time and place to appear to present their views before the commission or of the denial of their request to appear. (PPM 300.07)

On the day of the commission presentation, each person scheduled to make a presentation—or each member of a delegation—shall sign a registration sheet located at the reception desk. (PPM 300.07)

CHAPTER 6

Duties of the Chair, Vice-Chair and Secretary

Duties of the Chair

The chair shall preside at all meetings. During the absence of the chair, the vice-chair or designee shall preside. (PPM 300.07)

The chair shall be responsible for calling members to order, preserving order and decorum, announcing results of all votes, and generally following established procedures as provided in *Robert's Rules of Order*. (PPM 300.07)

If the chair desires to make or second a motion, the chair shall be relinquished until the question is resolved. (PPM 300.07)

In addition to the duties required to be performed by the chair under the provisions of the department's Policy and Procedures Manual, the duties of the chair of the commission are generally as follows:

1. To open the session at the time at which the commission is to meet, by taking the chair and calling the members to order.
2. To announce the business before the commission in the order in which it is to be acted upon.
3. To recognize members entitled to the floor.
4. To state and to put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote.
5. To protect the commission from annoyance from evidently frivolous or dilatory (delaying) motions by refusing to recognize them.
6. To assist in the expediting of business in every way compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if the chair thinks it advisable.
7. To restrain the members when engaged in debate, within the rules of order.
8. To enforce on all occasions the observance of order and decorum among the members, deciding all questions of order unless when in doubt the chair prefers to submit the questions for the decision of the commission.

9. To inform the commission, when necessary, or when referred to for the purpose, on a point of order or practice pertinent to pending business.
10. To authenticate, by his/her signature, when necessary, all the acts, orders, and proceedings of the commission declaring its will and in all things obeying its commands.
11. Call all regular and special meetings of the commission and preside at all meetings which it is possible for him/her to attend.
12. Call the meetings to order promptly at the prescribed time or as soon as a quorum is present and shall welcome thereto any delegations or guests present and be the spokesperson of the commission in dealing with delegations, but shall not communicate to the delegation any commitments of the commission on the matter at hand as no decision shall be reached in the presence of the delegation.
13. Declare the commission adjourned to some other time (and place if necessary), if it is impracticable to take a vote, or in his/her opinion, dangerous to delay for a vote in the event of fire, riot, or very serious disorder, or other emergency.
14. Act as the representative of the commission at all public functions he/she is called upon to attend in capacity as chair.
15. Make no statement, announcement, commitment, media release on behalf of the commission dealing with commission policies, actions or plans unless approved by the commission.
16. Be an ex-officio member of all standing and special committees as required by the Iowa Code.

The chair, being a duly appointed member of the commission, shall have the unrestricted right to vote on all matters before the commission. In the event of an even number of votes, the vote is lost and the chair, having voted, cannot as chair, break the tie.

Duties of the Vice-Chair

The vice-chair of the commission shall act as chair of the commission in the absence of the chair. He/she shall become the acting chair of the commission upon the death or resignation of the chair until a duly called meeting of the commission can choose a chair. Upon assuming the chair, he/she shall assume all the powers and responsibilities of the chair for as long as he/she is the chair. Without in any way restricting the generality of the foregoing, the vice-chair of the commission:

1. Shall assume the chair and all the duties and responsibilities thereof upon the absence, death or resignation of the chair or when called upon to do so by the chair of the commission.

2. Shall act as a representative of the commission at all public functions he/she is called upon to attend in his capacity as vice-chair or acting chair.
3. Shall make no statement, announcement, press or publicity actions, or plans unless approved by the commission.

Duties of the Commission's Recording Secretary

The recording secretary is the recording officer of the commission and the custodian of its records. These records are open to the public and to inspection by any member of the commission at reasonable times.

In addition to keeping the records of the commission and the minutes of the meetings, it is the duty of the recording secretary to keep a register, or roll, of the members and to call the roll when required, to furnish commission members with all papers directed to them, and to sign with the chair all orders authorized by the commission.

The recording secretary shall keep a book of commission orders, amendments made to them, date of the casting vote, votes cast, and majority vote/final decision of the commission.

In addition, it is the duty of the recording secretary to send out proper notices of all called meetings, and of other meetings when necessary, and to conduct the correspondence of the commission.

The recording secretary shall, prior to each meeting, for the use of the chair, make out an order of business showing in their exact order what is necessarily to come before the commission.

In the absence of the chair, and if there is no vice-chair present, when the hour for opening the session arrives, it is the recording secretary's duty to call the meeting to order, and to preside until the election of a chair pro tem, which should take place immediately.

The recording secretary shall keep a record of the proceedings or minutes. The essentials of the records are as follows:

1. The kind of meeting (regular, special, closed session, emergency, telephonic, electronic).
2. Date of meeting and place.
3. The fact of the presence of the regular chair and recording secretary, or in their absence the names of their substitutes.
4. Whether the minutes of the previous meeting were approved, or their reading dispensed with.
5. All the main motions (except such as were withdrawn) and points of order and appeals, whether sustained or lost, and all other motions that were not lost or withdrawn.

6. The hours of meeting and adjournment.
7. The name of the member who introduced a main motion, and that of the seconder.
8. In addition to the strict record of what is done, the minutes should contain a list of all speakers.
9. Reports by staff, when written copies are furnished, should be printed exactly as submitted, the minutes showing what action was taken by the commission in regard to them.

The minutes are approved by the commission and then published.

Chapter 7

Commission Duties

Commission Duties

The transportation commission approves the departmental budget, develops a comprehensive transportation policy and plan for the state, identifies transportation needs, and develops programs to meet these needs. Other commission duties and responsibilities are broadly stated in Iowa Code chapters 307 and 307A. (IAC 761-1.6) Please note that some of these duties were included when the commission was first created, and they have not been deleted from the Code although they may be outdated.

The transportation commission shall:

1. **Standard plans.** Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department. (Iowa Code section 307A.2)
2. **Highway construction and maintenance.** Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof. (Iowa Code section 307A.2)
3. **Railroad safety.** Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger. (Iowa Code section 307A.2)
4. **Patent infringements.** Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged. (Iowa Code section 307A.2)
5. **Highway surveys.** Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands. (Iowa Code section 307A.2)
6. **Record of operations.** Record all important operations of said commission and, at the time provided by law, report the same to the governor. (Iowa Code section 307A.2)
7. **Road Lecturers.** Incur no expense to the state by sending out road lecturers. (Iowa Code section 307A.2)
8. **Lights near railroads.** Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing. (Iowa Code section 307A.2)

9. Lights near highways. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection. (Iowa Code section 307A.2)

10. State park and institutional roads. Construct, reconstruct, improve, and maintain state institutional roads and state park roads, which are part of the state park, state institution, and other state land road system as defined in section 306.3, and bridges on such roads, roads located on state fairgrounds as defined in chapter 173, and the roads and bridges located on community college property as defined in chapter 260C, upon the request of the state board, department, or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the state transportation commission and the state board, department, or commission which has jurisdiction. (Iowa Code section 307A.2)

The commission may contract with any county or municipality for the construction, reconstruction, improvement, or maintenance of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exits from a state park at separate points shall be constructed, reconstructed, improved, and maintained as provided in section 306.4. Funds allocated from the road use tax fund for the purposes of this subsection shall be apportioned in the ratio that the needs of the state institutional roads and bridges, park roads and bridges, or community college roads and bridges bear to the total needs of these facilities based upon the most recent quadrennial park and institution need study. The commission shall conduct a study of the road and bridge facilities in state parks, state institutions, state fairgrounds, and on community college property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection. (Iowa Code section 307A.2)

11. Five-year program. Prepare, adopt, and cause to be published a long-range program for the primary road system, in conjunction with the state transportation plan adopted by the commission. Such program shall be prepared for a period of at least five years and shall be revised, brought up to date, and republished at least once every year in order to have a continuing five-year program. The program shall include, insofar as such estimates can be made, an estimate of the money expected to become available during the period covered by the program and a statement of the construction, maintenance, and other work planned to be performed during such period. The commission shall conduct periodic reinspections of the primary roads in order to revise, from time to time, its estimates of future needs to conform to the physical and service conditions of the primary roads. The commission shall annually cause to be published a sufficiency rating report showing the relative conditions of the primary roads. Before the last day of December of each year, the commission shall adopt and cause to be published from its long-range program, a plan of improvements to be accomplished during the next calendar year.

However, in years when the federal government is reauthorizing federal highway funding, the commission shall not be required to adopt and publish the annual plan of improvements to be accomplished until at least ninety days from the enactment of the new federal funding formula. This annual program shall list definite projects in order of urgency and shall include a reasonable year's work with the funds estimated to be available. The annual program shall be final and followed by the commission in the next year except that deviations may be made in case of disaster or other unforeseen emergencies or difficulties. The relative urgency of the proposed improvements shall be determined by a consideration of the physical condition, safety, and service characteristics of the various primary roads. (Iowa Code section 307A.2)

12. Administrative rules and funding. The criteria used by the commission for allocating funds as a result of any long-range planning process shall be adopted in accordance with the provisions of chapter 17A. The commission shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. (Iowa Code section 307A.2)

The commission shall approve all rules prior to their adoption by the director pursuant to the Iowa Code section 307.12, subsection 9. (Iowa Code section 307.10; IAC 761-10)

13. Quadrennial needs studies. For the four-year period beginning July 1, 1979, and for each subsequent four-year period, prepare, adopt and cause to be published the results of a study of all roads and streets in the state. The study shall be so designed to investigate present deficiencies and future twenty-year maintenance and construction needs of the roads and the ability of each applicable authority to meet the needs for the planning, construction, repair and maintenance of roads within their jurisdiction. The commission may gather information necessary to complete this study and shall be furnished assistance from any state agency as necessary to prepare, update and publish a report to be referred to as the "quadrennial need study" for the purposes of this chapter and chapter 312. The commission shall report the results of the study to the general assembly by January 1 of the last year in each four-year period and the study shall take effect the following July 1. This subsection does not preclude the commission from updating the quadrennial need study when necessary to reflect changes in road and street needs in the state. (Iowa Code section 307A.2)

14. County construction and maintenance needs. Annually recalculate the construction and maintenance needs of roads under the jurisdiction of each county to take into account the needs of a road whose jurisdiction has been transferred from the department to a county or from a county to the department during the previous year. The recalculation shall be reported by January 1 of the year following the transfer and shall take effect the following July 1 for the purposes of allocating moneys under sections 312.3 and 312.5. (Iowa Code section 307A.2)

15. Commercial and Industrial Network (CIN). Identify, within the primary road system, a network of commercial and industrial highways in accordance with section 313.2A. The improvement of this network shall be considered in the development of the long-range program and plan of improvements under this section. (Iowa Code section 307A.2)

Purpose. It is the purpose of this section to enhance opportunities for the development and diversification of the state's economy through the identification and improvement of a network of commercial and industrial highways. The network shall consist of interconnected routes which provide long distance route continuity. The purpose of this highway network shall be to improve the flow of commerce; to make travel more convenient, safe, and efficient; and to better connect Iowa with regional, national, and international markets. The commission shall concentrate a major portion of its annual construction budget on this network of commercial and industrial highways. In order to ensure the greatest possible availability of funds for the improvement of the network, primary highway funds shall not be spent beyond continuing maintenance for improvements to route segments that will be bypassed by the relocation of portions of the commercial and industrial highway network. (Iowa Code section 313.2A)

Network selection. The commission shall identify, within the primary road system, a network of commercial and industrial highways. The commission shall consider all of the following factors in the identification of this network:

1. The connection by the most direct routes feasible of major urban areas and regions of the state to each other and to the national system of interstate and defense highways and priority routes in adjacent states.
2. The existence of high volumes of total traffic and commercial traffic.
3. Long distance traffic movements.
4. Area coverage and balance of spacing with service to major growth centers within the state.
5. Metropolitan area bypasses consistent with metropolitan or regional area plans established through cooperation by the department and local officials.

The network of commercial and industrial highways shall not exceed two thousand five hundred miles including municipal extensions of these highways. (Iowa Code section 313.2A)

16. National Parkway. The state transportation commission shall make such investigations, surveys, studies and plans in connection with any proposed national parkway or parkway development as it shall deem necessary or desirable to determine if the proposed development is under the terms of the Act of the United States Congress applicable to such parkway or any regulations under such Act and is advantageous to the state. Such parkway development may be any portion of the proposed parkway which is proposed to be constructed as a project under such Act. "National parkway" has the same meaning as defined in Public Law 93-87, first session, Ninety-third Congress of the United States. (Iowa Code sections 308.2 and 308.4)

One member of the transportation commission shall serve as an advisory ex officio member of the Mississippi Parkway Planning Commission. (Iowa Code section 308.1)

17. Great River Road. The state transportation commission, with the cooperation of the department of natural resources, shall plan, designate, and establish the exact routing of the great river road, utilizing the general guidelines established in Title 23, United States Code. (Iowa Code section 308.4)

When, as a result of its investigations and studies, the state transportation commission, in cooperation with the department of natural resources, finds that there may be a need in the future for the development and construction or reconstruction of segments of the great river road, and when the state transportation commission determines that in order to prevent conflicting costly economic development on areas of lands to be available for the great river road when needed for future development, there is need to establish and to inform the public of the approximate location and widths of new or improved segments of the great river road to be needed, the state transportation commission may proceed to establish the location and the approximate widths in the manner provided in this section. (Iowa Code section 308.9)

The state transportation commission shall give notice and hold a public hearing on the matter in a convenient place in the area to be affected by the proposed improvement of the great river road. The state transportation commission shall consider and evaluate the testimony presented at the public hearing and shall make a study and prepare a map showing the location of the proposed new or reconstructed segment of the great river road and the approximate widths of right of way needed. The map shall show the existing roadway and the property lines and record owners of lands to be needed. The approval of the map shall be recorded by reference in the state transportation commission's minutes, and a notice of the action and a copy of the map showing the lands or interest in the lands needed in any county shall be filed in the office of the county recorder of that county. Notice of the action and of the filing shall be published once in a newspaper of general circulation in the county, and within sixty days following the filing, notice of the filing shall be served by registered mail on the owners of record on the date of filing. Using the same procedures for approval, notice and publications, and notice to the affected record owners, the state transportation commission may amend the map. (Iowa Code section 308.9)

After such location is established, within the area of the great river road as shown on the map or in such proximity to it as to result inconsequential damages when the rights in land for the great river road are acquired, a person shall not erect or move in any additional structure or rebuild, alter or add to any existing structure, without giving to the state transportation commission by registered mail sixty days' notice of such contemplated construction, alteration, or addition describing the same. However, this prohibition and requirement shall not apply to any normal or emergency repairs or replacements which are necessary to maintain an existing structure of a facility in approximately its previously existing functioning condition. When the rights in land for a segment of the great river road are acquired, damages shall not be allowed for any construction, alterations, or additions in violation of this subsection. (Iowa Code section 308.9)

Without limiting any authority otherwise existing, rights in land needed for the great river road

may be acquired at any time by the state, the county, or the municipality in which such segment of the great river road is located. If an owner's contiguous land is acquired to an extent which is less than the total amount shown on the map as needed, consequential damages to the land not acquired shall be allowed as found to exist. (Iowa Code section 308.9)

18. Bikeways. The department of natural resources, in consultation with the state transportation commission, is hereby authorized to establish recreational bikeways within this state for the use, enjoyment, and participation of the public in nonmotorized bicycling. The routes established for such bikeways shall be designed to maximize the safety of cyclists and motorists and may utilize secondary roads when the normal flow of motor vehicle traffic will not be hindered, as well as other infrequently traveled roads, streets, parkways, and appropriate thoroughfares. Such bikeways shall be routed, wherever possible, to allow the enjoyment of scenic views and points of historical interest, and may connect state parks and other recreational areas throughout the state. (Iowa Code section 308A. 1)

Bikeway routes shall be clearly marked with appropriate signs to guide cyclists and to alert motorists. Such signs shall be placed at intervals and designed in such form as prescribed by the department of natural resources in consultation with the state transportation commission. (Iowa Code section 308A.1)

The department of natural resources is hereby authorized to cooperate with county conservation boards, boards of supervisors, city councils, or any private organizations interested in the establishment of bikeways, and may consult with such groups in the planning of appropriate bikeway routes and related activities. (Iowa Code section 308A. 1)

19. Interstate 80--route designation. The interstate which runs from Council Bluffs on the western border through Des Moines to Davenport on the eastern border shall be known as interstate 80. The state transportation commission shall be prohibited from changing the route of interstate 80 as designated on January 1, 1992. (Iowa Code section 314.16)

20. Temporary transfer of RISE funds. If the state transportation commission receives and files a letter from the director of transportation certifying that federal funding is not forthcoming due to the failure of the United States Congress to pass and the president of the United States to approve legislation providing long term federal transportation funding to the state of Iowa, the commission may authorize the temporary transfer of funds from the RISE fund to the primary road fund. Transferred funds shall be repaid to the RISE fund within three months of transfer. The commission shall manage the RISE fund to ensure that funds will be available to meet contract obligations on approved RISE projects. (Iowa Code section 315.3)

21. Administration of RISE fund. Qualifying road and street projects shall be selected by the state transportation commission for full or partial financing from the fund after consultation with organizations representing interests of counties and cities. Counties and cities may make application for qualifying road and street projects with the department. In ranking applications for funds, the department shall, in addition to effects listed in section 315.3, subsection 1, consider the proportion of political subdivision matching funds to be provided, if any, the proportion of private contributions to be provided, if any, the total number of jobs to be created, the level of need, the impact of the proposed project on the economy of the area affected, and the factors and requirements in section 315.11. The proportion of funding shall be determined by the department or, in the case of cooperative projects, by agreement between the department and the city councils of participating cities, or boards of supervisors of participating counties, or other participating public agencies or private parties. (Iowa Code section 315.5)

Immediate Opportunity Projects: The commission may fund all or any part of an application and may make a conditional funding commitment. In making its decision, the commission will consider the amount of total capital investment per RISE dollar requested, and the amount of RISE dollars requested per job created or retained. (IAC 761-163.8)

The commission may deny funding for projects which will not result in net job creation or job retention from a statewide point of view; for instance, projects which simply involve the relocation of jobs or other economic activity within Iowa. (IAC 761-163.8)

Immediate opportunity project applications may, at the discretion of the commission, be considered as applications for local development projects. (IAC 761-163.8)

Local Development Projects: Complete applications shall be forwarded to the commission for a funding commitment action within a reasonable period of time after the application deadline. An application considered but not funded in one programming cycle must be resubmitted by the applicant if it is to be considered in a subsequent cycle. The commission may fund all or any part of an application and may make a funding commitment conditional upon adherence to a specific time schedule, realization of a development prospect, or fulfillment of other agreements. (IAC 761-163.9)

Regional Development Projects: Regional development projects shall be evaluated by the department and approved by the commission in a process parallel to the department's annual development of its five-year transportation improvement program. (IAC 761-163.10)

Remedies for noncompliance with project agreement. The commission may revoke funding commitments, require repayment of RISE funds loaned or granted, or take both actions when the county or city has not fulfilled the terms of the project agreement.

22. Funding approvals. Applications for funding for the following programs shall be presented to the commission by department staff during a public meeting and shall include a staff analysis and recommendation. The commission may approve, reject or modify the staff recommendation.

- Airport Improvement Program (IAC 761-710)
- Capital Match Revolving Loan Fund (IAC 761-923)
- Commercial Air Service Airport Infrastructure Program (IAC 761-716)
- Commercial Air Service Marketing Program (IAC 761-715)
- General Aviation Airport Infrastructure Program (IAC 761-717)
- Intermodal Pilot Project Program (IAC 761-201)
- Rail Assistance Program (IAC 761-830)
- Railroad Revolving Loan Fund (IAC 761-831)
- Recreational Trails Program (IAC 761-165)
- RISE (Immediate Opportunity, Local Development, Regional projects) (IAC 761-163)
- State Transit Assistance (IAC 761-920)
- Traffic Safety Improvement Program (IAC 761-164)

23. Budget. The director shall present the department's budget to the transportation commission for approval. The commission shall approve, or amend and approve, the budget of the department prior to its submission to the governor and the general assembly. (Iowa Code sections 307.10 and 307.12; IAC 761-1.6)

24. Prorating departmental costs. The director shall, *with the approval of the commission*, prorate the costs of the department which will be expended for highways and such costs shall be paid from money appropriated from the road use tax fund. Prorated costs payable from the road use tax fund shall be based upon that portion of the department's duties related to the construction, maintenance, and supervision of the public highways within the state or for the payment of bonds issued for the construction of public highways and the payment of interest on such bonds. The general assembly shall appropriate from the general fund of the state the remaining necessary departmental costs. (Iowa Code section 307.28)

25. Annual Policy and Plan. Develop and coordinate a comprehensive transportation policy and plan for the state to be submitted to the governor and the general assembly, and to update the policy and plan annually. (Iowa Code section 307.10)

26. Multimodal facilities. Promote the coordinated and efficient use of all available modes of transportation for the benefit of the state and its citizens including, but not limited to, the designation and development of multimodal public transfer facilities if carriers or other private businesses fail to develop such facilities. (Iowa Code section 307.10)

27. City, county and regional transportation facilities. Identify the needs for city, county and regional transportation facilities and services in the state and develop programs appropriate to meet these needs. (Iowa Code section 307.10)

28. **Transportation safety.** Identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs. (Iowa Code section 307.10)
29. **Energy and environmental issues.** Consider the energy and environmental issues in transportation development. (Iowa Code section 307.10)
30. **Contracts/agreements.** Enter into such contracts and agreements as provided in chapter 307 of the Iowa Code, "Department of Transportation." (Iowa Code section 307.10)
31. **Public Transit.** Promote the efforts of political subdivisions in developing energy efficient public transit systems including bus and rail systems. (Iowa Code section 307.10)
32. **Rural bus systems.** Promote the development of rural bus systems. (Iowa Code section 307.10)
33. **Bus subsidy.** Develop and implement a bus system subsidization program. (Iowa Code section 307.10)
34. **Van Poolers.** Act as a resource and referral source for van poolers in the state. (Iowa Code section 307.10)
35. **Pedestrian accessibility.** Conduct a comprehensive transportation planning study to examine pedestrian accessibility in new commercial development. (Iowa Code section 307.10)
36. **Transit accessibility.** Establish transit accessibility impact guidelines to be used in evaluating proposals for the construction or acquisition of publicly financed facilities. (Iowa Code section 307.10)
37. **Impact of public transit.** Develop statistical measures to ascertain the impact of public transit systems on the minimization of motor vehicle accidents and reduction in fuel utilization and the impact of public transit systems on the reduction of hazardous emissions of mobile sources, as identified pursuant to Title 11 of the federal Clean Air Act of 1990, Pub. L. No. 101 549. (Iowa Code section 307.10)
38. **Transit service marketing steering committee.** Create a statewide transit services marketing steering committee which includes providers, consumer advocates, and public relations representatives. The committee shall develop criteria for the evaluation of the adequacy and public awareness of transit service delivery. (Iowa Code section 307.10)

39. Aviation federal funding applications. All preapplications for federal funds for the acquisition, construction, enlargement, improvement, maintenance, equipment or operations of airports and other air navigation facilities, and sites for airports and other navigation facilities received by any governmental subdivision, commission, or authority, whether acting alone or jointly with another governmental or private entity, shall be approved by the state transportation commission prior to being submitted to any federal agency or department. Approval shall be based on criteria consistent with the Iowa aviation system plan. (Iowa Code section 330.13)

Chapter 8

Commissioner's Code of Conduct and Ethics

As commissioner I shall:

1. Be an advocate of transportation.
2. Uphold and enforce all laws, rules and regulations and court orders pertaining to the commission and department. Desired changes should be brought about only through legal and ethical procedures.
3. Read, understand and sign an acknowledgment indicating awareness and receipt of the State of Iowa Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy; State of Iowa Substance Abuse Policy for Executive Branch Employees; Drug Free Workplace Policy; and the State of Iowa Violence-Free Workplace Policy for Executive Branch Employees.
4. Work unremittingly to help the people of the state understand the importance of transportation and need to support it.
5. Strive to ensure that people are accurately informed about Iowa's transportation system, and I will share with the department staff the aspirations of the citizens for Iowa's transportation system.
6. Confine my commission action to policy making and planning, and I will help to frame those policies and plans only after the commission has consulted those who will be affected by them.
7. Arrive at conclusions only after discussing all aspects of the issues at hand with my fellow commission members assembled in meeting.
8. Recognize that authority rests with the whole commission assembled in public meetings and will make no personal promises nor take any private action which may commit the commission or department to an action.
9. Refuse to surrender my independent judgment to special interest or partisan political groups.
10. Hold confidential all matters pertaining to the department which, if disclosed, would needlessly injure individuals or the department.
11. Support departmental personnel in performance of their duties.
12. Refer all complaints to the director and will act on such complaints at public meetings only after failure of an administrative solution.
13. Abide by the Iowa Gift Law as described in Iowa Code Chapter 68B. (A copy of the Iowa Gift Law is provided in the appendix of this guide.)

Chapter 9

Duties and Responsibilities of the Director

Director of Transportation

The director of transportation is based in Ames and serves as the chief administrative officer of the department and the secretary of the Iowa railway finance authority. The director is responsible for the management of the department and for statutory duties including but not limited to those listed in Iowa Code section 307.12. (IAC 761-1.7)

Director of Transportation—Qualifications—Salary

The governor shall appoint a director of transportation, subject to confirmation by the senate, who shall serve at the pleasure of the governor and who shall not be a member of the commission. The director shall not hold any other office under the laws of the United States or of this or any other state or hold any other position for profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with the director's duties, serve on or under a committee of a political party, or contribute to the campaign fund of any person or political party. The director shall be appointed on the basis of executive and administrative abilities and shall devote full time to the duties of the position. (Iowa Code section 307.11)

The director shall receive a salary as fixed by the governor within a salary range set by the general assembly. (Iowa Code section 307.11)

Reporting Units

The following employees serve at the pleasure of the director:

- The deputy director (IAC 761-1.7)
- The division directors (IAC 761-1.7)
- The six district engineers
- The director of the engineering bureau
- The director of statewide operations bureau
- The commission secretary
- The administrative assistant to the director

Chapter 10 Duties of the Director

The director shall:

1. **Administer department.** Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department. (Iowa Code section 307.12)
2. **Employ personnel.** Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with chapter 19A. (Iowa Code section 307.12)
3. **Assist commission.** Assist the commission in developing state transportation policy and a state transportation plan. (Iowa Code section 307.12)
4. **Establish advisory boards.** Establish temporary advisory boards of a size the director deems appropriate to advise the department. (Iowa Code section 307.12)
5. **Prepare budget.** Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law. (Iowa Code section 307.12)
6. **Appoint deputy and administrators.** Appoint the deputy director of transportation and the administrators of the department. (Iowa Code section 307.12)
7. **Prepare legislative proposals.** Review and submit legislative proposals necessary to maintain current state transportation laws. (Iowa Code section 307.12)
8. **Enter into reciprocal agreements.** Enter into reciprocal agreements relating to motor vehicle inspections with authorized officials of any other state, subject to approval by the commission. The director may exempt or impose requirements upon nonresident motor vehicles consistent with those imposed upon vehicles of Iowa residents operated in other states. (Iowa Code section 307.12)
9. **Adopt rules.** Adopt rules in accordance with chapter 17A as the director deems necessary for the administration of the department and the exercise of the director's and department's powers and duties. (Iowa Code section 307.12)

The director shall adopt proposed rules unless statutes specifically provide for commission adoption. The commission shall approve the rules prior to their adoption by the director except as provided in subrule 10.2(5) of the Iowa Administrative Code. (IAC 761-10.2)

Upon adoption of proposed rules by the director or the commission, the director shall file them in accordance with Iowa Code section 17A.5. (IAC 761-10.2)

10. **Reorganize department.** Reorganize the administration of the department as needed to increase administrative efficiency. (Iowa Code section 307.12)

11. Receive/disburse federal funds. Provide for the receipt or disbursement of federal funds allocated to the state and its political subdivisions for transportation purposes. (Iowa Code section 307.12)

12. Budget federal funds. Include in the department's annual budget all estimated federal funds to be received or allocated to the department. (Iowa Code section 307.12)

13. Adopt hazardous waste rules. Adopt, after consultation with the department of natural resources and the department of public safety, rules relating to enforcement of the rules regarding transportation of hazardous wastes adopted by the department of natural resources. The department and the division of the Iowa State Patrol of the department of public safety shall carry out the enforcement of the rules. (Iowa Code section 307.12)

14. Prepare highway program. Prepare and submit a report to the General Assembly on or before January 15 of each fiscal year describing the prior fiscal year's highway construction program, actual expenditures of the program, and contractual obligations of the program. (Iowa Code section 307.12)

15. Administer chapter 327J "Passenger Rail Service." (Iowa Code section 307.12)

a. The director may expend moneys from the passenger rail service revolving fund to pay the costs associated with the initiation, operation, and maintenance of rail passenger service. The director shall report by February 1 of each year to the legislative fiscal bureau concerning the status of the fund including anticipated expenditures for the following fiscal year. (Iowa Code section 327J.3)

b. The director shall enter into discussions for the purpose of securing AMTRAK passenger service from Chicago to Omaha utilizing the Chicago and Northwestern Transportation Company railroad tracks. (Iowa Code section 327J.3)

c. The director may provide technical assistance to cities along the proposed AMTRAK route to ensure that passenger facilities meeting AMTRAK requirements are available in a timely manner. (Iowa Code section 327J.3)

d. The director shall report regularly to the general assembly concerning the progress of efforts to secure central Iowa AMTRAK passenger service. (Iowa Code section 327J.3)

16. Reassign personnel. The director may reassign personnel within the department among the various divisions of the department in order to properly coordinate the work of the divisions and perform the duties and responsibilities of the department efficiently and economically. (Iowa Code section 307.13)

However, any employee so transferred or transferred from one employment system to another either administratively or legislatively, shall not be considered to be a probationary employee simply because of this action. (Iowa Code section 307.13)

If in the interest of the state, the director may allow a subsistence expense to an employee under the supervision of the department's administrator for highways for continuous stay in one location while on duty away from established headquarters and place of domicile for a period not to exceed forty-five days; and allow automobile expenses, for moving an employee and the employee's family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. The household goods for which transportation expense is allowed shall not include pets or animals. (Iowa Code section 307.12)

17. Prorate department costs. The director shall, with the approval of the commission, prorate the costs of the department which will be expended for highways and such costs shall be paid from money appropriated from the road use tax fund. Prorated costs payable from the road use tax fund shall be based upon that portion of the department's duties related to the construction, maintenance, and supervision of the public highways within the state or for the payment of bonds issued for the construction of public highways and the payment of interest on such bonds. The general assembly shall appropriate from the general fund of the state the remaining necessary departmental costs. (Iowa Code section 307.28)

18. Prescribe motor vehicle forms. The director shall prescribe and provide suitable forms of applications, registration cards, certificates of title and all other forms requisite or deemed necessary to carry out the provisions of this chapter (Chapter 321 of the Iowa Code, "Motor Vehicles and Law of the Road") any other laws, the enforcement and administration of which are vested in the department except manufacturer's or importer's certificates. Manufacturer's and importer's certificates shall be provided by the manufacturer or importer and be in the form prescribed by the department. (Iowa Code section 321.8)

19. Authorizing the administration of oaths. Officers and employees of the department designated by the director are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee. (Iowa Code section 321.9)

20. Prepare certified copies of records. The director and officers of the department designated by the director are authorized to prepare under the seal of the department and provide upon request a certified copy of any record of the department, charging a fee of fifty cents for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original and shall be considered to be true and accurate unless shown otherwise by an objecting party. (Iowa Code section 321.10)

21. Construct Great River Road. The director of transportation, with the cooperation of the department of natural resources, shall:

a. Acquire all rights in land necessary for reconstruction or relocation of any portions of the great river road where reconstruction or relocation is imperative for the safety of the traveling public, or where the condition or location of existing segments of the highway is not in keeping with the intent of this chapter. Acquisitions of such rights in land shall be by gift, purchase, exchange, or by instituting and maintaining proceedings for condemnation. Gift, purchase, exchange, and condemnation include acquisition of a scenic easement. A scenic easement acquired under this chapter constitutes an easement both at law and in equity, and all legal and equitable remedies, including prohibitory and mandatory injunctions, are available to protect and enforce the state's interest in such scenic easements. A scenic easement acquired under this chapter is deemed to be appurtenant to the roadway to which it is adjacent or from which it is visible. The duties created by a scenic easement acquired under this chapter are binding upon and enforceable against the original owner of the land subject to the scenic easement and the original owner's heirs, successors, and assigns in perpetuity, unless the instrument creating the scenic easement expressly provides for a lesser duration. A court shall not declare a scenic easement acquired under this chapter to have been extinguished or to have become unenforceable by virtue of changed conditions or frustration of purpose. (Iowa Code section 308.4)

b. Accept and administer state, federal, and any other public or private funds made available for the acquisition of rights in land and for the planning and construction or reconstruction of any segment of the great river road, and state and federal funds for the maintenance of that part of the great river road constituting the right of way. (Iowa Code section 308.4)

c. The director of transportation, with the concurrence of the department of natural resources, shall transfer jurisdiction of any adjacent conservation area to the department of natural resources upon completion of a new segment of the great river road. (Iowa Code section 308.6)

d. The director of transportation and the department of natural resources may enter into agreements with the United States secretary of transportation, as provided under the United States Code, Title 23 relating to the scenic and recreational highway system, and with any other agency and jurisdiction, and take action in the name of the state to comply with the terms of any agreement. (Iowa Code section 308.8)

22. Destroy records. The director may destroy any records of the department which have been maintained on file for three years which the director deems obsolete and of no further service in carrying out the powers and duties of the department, except as otherwise provided in this section. (Iowa Code section 321.12)

The director shall not destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2 or operating records pertaining to revocations for violations of section 321J.2A, except that a conviction or revocation under section 321J.2 or 321J.2A shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation. (Iowa Code section 321.12)

23. Maintain a records system. The director shall maintain a records system of delinquent accounts owed to the state using information provided through the computerized data bank established in section 421.17. The department and county treasurers shall use the information maintained in the records system to determine if applicants for renewal of registration have delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state as provided pursuant to section 421.17. The director and the director of revenue and finance shall establish procedures for updating the delinquent accounts records to add and remove accounts, as applicable. (Iowa Code section 321.3 1)

24. Render decisions in contested cases. The director of transportation may make a decision affirming, modifying or reversing the presiding officer's decision (in contested cases), or may remand the case to the presiding officer. (IAC 761-13.7(6))

The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. (IAC 761-13.7(7))

The director of transportation may, on the director's own motion, review the presiding officer's decision. The motion for review is subject to the same time limits as an appeal from the presiding officer's decision. (IAC 761-13.8(17A))

25. Fix the General Counsel's Salary. The salary of the general counsel shall be fixed by the director, subject to the approval of the attorney general. The director shall provide and furnish a suitable office for the general counsel upon request of the attorney general. (Iowa Code section 307.23)

26. Distribute federal donations. If the U.S. government provides for free distribution among the states machinery or other equipment suitable for use in road improvement, the director may take receipt of the equipment and take action to secure it for the state's benefit. The director may make an apportionment of the machinery and equipment among the counties which in the director's best judgement will best facilitate work by the counties. Title and right of possession of the property will remain at all times with the director for the use and benefit of the state. (Iowa Code section 307.43)

27. Enter into vehicle equipment compacts. The director of transportation may enter into vehicle equipment safety compacts with other jurisdictions. (Iowa Code section 321D.1)

28. Administer chapter 321H "Vehicle recyclers." The administration of chapter 321H of the Iowa Code shall be vested in the director of the state department of transportation. (Iowa Code section 321H.1)

29. Administer chapter 322 "Motor vehicle manufacturers, distributors and dealers." The administration of chapter 322 "Motor Vehicle Manufacturers, Distributors and Dealers" shall be vested in the director of transportation. (Iowa Code section 322.1)

The director may enter into reciprocity agreements with the authorized representatives of any jurisdiction to exchange information on dealer activity in order to pursue legal action for violations. (Iowa Code section 322. 1)

30. Administer chapter 322C "Travel Trailer Dealers, Manufacturers and Distributors." Iowa Code chapter 322C shall be administered by the director of transportation. (Iowa Code section 322C.1)

31. Enter into motor vehicle reciprocity agreements. The director may enter into reciprocity agreements with the authorized representatives of any jurisdiction, exempting nonresidents of this state using the highways of this state from the registration requirements of Iowa Code chapter 321 and payment of fees to this state, and conditions, restrictions, and privileges the director deems advisable. (Iowa Code section 326.5)

32. Cancel registrations. Whenever the director has reason to believe that a fleet owner has filed incorrect information with the department or the department of revenue and finance, for the purpose of reducing fleet owner's obligation for registration fees or fuel taxes, the director may cancel the apportioned registration privileges on all of the vehicles owned by such person. (Iowa Code section 326.31)

33. Serve as staff for the Iowa railway finance authority. The director and staff of the department shall serve as the staff of the Iowa railway finance authority. The director of the department shall advise the board on matters relating to railroad transportation and carry out all directives from the board, and may employ professional expertise when not available on the department staff. (Iowa Code section 327I.6)

34. Release confidential records. The director of transportation may release a confidential record or a portion of it to a person not covered in subrule 4.10(1) of the Iowa Administrative Code if the release:

- a. Is permitted by statute, rule or another provision of law, and
- b. Is not inconsistent with the stated or implied purpose of the law which establishes or authorizes confidentiality.

35. Consent to sale of goods and services by members of transportation commission. An official (director of transportation or a member of the transportation commission) shall not sell, either directly or indirectly, any goods or service to an individual, association or corporation subject to the regulatory authority of the department except when consent is granted by rule. The deputy director is authorized to consent to sales by the director of transportation. The director of transportation is authorized to consent to sales by a member of the transportation commission. (IAC 761-26)

36. Administer Iowa Code chapter 321, "Motor Vehicles and Law of the Road." The director is hereby vested with the power and is charged with the duty of observing, administering, and enforcing the provisions of the Iowa Code chapter 321. (Iowa Code section 321.3)

37. Enter into Interstate Drivers License Compacts. The director of transportation may enter into drivers license compacts with other jurisdictions in substantially the form prescribed in chapter 321C, Interstate Drivers License Compacts. (Iowa Code section 321C.1)

38. Adopt rules to administer chapter 321F, "Leasing and Renting of Vehicles." The director shall adopt rules for the purpose of administering this chapter (321F). All fees and funds accruing from the administration of this chapter shall be remitted to the treasurer of state monthly and deposited in the road use tax fund. (Iowa Code section 321F.11)

39. Carry out duties relating to aeronautics. The director in carrying out the director's duties relating to aeronautics shall: (Iowa Code section 328.12)

a. Promotion of aeronautics. Encourage, foster, and assist in the general development and promotion of aeronautics in this state, and make disbursements from moneys available for such purposes.

b. Rules. Make reasonable rules, consistent with this chapter, as deemed by the director to be necessary and expedient for the administration and enforcement of this chapter, and amend the rules at any time.

c. Filing of rules. Keep on file at the office of the director, for public inspection, a copy of all the department's aeronautic rules with all amendments, and mail copies to all registered landing areas in this state.

d. Technical services available. So far as reasonably possible, make available the engineering, management consulting, and other technical services of the department, without charge, in connection with aeronautics.

e. Intervention. Participate, at the director's discretion, as party plaintiff or defendant, or as intervenor, complainant, or movant, on behalf of the state or any governmental subdivision or citizen of the state, in any proceeding having to do with aeronautics.

f. Enforcement of aeronautics laws. Enforce and assist in the enforcement of this chapter and of all rules issued pursuant to this chapter, and of all other laws of this state relating to aeronautics; and, in the aid of enforcement and within the scope of the director's duties, general powers of peace officers are conferred upon the director, and officers and employees of the department designated by the director to exercise such powers. The director, in the name of this state, may enforce this chapter and the rules issued pursuant to this chapter by injunction in the courts of this state.

g. Use of existing facilities. In the discharge of all functions prescribed by this chapter, to every feasible extent, use the facilities of other agencies of the state; and other state agencies are authorized and directed to make available to the director such facilities and services.

h. Investigations and inquiries. Hold investigations and inquiries.

A. The director or the director's designee when acting for and with the authority of the director, may hold investigations and inquiries concerning matters covered by this chapter and orders and rules of the department. In an investigation or inquiry, the person acting for the director may administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books, and documents.

B. The reports of investigations or inquiries, or any part of them, shall not be admitted in evidence or used for any purpose in a civil suit growing out of a matter referred to in an investigation, inquiry, or report, except in criminal or other proceedings instituted in behalf of the director or this state under this chapter and other laws of this state relating to aeronautics.

i. Authority to contract. Enter into contracts necessary to the execution of the powers granted the director by this chapter.

j. No exclusive rights granted. Grant no exclusive right for the use of an airway, airport, landing area, or other air navigation facility under the director's jurisdiction.

k. Sufficiency reports. Issue sufficiency reports for all airports in the state, which are owned and operated by a governmental subdivision, based on the functional classification of those airports as set out in the department's transportation plan.

l. Centralized purchasing agency. Encourage governmental subdivisions to utilize the department's services as a centralized purchasing agency for items, including but not limited to airport and aeronautics equipment.

m. Safety inspections. Enter into agreements, at the director's discretion, and otherwise co-operate with federal authorities in the safety inspection of registered landing areas, and adopt safety standards for airports.

n. Newsletter. Have authority to publish and distribute by subscription a state aeronautics newsletter or magazine. The department may charge a reasonable fee for subscriptions to the newsletter or magazine.

o. Commuter air carrier demonstration projects. The department may encourage the development of commuter air carrier service in the state by:

- A. Recommending routes between cities that may support such service.
- B. Making available funding for demonstration projects from any federal funds made available to the state or from any state funds appropriated for such purposes.
- C. Establishing specifications, operational requirements, terms and conditions under which demonstration projects will be participated in by the state.

Prepared by:

Director's Staff Division
Iowa Department of Transportation
September 2000

The 1999 Handbook on

The Iowa Gift Law

**Guidance for Public Officials and Employees
on How to Comply with the Amended Iowa Gift Law**

Provided by Thomas J. Miller, Attorney General of Iowa

September 1, 1999

This handbook is provided as an informational guide by the Iowa Attorney General's Office. It is not an official opinion of the Attorney General and may not be cited as such. Legal advice on how the law applies to you must be obtained from the attorney who represents your political subdivision or agency.

This handbook construes the gift law provisions of Iowa Code chapter 68B, as amended through the 1999 session of the legislature. This law is subject to change.

Attorney General's staff who contributed to the first edition of this handbook in 1993 include: Attorney General, Bonnie Campbell, Elizabeth Osenbaugh, Charles Krogmeier, Julie Pottorff, Christie Scase, Lynn Walding, and Julie Fleming.

Permission is hereby granted to reprint The 1999 Handbook on the Iowa Gift Law with acknowledgment of the Attorney General's Office. Any reprint should cite the date on this booklet to avoid confusion.

Iowa Attorney General's Office

THE IOWA GIFT LAW

Introduction

The Attorney General prepared this handbook because many public officers and employees had expressed their concern about how to comply with revisions of the gift law.

The 1992 handbook on the gift law was used by a large number of people. Almost 7,000 copies were distributed to state employees and other interested parties. It is estimated that groups like the Iowa State Association of Counties, League of Iowa Municipalities and Iowa Association of School Boards provided the information to an additional 7,000 people.

It is important to note that this handbook should not be considered the final authority on the questions it addresses. Definitive answers to these questions ultimately will be developed through case law, Attorney General's opinions, and interpretive rules. Interested parties should seek further advice from their own legal counsel.

The handbook is intended to provide guidelines for public officials and employees to comply with the new law, but is not intended to identify when penalties are appropriate. Whether charges are appropriate in any given situation rests in the sound discretion of the appropriate authorities.

Several important phone numbers are provided on page 13, listing officials and organizations that also may be able to help you with gift law questions.

I hope you find this handbook informative and helpful.

Thomas J. Miller
Attorney General of Iowa

[This handbook is meant to replace the Gift Law Handbook that was distributed by the Attorney General's Office in 1992. This handbook reflects the changes made by the legislature during the 1999 Legislative Session.]

THE GIFT LAW

In 1992 the legislature passed the Iowa Public Officials Act which amended the gift law in Iowa Code chapter 68B. The gift law has been amended in the years since its passage. This handbook sets forth current provisions of the gift law following the 1999 legislative session and answers some common questions that may arise in interpreting the gift law. The Iowa Public Officials Act as amended also contains many other provisions of law restricting the activities of public officials and employees and lobbyists.

This handbook is addressed to governmental officers and employees and their family members who are subject to the law.

SCOPE OF THE GIFT LAW

1. How do I know whether the gift law applies?

You should ask three questions when determining whether the gift law applies:

- Am I getting something for nothing or less than it is worth?
- Is the donee (the person receiving the item) a public official, public employee, or candidate for office or the spouse or dependent child of an official, employee, or candidate covered by the statute? (See questions 2, 3 & 4.)
- Is the donor (the giver) a "restricted donor"? (See questions 5-11.)

If the answer to all three questions is yes, then the gift law likely applies and the gift is prohibited unless a specific exception applies. (See questions 12-33.) If the answer to any of the questions is no, the transaction is not subject to the gift law. (Of course, other laws, including other provisions of chapter 68B, may nonetheless apply.)

2. Who is subject to the gift law?

- All state officers, elected or appointed, including members of boards and commissions (but not members of purely advisory committees or certain agricultural commodity promotional boards)
- Legislators
- State employees, including both executive and legislative branch employees
- Officeholders or employees of any political subdivision, such as cities, counties, school districts, townships, benefited fire districts, or solid waste agencies.
- Candidates for public office
- Spouses and dependent children of all of the above
- "Restricted donors" who provide gifts to any of the above

The categories of persons who are subject to the gift law are defined in section 68B.2. Specific definitions should be considered and legal advice sought if the application of the terms in any particular situation is unclear.

3. Are judges and judicial employees subject to the gift law?

Not directly. However, Iowa Supreme Court Rule 204 provides substantially similar requirements for judges and Judicial Department employees. Be sure to check these rules to determine whether the gift rules applicable to judges and Judicial Department employees vary from the statutes construed in this brochure.

4. Does the gift law apply to my family?

Yes. If you are subject to the gift law, your spouse and dependent children are subject to the law as well. §§ 68B.2(11), 68B.22.

5. *Does the gift law apply whenever I receive a gift from anyone?*

No. The gift law applies only when the donor is within one of four categories defined in the statute. § 68B.2(24). The law uses the term "restricted donor" to mean a giver who is within these four categories.

- Anyone who contracts with your agency or is seeking to contract with it. This includes persons involved in sales, leases, purchases, or other contracts. The term "agency" includes all public bodies covered by the statute, including departments, divisions, boards, commissions, bureaus and offices of a city, school district, or county. (Certain agricultural commodity production boards are excluded.)
- Anyone who will be directly and substantially affected financially by performance or nonperformance of your official duties in a way that is greater than the effect on the general public or a substantial class to which the person belongs (such as all members of a profession or residents of a region). An agent of such a person is also a "restricted donor."
- If you are an official or employee of one of the 16 listed "state regulatory agencies," a "restricted donor" is also any person who is the subject of, or a party to, a matter pending before that part of the regulatory agency (or "subunit") in which you have discretionary authority as an officer or employee. The agent of persons with matters pending before your subunit is also a "restricted donor." Thus, for example, a member of the Board of Medical Examiners could not accept a gift from a doctor who is the subject of a pending investigation before that board nor from the doctor's lawyer. However, this would not make the doctor a "restricted donor" as to employees or officials of unrelated units in the Department of Health.
- Anyone who is a "lobbyist," or a client of a lobbyist, regarding matters within your agency's jurisdiction. The term "lobbyist" is specially defined, as described on the next page.

6. Who is a "lobbyist"?

The term "lobbyist" includes any individual who, 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, by acting directly, does any one or more of the following:

- Receives compensation,
- Is a designated representative of an organization,
- Represents the position of a federal, state, or local agency in which the person serves or is employed as the designated representative, or
- Makes expenditures of more than \$1,000.00 in a calendar year to communicate in person (other than to compensate another for lobbying services or to communicate with a person's own legislators).

§ 68B.2(13)(a)(1)-(4).

7. Why is the definition of "lobbyist" significant?

Lobbyists and their clients are "restricted donors" under the gift law and, therefore, cannot offer or make a gift to the public officials or public employees of agencies whom they lobby or to their spouses or dependent children. Conversely, public officials, public employees, their spouses or dependent children cannot accept or receive gifts from lobbyists of the agency in which they serve or are employed. § 68B.22(1), (2).

The definition is important for reasons in addition to the gift law. Persons who are lobbyists must comply with registration and reporting requirements. §§ 68B.36, 68B.37. They are prohibited from making loans to officials, members of the general assembly, state employees, legislative employees, or candidates for state office - except in the ordinary course of business. § 68B.24. Except in the case of a special election, lobbyists cannot make contributions to the campaign of a state official, candidate for state office, or a member of the general assembly during and, in some cases, shortly after, the legislative session. § 56.15A. Finally, officials and state or legislative employees are restricted from certain lobbying during service or employment and for a period after termination of service or employment. § 68B.5A.

8. Is a city employee designated by the council to meet with a state agency a "lobbyist"?

The city employee would be a lobbyist only if the contact concerns rulemaking. The new definition of "lobbyist" applies only when a person acts directly as described in § 68B.2(13)(a)(3) to encourage 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. These definitions are significantly more narrow than those under the 1992 legislation. Under these definitions contact with a state agency, even as the designated local representative, will now trigger the definition of lobbyist only if the contact is to encourage the passage, defeat, approval, veto, or modification of rules.

9. My agency and another state agency are required by statute to jointly promulgate rules, and I have been designated by my agency to coordinate this effort. Will I become a "lobbyist"?

No. The term "lobbyist" does not include agency officials and employees engaged in activities with another agency with which the official or employee's agency is engaged in a collaborative project. § 68B.2(13)(b)(6).

10. Do lawyers representing clients before state agencies become "lobbyists"?

Lawyers representing clients before state agencies will trigger the definition of lobbyist only when encouraging the passage, defeat, approval, veto, or modification of rules. A lawyer representing a client for any other purpose before a state agency will not become a lobbyist.

Further, even if a lawyer is engaged in the described activities, an exception may apply. Although the provision excluding lawyers from the definition of "lobbyist" was repealed, new provisions have been enacted which exclude "persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees" and "persons whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation" in a rulemaking. §§ 68B.2(13)(b)(4), 68B.2(13)(b)(8). These exclusions are not limited to lawyers.

11. Can a public official or employee be a "restricted donor"?

Yes, if one of the four definitions of "restricted donors" applies to you. See question number 5. Therefore, you must consult the gift law when you are giving a gift to another public official or employee as well as when you receive one.

APPLICATION OF THE GIFT LAW

12. What is a gift?

A gift is anything of value given to you for which you did not give something of equal or greater value in return. A gift is prohibited only if the person who gave you the gift is a "restricted donor" and no exception applies. §§ 68B.2(9), 68B.2(24), 68B.22(4).

13. What exceptions may apply?

There are sixteen exceptions to the gift law. § 68B.22(4). You may, for example, accept items available free of charge to members of the general public and nonmonetary items worth three dollars or less, such as pencils or bumper stickers.

14. Can I accept non-food items worth three dollars or less?

Yes, but you can't accept money from a "restricted donor". The 1993 revisions combined non-food items with food and drink as "nonmonetary items." § 68B.22(4)(i). Even if the nonmonetary items are received from a "restricted donor," you may accept them if worth three dollars or less.

15. Must I continue to file reports of gifts?

No. There is no reporting obligation under the new statute. Instead, the law precludes the receipt of all gifts unless a statutory exception applies.

16. What about food and drink? Can I accept lunch from a "restricted donor" without worrying about the gift law?

You can accept free food and drink from a "restricted donor" only if it fits within an exception. Specific exceptions for food and drink include the following:

- You may accept food and drink with a value of three dollars or less received from any restricted donor in any one calendar day. § 68B.22(4)(i).
- You may accept food and drink given in return for your participation in a panel or speaking engagement so long as the food and drink relates directly to the day or days on which you participate or speak. §§ 68B.22(4)(g), 68B.23(2)(a).
- You may accept food and drink given to an economic development delegation under limited circumstances. § 68B.22(4)(o). (See question 28.)

17. What should I do if I am part of a group entertained by a "restricted donor" at a private club which does not provide individual checks?

You should advise the "restricted donor" that the state gift law prohibits your acceptance of free food and drink worth more than three dollars and ask the donor to provide either an estimate or a bill so that you can pay your share.

18. Under § 68B.22(4)(i) I can accept \$3.00 worth of food and drink from a "restricted donor." What if I attend a dinner sponsored by a "restricted donor" that is worth \$10.00? Can I pay \$7.00 and accept the remaining \$3.00 in value under this exception?

Technically, this is an option under the gift law. You may accept \$3.00 in food and drink from a "restricted donor" under an exception to the prohibition against accepting gifts and pay for the remainder of the meal.

19. Can "restricted donors" avoid the limit on food and drink by joining with others to buy my dinner?

No. The gift law specifically prohibits "restricted donors" from joining together to give one gift and dividing the value of the gift among them. §§ 68B.22(2), 68B.22(5).

20. Can I go to dinner at the home of a "restricted donor"?

A dinner worth more than three dollars would be a prohibited gift if provided by a "restricted donor" unless you provide something of equal value in return. You can accomplish this by, for example, bringing a gift to the host, going "potluck," or by reciprocating at another date.

21. Can I accept gifts from a covered "restricted donor" who is also a personal friend?

No. The gift law contains an exception for close relatives, but not for friends. See §§ 68B.21, 68B.22(4)(c). A friend who is also a "restricted donor" must comply with the gift law.

22. Can a "restricted donor" give me a gift on ceremonial occasions or holidays?

The amendments allow receipt of a wedding gift, twenty-fifth and fiftieth anniversary gifts, funeral flowers, or contributions to a memorial. See §§ 68B.22(4)(l), (m). The law still contains no exceptions for Christmas presents, birthday gifts, or other holiday gifts. Gifts from a "restricted donor" are prohibited unless an exception applies or you reciprocate by exchanging gifts of equal value.

23. *Can someone who wants to sell a product to my agency give me free samples for my personal use?*

A vendor seeking to do business with your agency is a "restricted donor." §§ 68B.2(24)(a), (c). Therefore, you cannot accept samples worth over three dollars for personal use unless these are made available free of charge to members of the general public or otherwise fit within an exception. However, you can test samples as part of normal contract review or donate samples, as provided by § 68B.22(3), within 30 days of receipt.

24. *Can I continue to accept government employee discounts on hotel rooms or other goods and services?*

You may accept a government rate which is available to all government employees for official business. Whether you can accept a discount for personal use depends on the circumstances involved, and you should seek legal advice. Op.Att'yGen. #93-7-7(L).

25. *Is there a polite alternative to rejecting a prohibited gift?*

You may accept gifts other than money if you turn the gift over to a public body or charity within thirty days and meet all the requirements of § 68B.22(3). You may also exchange gifts of equal value, where appropriate.

26. *May I accept a gift from a foreign citizen?*

Yes. You may accept a gift from a foreign citizen given during a ceremonial presentation or as a result of a foreign custom, provided the gift is only of personal value to you. § 68B.22(4)(p). If the gift has more than personal value, you should follow the advice given in response to question 25.

27. *Can a "restricted donor" pay my travel expenses to a conference by reimbursing the agency where I work? Is it a gift to me or to my agency?*

The payment of travel expenses for a governmental official or employee by a "restricted donor" is almost always prohibited. Generally, the law treats free travel as a gift to the employee and limits payment of travel expenses from a "restricted donor" to those exceptions specifically permitted by statute. 1990 Op.Att'yGen. 52 (#89-11-3(L)). These exceptions include, for example, travel expenses given in return for participation in a panel or speaking engagement at a meeting when the expenses related directly to the days of participation. § 68B.22(4)(g).

28. Can a "restricted donor" waive, or pay, the registration fee to allow me to attend a conference or seminar addressing issues relevant to my official duties?

Yes. The gift law exempts from the prohibition upon receipt of gifts "actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the persons's official functions." § 68B.22(4) (q). Travel, lodging, and meal costs are not included in this exemption and may not be accepted unless another exemption is applicable. (See questions 15 and 27)

29. May a "restricted donor" pay my travel expenses as part of a joint economic development effort?

Yes, under certain circumstances. Section 68B.22(4)(o) permits you to accept travel, lodging, food and drink while an official member of a delegation to attract a specific business if you play a significant role in the presentation to the business and the donor is not the business being contacted. If the donor is the business being contacted, you may consume food and drink provided by the business during the meeting.

30. Can I attend an official reception at a meeting of an association of governmental entities?

Yes. The gift law specifically exempts regularly scheduled events at meetings of an association of which the State or a political subdivision is a member. Examples of these groups are the National Conference of State Legislatures, Council of State Governments, Iowa State Association of Counties, the Iowa Association of School Boards, and the Iowa League of Cities. § 68B.22(4)(k).

31. Can I attend an official reception at a meeting of an association of public officers?

Yes. The gift law also specifically exempts regularly scheduled events at meetings of an association of public officers if you or your governmental entity is a member of the association. Examples of these groups are the National Governors' Association, Iowa State Sheriffs' and Deputies' Association, and the Iowa Municipal Finance Officers' Association. § 68B.22(4)(k).

32. Can I attend a free reception sponsored by a "restricted donor" at a meeting of an association?

Yes, but you cannot consume food or drink worth more than three dollars at any event sponsored by a "restricted donor" unless it fits within the exception for a "regularly scheduled event" at a meeting of an association of public officers or an association in which the State or a political subdivision is a member. The scope of this exception will need to be resolved on a case-by-case basis. § 68B.22(4)(i), (k).

33. Can I attend a free reception of a professional organization or civic group?

Yes, but if the sponsor is a "restricted donor," you cannot consume food or drink worth more than three dollars unless the event is free to the public or the event is part of the benefits you receive in return for your payment of membership dues. § 68B.22(4)(e), (i).

34. *Is a "restricted donor's" contribution to an official's political campaign a gift?*

No. Contributions made to a candidate or candidate's committee are excluded from the gift law but are subject to the campaign finance law, Iowa Code ch. 56. § 68B.22(4)(a).

35. *What are the penalties for violating the gift law?*

A violation of the gift law is a serious misdemeanor which may, upon conviction, result in imprisonment for one year and a \$ 1,000 fine. §§ 68B.25, 903.1. In addition, the Ethics and Campaign Disclosure Board may impose a civil penalty of up to \$ 2,000 for each violation of chapter 68B. § 68B.32D(1)(h). A violation can also be grounds for removal from office, suspension or dismissal from employment, or other employee discipline. §§ 68B.25, 68B.31(11), 68B.32D.

36. *Does the gift law apply when I'm attending a conference in another state?*

Yes. If the gift law applies to you, it will apply even though the transaction occurs out of state. 1990 Op.Att'yGen. 27.

37. *Where can a person file a complaint about a violation of the gift law?*

- File complaints about state executive branch officers, employees, or lobbyists with the Ethics and Campaign Disclosure Board. § 68B.32(1).
- File complaints about legislators and legislative employees and lobbyists with the legislative ethics committees. § 63B.31(5).
- File complaints about judicial officers with the commission on judicial qualifications. § 602.2104.
- File criminal complaints for knowing and intentional violations of the law with the county attorney where the violation allegedly occurred. Complaints regarding the conduct of local officials and employees are filed with the county attorney in the county where the accused resides. § 68B.26.

ETHICS AND CAMPAIGN DISCLOSURE BOARD

Board: Six members appointed by the Governor with confirmation by the Senate.

Staff: Executive Secretary, Legal Counsel and other personnel as necessary.

Duties: Promulgate rules
Develop forms
Receive campaign finance disclosure reports
Receive lobbyist registration/reports
Receive lobbyists' client disclosures
Receive financial disclosures
Distribute information available to the public
Prepare uniform guidance for reporting
Receive and process complaints
Establish and impose penalties for violations

Complaint Process:

- Any person may file a complaint.
- Board may initiate investigation on its own motion.
- If Board finds probable cause based on investigation, the Board may issue statement of charges and notice of contested case proceeding.
- The hearing is conducted as a contested case under Chapter 17A.
- Upon finding violation of chapter 56 or 68B, the Board may reprimand the violator, recommend that disciplinary action be taken, impose a civil penalty of up to \$2,000 for each violation, or refer the complaint and supporting evidence for prosecution or removal proceedings.

CAUTIONS

This handbook does not address other requirements in the ethics law, including financial disclosure, campaign finance, restrictions on lobbying, and conflicts of interest.

If you are a state official, legislator, member of certain state boards, head of a state agency, deputy, or head of a major subunit of a "regulatory agency," you must file a financial disclosure statement. These requirements are contained in Iowa Code § 68B.35. See Op.Att'yGen. # 92-9-3.

If you are a federal, state, or local official or employee, you may be a "lobbyist" if you contact a legislator, the governor, or state agency regarding legislation, rulemaking, or an executive order on behalf of the agency or subdivision for which you work. "Lobbyists" are subject to requirements and prohibitions in addition to the gift law.

For advice concerning what legal requirements apply to you, contact the attorney who advises your agency or political subdivision.

IMPORTANT PHONE NUMBERS

- Ethics and Campaign Disclosure Board
Executive Director: Kay Williams (515) 281-4411
- Iowa State Association of Counties
General Counsel: David Vestal (515) 244-7181
- Iowa League of Cities
Executive Director: Tom Bredeweg (515) 244-7282
- Iowa State Association of School Boards
Executive Director: Ronald M. Rice (515) 288-1991
- Commission on Judicial Qualifications
Executive Secretary: William O'Brien (515) 281-5241
- Iowa Attorney General's Office (515) 281-5164

ADDITIONAL CONTACTS

- Local City Attorney
- Local County Attorney
- Private Legal Counsel

Excerpts from Iowa Code Chapter 68B

68B.1 TITLE OF ACT.

This chapter shall be known as the "Iowa Public Officials Act".

68B.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, or any department, division, board, commission, bureau or office of a political subdivision of the state, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

2. "Agency of state government" or "state agency" means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

3. "Board" means the Iowa ethics and campaign disclosure board.

4. "Candidate" means a candidate under chapter 56 but does not include any judge standing for retention in a judicial election.

5. "Candidate's committee" means the committee designated by a candidate for a state, county, city, or school office, as provided under chapter 56, to receive contributions in excess of five hundred dollars in the aggregate, expend funds in excess of five hundred dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of five hundred dollars in the aggregate in any calendar year.

6. "Client" means a private person or a state, federal, or local government entity that pays compensation to or designates an individual to be a lobbyist.

7. "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.

8. "Contribution" means a loan, advance, deposit, rebate, refund, transfer of money, an in-kind transfer, or the payment of compensation for the personal services of another person.

9. "Gift" means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

10. "Honorarium" means anything of value that is accepted or given as consideration for an appearance, speech, or article.

11. "Immediate family members" means the spouse and dependent children of a public official or public employee.

12. "Legislative employee" means a permanent full-time employee of the general assembly but does not include members of the general assembly.

13. a. "Lobbyist" means an individual who, by acting directly, does any of the following:

(1) Receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.

(2) Is a designated representative of an organization which has as one of its purposes the encouragement of the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly, a state agency, or any statewide elected official.

(3) Represents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes 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.

(4) Makes expenditures of more than one thousand dollars in a calendar year, other than to pay compensation to an individual who provides the services specified under subparagraph (1) or to communicate with only the members of the general assembly who represent the district in which the individual resides, to communicate in person with members of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.

b. "Lobbyist" does not mean:

(1) Officials and employees of a political party organized in the state of Iowa representing more than two percent of the total votes cast for governor in the last preceding general election, but only when representing the political party in an official capacity.

(2) Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.

(3) All federal, state, and local elected officials, while performing the duties and responsibilities of office.

(4) Persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.

(5) Members of the staff of the United States congress or the Iowa general assembly.

(6) Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency with which the official's or employee's agency is involved in a collaborative project.

(7) An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization who either is not paid compensation or is not specifically designated as provided in paragraph "a", subparagraph (1) or (2).

(8) Persons whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under section 17A.4, subsection 1.

14. "Local employee" means a person employed by a political subdivision of this state and does not include an independent contractor.

15. "Local official" means an officeholder of a political subdivision of this state.

16. "Member of the general assembly" means an individual duly elected to the senate or the house of representatives of the state of Iowa.

17. "Official" means all statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, members of boards or commissions as defined under section 7E.4, and heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board adopted in consultation with the department or agency and pursuant to chapter 17A. "Official" does not include officers or employees of political subdivisions of the state, members of the general assembly, legislative employees, officers or employees of the judicial branch of government who are not members or employees of the office of attorney general, members of state government entities which are or exercise the same type of authority that is exercised by councils or committees as defined under section 7E.4, or members of any agricultural commodity promotional board, if the board is subject to a producer referendum.

18. "Person" means, without limitation, any individual, corporation, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

19. "Public disclosure" means a written report filed by a person as required by this chapter or required by rules adopted and issued pursuant to this chapter.

20. "Public employee" means state employees, legislative employees, and local employees.

21. "Public office" means any state, county, city, or school office or any other office of a political subdivision of the state that is filled by election.

22. "Public official" means officials, local officials, and members of the general assembly.

23. "Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue and finance, department of inspections and appeals, department of personnel, public employment relations board, state department of transportation, civil rights commission, department of public defense, and department of natural resources.

24. "Restricted donor" means a person who is in any of the following categories:

a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.

b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.

d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

25. "State employee" means a person who is not an official and is a paid employee of the state of Iowa and does not include an independent contractor, an employee of the judicial department who is not an employee of the office of attorney general, an employee of the General Assembly, an employee of a political subdivision of the state, or an employee of any agricultural commodity promotional board, if the board is subject to a producer referendum.

26. "Statewide elected official" means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general of the state of Iowa.

68B.21 LEGISLATIVE INTENT.

It is the goal of the general assembly that public officials and public employees of the state be extremely cautious and circumspect about accepting a gratuity or favor, especially from persons that have a substantial interest in the legislative, administrative, or political actions of the official or employee. Even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raises suspicions that tend to undermine the public trust. It is therefore the intent of the general assembly that the provisions of this division be construed to discourage all gratuities, but to prohibit only those that create unacceptable conflicts of interest or appearances of impropriety.

68B.22 GIFTS ACCEPTED OR RECEIVED.

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official, public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of general services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of general services shall be disposed of by assignment to state agencies for official use or by public sale.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

- a. Contributions to a candidate or a candidate's committee.
- b. Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.
- c. Anything received from anyone related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

d. An inheritance.

e. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.

f. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

g. Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

h. Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

i. Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

j. Items or services solicited by or given to a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member for purposes of a business or educational conference, seminar or other meeting, or solicited by or given to state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees for purposes of a business or educational conference, seminar or other meeting.

k. Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

l. Funeral flowers or memorials to a church or nonprofit organization.

m. Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

n. Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

o. Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

p. Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and is given during a ceremonial presentation or as a result of a custom of the other country and is of personal value only to the donee.

q. Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a member of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assembly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

68B.23 HONORARIA -- BANNED.

1. Except as provided in subsection 2, a public official or public employee shall not seek or accept an honorarium from a restricted donor.

2. A public official or public employee may accept an honorarium from any person under the following circumstances:

a. The honorarium consists of payment of actual expenses of a donee for registration, food, beverages, travel, and lodging paid in return for participation in a panel or speaking engagement at a meeting when the expenses relate directly to the day or days on which the recipient has participation or presentation responsibilities.

b. The honorarium consists of a nonmonetary item or series of nonmonetary items that the public official or public employee donates within thirty days to a public body, a bona fide educational or charitable organization, or the department of general services as provided in section 68B.22, subsection 3.

c. The honorarium consists of a payment made to a public official or public employee for services rendered as part of a bona fide private business, trade, or profession in which the public official or public employee is engaged if the payment is commensurate with the actual services rendered and is not being made because of the person's status as a public official or public employee, but, rather, because of some special expertise or other qualification.

68B.24 LOANS -- RECEIPT FROM LOBBYISTS PROHIBITED.

1. An official, member of the general assembly, state employee, legislative employee, or candidate for state office shall not, directly or indirectly, seek or accept a loan or series of loans from a person who is a lobbyist.

2. A lobbyist shall not, directly or indirectly, offer or make a loan or series of loans to an official, member of the general assembly, state employee, legislative employee, or candidate for state office. A lobbyist shall also not, directly or indirectly, join with one or more persons to offer or make a loan or series of loans to an official, member of the general assembly, state employee, legislative employee, or candidate for state office.

3. This section shall not apply to loans made in the ordinary course of business. For purposes of this section, a loan is "made in the ordinary course of business" when it is made by a person who is regularly engaged in a business that makes loans to members of the general public and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

68B.25 ADDITIONAL PENALTY.

In addition to any penalty contained in any other provision of law, a person who knowingly and intentionally violates a provision of sections 68B.2A through 68B.7, sections 68B.22 through 68B.24, or sections 68B.35 through 68B.38 is guilty of a serious misdemeanor and may be reprimanded, suspended, or dismissed from the person's position or otherwise sanctioned.

68B.26 ACTIONS COMMENCED.

Actions against public officials or public employees to enforce the provisions of this chapter may be commenced by the filing of a complaint with the county attorney by any legal resident of the state of Iowa who is eighteen years of age or more at the time of commencing the action or by the attorney general. Complaints regarding conduct of local officials or local employees which violates this chapter shall be filed with the county attorney in the county where the accused resides.

CHAPTER 21

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

- 21.1 Intent -- declaration of policy.
- 21.2 Definitions.
- 21.3 Meetings of governmental bodies.
- 21.4 Public notice.
- 21.5 Closed session.
- 21.6 Enforcement.
- 21.7 Rules of conduct at meetings.
- 21.8 Electronic meetings.
- 21.9 Employment conditions discussed.
- 21.10 Information to be provided.
- 21.11 Applicability to nonprofit corporations.

21.1 Intent -- declaration of policy.

This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.

[C79, 81, § 28A.1]

C85, §21.1

21.2 Definitions.

As used in this chapter:

1. "Governmental body" means:

- a. A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.
- b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
- c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs "a" and "b" of this subsection.
- d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.
- e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.
- f. A nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

h. An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

2. "*Meeting*" means 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.

3. "*Open session*" means a meeting to which all members of the public have access.

[C71, 73, 75, 77, § 28A.1; C79, 81, § 28A.2]

C85, §21.2

89 Acts, ch 73, § 1; 90 Acts, ch 1175, §1; 90 Acts, ch 1271, §701; 91 Acts, ch 258, § 26; 93 Acts, ch 25, § 1

21.3 Meetings of governmental bodies.

Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

[C71, 73, 75, 77, § 28A.1, 28A.5; C79, 81, § 28A.3]

C85, § 21.3

93 Acts, ch 25, § 2

21.4 Public notice.

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.

When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

[C71, 73, 75, 77, 79, 81, § 28A.4]

C85, § 21.4

96 Acts, ch 1129, § 113

21.5 Closed session.

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.

b. To discuss application for letters patent.

c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable

injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

[C71, 73, 75, 77, § 28A.3; C79, 81, § 28A.5]

C85, § 21.5

21.6 Enforcement.

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated

any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

(3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body.

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in two prior violations of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

[C71, 73, 75, 77, § 28A.7, 28A.8; C79, 81, § 28A.6]

C85, § 21.6

99 Acts, ch 9, §1

Subsection 3, paragraph b amended

21.7 Rules of conduct at meetings.

The public may use cameras or recording devices at any open session. Nothing in this chapter

shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

[C79, 81, § 28A.7]

C85, § 21.7

21.8 Electronic meetings.

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.

b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.

c. Minutes are kept of the meeting.

The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph "a" of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

[C79, 81, § 28A.8]

C85, § 21.8

21.9 Employment conditions discussed.

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, "*employment conditions*" mean areas included in the scope of negotiations listed in section 20.9.

[81 Acts, ch 30, § 1]

C83, § 28A.9

C85, § 21.9

21.10 Information to be provided.

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies.

89 Acts, ch 73, § 2

21.11 Applicability to nonprofit corporations.

This chapter applies to nonprofit corporations which are defined as governmental bodies subject to section 21.2, subsection 1, paragraph "f", only when the meetings conducted by the

nonprofit corporations relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D.

90 Acts, ch 1175, §2

OPEN MEETINGS CHECKLIST

The provisions of the Open Meetings Law are triggered when there is a "meeting" of a "governmental body". There is no question but that IRFA and the DOT Commission are governmental bodies. The following checklist is to aid in determining when they are in meetings subject to the law and what procedures they must follow when they are.

I. Meeting

A meeting occurs when:

- a) there is a gathering of a majority of the commission or IRFA; and
- b) there is either discussion or action upon matters over which it has discretionary authority;

II. Notice

Notice of meetings is required to:

- a) be given at least 24 hours in advance: *
- b) give the date, time and place of the meeting;
- c) state a tentative agenda; and
- d) be given in a manner calculated to apprise the public of the information, which shall include:
 - 1) posting at the agency's office; and
 - 2) distributing to media who request it.

III. Time and Place *

Meetings shall be held:

- a) at a place reasonably accessible to the public; and
- b) at a time convenient to the public.

IV. Minutes

Minutes of each meeting must be kept showing:

- a) the date, time and place of the meeting;
- b) the members present; and
- c) actions taken, including the results of each vote.

Meeting minutes are records open to the public.

V. Closed Sessions

The body may hold a session not open to the public:

- a) to review confidential records;
- b) to discuss application for letters patent;
- c) to discuss with counsel strategy in pending or imminent litigation;
- d) to discuss licensing decisions;
- e) to discuss suspending or expelling a student;
- f) to discuss a proposed decision in a contested case;
- g) to discuss law enforcement matters;
- h) to evaluate an employee's or potential employee's professional competency; or
- i) to discuss the purchase of real estate if disclosure might affect the price.

A closed session may be held only upon the vote, in open session, of either two-thirds of the body or all the members present. The specific exemption justifying the closed session must be stated publicly.

VI. Electronic Meetings

The body may hold a meeting electronically (e.g. telephone conference call) only if:

- a) it is impossible or impractical to hold the meeting in person;

- b) the public has access to the conversation (unless a provision for closed sessions applies);
- c) notice, as set out in II. above, is given; and
- d) minutes are kept which also state why an in-person meeting is impossible or impractical.

VII. Enforcement

Judicial enforcement of the open meetings law may be sought by:

- a) any aggrieved person;
- b) any Iowa taxpayer;
- c) any Iowa citizen;
- d) the attorney general; or
- e) county attorney.

VIII. Penalty

Members of the body who participate in a meeting in violation of the law are subject to: (a) fine of between \$100 and \$500; (b) payment of the successful party's costs and attorney fees unless the member shows he or she:

- a) voted against a closed session;
- b) had good reason to believe, and believed, the facts indicated compliance with the law;
- c) reasonably relied on a judicial decision, an Attorney General Opinion or the attorney for the body.

* Where it is impossible or impractical to comply, the minutes shall contain a statement justifying the departure.