

MICHAEL DOOLEY, et al v. JOHNSON COUNTY BOARD OF SUPERVISORS,
(Iowa Court of Appeals, December 17, 2008)

Serial gathering of county supervisors with planning consultant to discuss recommendations of report did not constitute "meeting" under Open Meetings Law.

In November 2003, the Johnson County Secondary Road Department recommended developing a new road through The North Corridor (an area north of Iowa City, south of Linn County, east of highway 965, and west of highway 1) to accommodate planned growth. The department determined that existing roads could not accommodate new growth without being upgraded. The proposed new road would bypass an existing route and cut through several properties. Because of concerns about the project by some citizens, the Johnson County Board of Supervisors contracted with H.R. Green to study the issue and provide recommendations, in order to get an additional and independent perspective. A preliminary draft of H.R.Green's report was given to members of the board in early December 2004. The draft report contained the following recommendations:

The [c]ounty should improve the surface of Prairie du Chien Road and Newport Road within the existing right-of-way and road grade as much as possible, implementing one of several methods currently being used by other county engineers in Iowa.

The county should provide a separate trail facility for pedestrian and bicycle traffic. This facility would ideally be located on the outside edge of the existing right-of-way. This requires the acquisition of additional right-of-way.

The county should also pursue the assignment and development of a connecting roadway from the north end of Prairie du Chien Road and Newport Road as recommended by the November 2003 report. In addition, a connection further east between Newport Road and IA Hwy 1 should be considered for long term growth.

The board's executive assistant emailed the board and stated that someone from H.R. Green wanted to meet with two supervisors and some county staff to present the report and discuss it. The email noted, "The meeting is not designed to deliberate the draft report but to seek input." It asked the board to respond with which members would like to attend. Two board members agreed to attend this meeting. Prior to the scheduled meeting another board member emailed comments to the board and the board's executive assistant stating her dissatisfaction with the report. She complained that H.R. Green's recommendation was not clear, and that they had not followed the board's instructions to recommend one of the design alternatives offered in the November 2003 study by the department of secondary roads. The board's executive assistant inquired whether the other board members agreed, and stated that H.R. Green would be willing to meet with the members to discuss the board's expectations. On January 4, 2005 two board members met with the H.R. Green representatives as planned. After they left, two other members entered and discussed the report with H.R. Green. Then, after those two members left, the remaining board member entered and met with H.R. Green.

H.R. Green revised the draft report and presented a project summary of the report publicly on January 19, 2005. The final report issued in February 2005 contained the following recommendations:

It is recommended that Prairie du Chien Road be improved to current standards from its current intersection with Newport Road, north to the US Army Corp property with a design speed that will

provide a speed limit of 35 MPH or greater along the corridor. It is recommended that the connection proposed in the November 2003 report and shown on Figure 2 in this study be completed to provide a new connection between Prairie du Chien Road and Newport Road.

It is recommended that Newport Road, between Prairie du Chien Road and the new connection not be improved. If development pressure requires, a hard surface may be required as a long-term solution.

It is recommended that Newport Road, from the new connection north and east, be improved to current design standards with a design speed that will allow a speed limit of 35 MPH or greater. It is recommended that a long-term connection between IA Hwy 1 and Newport Road be identified at the planning level and a corridor maintained to provide additional future transportation connections.

Plaintiffs filed suit in November 2005 alleging the gathering on January 4, 2005, was a violation of Iowa's open meetings law. The Johnson County District court concluded there was no violation of the open meetings law. Plaintiffs appealed to the Iowa Court of Appeals.

Plaintiffs asserted that the board members had a "meeting," as it is understood by the open meetings law, by discussing the transportation study with H.R. Green in pairs and individually, one right after another (often called a "walking quorum"). Under Iowa Code § 21.2(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.

Plaintiffs pointed out that walking quorums have been found to be a violation of open meetings laws in other states and are contemplated to be covered by Iowa's law in that they reflect "intent to avoid the purposes" of the open meetings law. The Court of Appeals determined that they did not need to address the issue of the walking quorum because the supervisors were gathered for "purely ministerial" purposes, not to deliberate or take action as is required under the Iowa Code. The Court found the purpose of the gathering was, "simply to receive information upon a matter within the scope of the body's policymaking duties." The District Court had found that the board members merely "asked questions and elicited clarification" about the draft report; there was no evidence showing debate or discussion of the recommendations among members. "The revised recommendations made in the final report were more detailed specifications rather than a total change due to supervisor complaints as argued by the plaintiffs."

The Court of Appeals ruled in favor of Johnson County, although it warned: "[g]iven that this project was to be voted on at a public meeting, gathering for this purpose appears dangerously close to "deliberation." Even absent any intention to deliberate, such discussions could arise effortlessly. We believe that the board's decision to review the draft in this fashion was a poor one...."