

The Iowa Public Information Board

In re the Matter of: Francis Rush, Complainant And Concerning: City of Emerson, Respondent	Case Number: 21FC:0015 Dismissal Order
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COMES NOW, Margaret E. Johnson, Executive Director for the Iowa Public Information Board (IPIB), and enters this Dismissal Order:

On March 2, 2021, Francis Rush filed formal complaint 21FC:0015, alleging that the City of Emerson (City) violated Iowa Code chapter 21 on February 27, 2021.

Mr. Rush alleged that on February 27, 2021, a Saturday, there was a meeting of the Emerson City Council at the Emerson City Hall. He alleged that all the council members were present, but that the Mayor and Mayor pro tem were not there. He added that he did not observe the meeting, but that the Mayor had drone footage that he viewed.

In addition, Mr. Rush provided copies of Facebook postings concerning photos taken of the Mayor's child playing with their dog. He alleged these photos were the topic discussed by the City on February 27, 2021, and were an attempt to 'smear the Mayor.'¹

Legal counsel for the City responded to the complaint, stating that he had contacted the City council members concerning the allegations. He determined that the deputy clerk, the City clerk, and two out of five council members were present and that no council members were called. A meeting as defined by Iowa Code section 21.2(2) did not occur.

Iowa Code section 21.2(2) defines a meeting:

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.

In this case, there is no substantiation that a majority of the members of the City Council were present or that deliberation occurred or action was taken on official government matters. It is apparent from the Facebook postings provided and previous IPIB contact with the City that there

¹ Mr. Rush provided the names and phone numbers of four people he stated had first-hand knowledge of the meetings. These people were contacted, but were unable to provide any probative information.

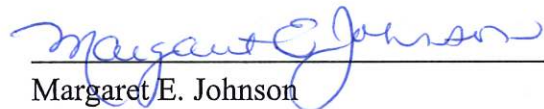
is a significant conflict in the City of Emerson between the two factions on the council that divides the community.²

Iowa Code section 23.8 requires that a complaint be within the IPIB's jurisdiction, appear legally sufficient, and have merit before the IPIB accepts a complaint. This complaint does not fulfill those requirements.

IT IS SO ORDERED: Formal complaint 21FC:0015 is dismissed as legally insufficient pursuant to Iowa Code section 23.8(2) and Iowa Administrative Rule 497-2.1(2)(b).

Pursuant to Iowa Administrative Rule 497-2.1(3), the IPIB may "delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board." The IPIB will review this Order on April 15, 2021. Pursuant to IPIB rule 497-2.1(4), the parties will be notified in writing of its decision.

By the IPIB Executive Director


Margaret E. Johnson

CERTIFICATE OF MAILING

This document was sent by electronic mail on the 8th day of April, 2021, to:

Francis Rush
City of Emerson

² See IPIB formal complaints 20FC:0038, 20FC:0112, 20FC:0115, 20FC:0117, and 20FC:0120.