

Board of Supervisors  
Calhoun County Courthouse  
Rockwell City, Iowa  
Thursday, April 21, 2016

The Board of Supervisors of Calhoun County met with the following members present: Cooper, Nicholson and Jacobs.

Agenda additions: none

It was moved by Nicholson and seconded by Jacobs to approve the agenda. Ayes all. Motion carried.

The minutes of the last meeting were read. It was moved by Jacobs and seconded by Nicholson to approve the minutes. Ayes all. Motion carried.

A Joint telephonic call was held with Calhoun, Sac, and Buena Vista counties concerning a Freedom of Information request.

RESOLUTION NO. 16-0421

It is hereby resolved by the Buena Vista, Calhoun, and Sac County Boards of Supervisors, acting as Joint Board of Trustees for the Named Drainage Districts as follows:

A letter was received on April 10, 2016, from the Iowa Freedom of Information Council (attached hereto) requesting information relating to the Des Moines Water Works lawsuit.

April 10, 2016

Buena Vista County Auditor Susan Lloyd  
Calhoun County Auditor Judy Howrey  
Sac County Auditor Jim Dowling

Buena Vista County Supervisors Tom Huseman, Dale Arends, Paul Merten, Rhonda Ringgenberg, Don Altena  
Calhoun County Supervisors Mike Cooper, Scott Jacobs, Gary Nicholson  
Sac County Supervisors Dean Stock, Rick Hecht, Ranell Drake  
Gary Armstrong, Buena Vista County drainage district attorney  
David C. Wollenzien, Calhoun County drainage district attorney  
Colin McCullough, Sac County drainage district attorney

Dear County Auditors, County Supervisors and Attorneys:

First, thank you for your timely response to the Iowa Freedom of Information Council's March 16, 2016, letter in which the Council asked for certain public records pertaining to the Des Moines Water Works' lawsuit against Buena Vista, Calhoun and Sac counties.

In examining the documents you sent, not all of the materials and information sought in our open records act request were provided. Therefore, I want to renew and restate my request for the following documents. If you believe there is a legal basis for not fulfilling any part of this request, please cite that authority by providing us the statutory exemption upon which you rely.

- 1) A copy of any 28E agreement that any of your three counties entered into relating to the joint defense of the Des Moines Water Works litigation.
- 2) A copy of any joint representation or joint defense agreement entered into by any of your counties (or by any representative, attorney or agent for any of your counties) relating to the Des Moines Water Works litigation.
- 3) All documents relating to the appointment or engagement of outside or special defense counsel relating to the Des Moines Water Works litigation, including, by way of example, letters of appointment or engagement, retainer agreements, fee splitting or fee sharing agreements, authorizations to allow third parties to review or pay attorney fees or law firm invoices, or other documents sent by or received from counsel or authorized payers by which any of the three counties retained the services of Crowell & Moring in Washington, D.C., or any lawyer in that firm, to represent the counties in this litigation. In addition, please provide any agreements, resolutions, memoranda or other documents that provide details about the financial terms each county agreed to with regard to Crowell & Moring and the arrangements for billings by, and payments to, that law firm and any designations that would allow third parties to receive, review or pay bills and invoices directly or indirectly.
- 4) Copies of all billing statements and invoices Crowell & Moring has submitted to date-either to the individual counties, to Sac County Auditor Dowling as the manager of the counties' joint litigation fund, or to any non-government entity or entities that have agreed to pay the counties' past and current legal expenses for Crowell & Moring's

work. (We recognize that privileged legal advice or attorney work product, if any, may be redacted from portions of the line entries on the invoices.)

5) Copies of all checks issued by any non-governmental entity to pay the legal expenses the three counties have incurred in defending the Des Moines Water Works litigation. Such checks would include those made payable to any of the law firms representing the counties; to the joint litigation fund managed by Sac County Auditor Dowling; or to Buena Vista, Calhoun or Sac counties individually.

6) Copies of payments solicited by the Agribusiness Association of Iowa or its Agricultural Legal Defense Fund on behalf of the three counties' legal defense costs and paid either to the Association, to its Agricultural Legal Defense Fund, or paid directly to one or more of the law firms representing the counties.

The people of Buena Vista, Calhoun and Sac counties have a vested interest in the Des Moines Water Works litigation. The taxpayers of your counties are ultimately liable for the cost of defending against the lawsuit and for meeting any judgment the Des Moines Water Works might win in this matter. Likewise, they should know who is underwriting the public defense costs.

In the aftermath of the Supreme Court's decision in *Gannon v. Board of Regents*, the Iowa Legislature amended the state's public records law to provide confidentiality to certain records of private foundations organized for the support of a government body. These legislative changes show the intent of lawmakers that the public be informed about entities making donations to a government body.

Specifically, Chapter 22.7(52)(b) says, "The confidential records described in paragraph 'a', subparagraphs (1) through (5) shall not be construed to make confidential those portions of records disclosing any of the following: (1) The amount and date of the donation. (2) Any donor-designated use or purpose of the donation. (3) Any other donor-imposed restrictions on the use of the donation. (4) When a pledge or donation is made expressly conditioned on receipt by the donor ... of any privilege, benefit, employment, program admission, or other special consideration from the government body a description of any and all such consideration offered or given in exchange for the pledge or donation."

Thus, there is no justification for shielding from public scrutiny the donations made to the three counties using the Agricultural Legal Defense Fund as an intermediary.

For these reasons, the Iowa Freedom of Information Council again asks that you to comply with the letter of Chapter 22, as well as the spirit of the open records law, and provide to the Council the documents enumerated earlier in this letter.

I look forward to hearing from you by April 22, 2016, Thank you.  
Respectfully, Randy Evans Executive Director

It was moved by Ranell Drake and seconded by Paul Merten that the Joint Board of Trustees for the named Drainage Districts directs Colin McCullough, Gary Armstrong, David Wollenzien, Belin McCormick and Crowell & Moring to provide all requested information that is legally required to be provided to the Iowa Freedom of Information Council on or before April 22, 2016. This is the second request for information to be released and we direct that our attorneys act accordingly. The Joint Board further encourages the Agribusiness Association of Iowa and/or the Agricultural Legal Defense Fund to provide the information requested in Paragraph 6 of the request.

Passed and approved this 21<sup>st</sup> day of April, 2016

Joint Board of Trustees for Named Drainage Districts by Dean Stock, Chairman.  
Attest: James W. Dowling

Board Members Present:

Buena Vista County: Tom Huseman, Dale Arends, Paul Merten, Rhonda Ringgenberg, and Don Altena

Calhoun County: Mike Cooper, Scott Jacobs, and Gary Nicholson

Sac County: Dean Stock, Rick Hecht and Ranell Drake

Board Members Absent: Buena Vista County: None, Calhoun County: None, Sac County, None

Ayes: Huseman, Arends, Merten, Ringgenberg, Altena, Cooper, Jacobs, Nicholson, Stock, Hecht, and Drake

Nays: none

It was moved by Jacobs and seconded by Cooper to adjourn until Tuesday, April 26 at 9:00 am for their next regular Board meeting. Ayes all. Motion carried.

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Mike Cooper, Chairman

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Scott Jacobs, Member

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Gary Nicholson, Vice-Chairman

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Karen Norine, Deputy Auditor

