

Legal Overview:

Commission on Tobacco Use Prevention and Control

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This overview incorporates portions of an outline prepared by Pamela Griebel and Emily Willits, Directors of the Licensing and Administrative Law Division. This outline provides a general overview of laws related to the Commission and is not intended to cover all applicable laws or the nuances of applicable laws. Commission members with legal questions should contact AAG Heather Adams at the phone number or email address listed above.

Last Updated March 2022

Mission and Authority

1. The Commission on Tobacco Use Prevention and Control (Commission) was created by a statute enacted by the Iowa General Assembly – Iowa Code chapter 142A – to develop policy and provide direction for the comprehensive tobacco use prevention and control initiative.

The Commission is comprised of nine voting members: three appointed by the Governor who are active with nonprofit health organizations that emphasize tobacco use prevention or who are active as health services providers at the local level; three appointed by the Governor who are active with health promotion activities at the local level in youth education, nonprofit services, or other activities related to tobacco use prevention and control; and three members selected by the participants in the annual statewide youth summit of the initiative's youth program.

The Commission also includes five ex officio, nonvoting members: four members of the general assembly as appointed by leadership, and the presiding officer of the statewide youth executive body as selected by delegates to the statewide youth summit.

In addition to the members of the Commission, the following agencies assign a single liaison to the Commission to provide assistance in the discharge of its duties: department of education, drug policy coordinator, office of the attorney general, and department of human services.

2. The Commission possesses only that authority granted by law. The duties of the Commission are contained in Iowa Code chapter 142A.

- a. Iowa Code chapter 142A provides that the Commission shall develop policy, provide direction to the initiative, and perform other duties related to the initiative and other tobacco use prevention and control activities as directed by the chapter or referred to the Commission by the director of public health. The Commission is specifically charged with the following duties:

1. Develop and implement the comprehensive tobacco use prevention and control initiative as provided in chapter 142A.
2. Provide a forum for the discussion, development, and recommendation of public policy alternatives in the field of tobacco use prevention and control.
3. Develop an educational component of the initiative. Educational efforts provided through the school system shall be developed in conjunction with the department of education.
4. Develop a plan for implementation of the initiative in accordance with the purpose and intent specified in [section 142A.1](#).
5. Provide for technical assistance, training, and other support under the initiative.
6. Take actions to develop and implement a statewide system for the initiative programs that are delivered through community partnerships.
7. Manage and coordinate the provision of funding and other moneys available to the initiative by combining all or portions of appropriations or other revenues as authorized by law.
8. Assist with the linkage of the initiative with child welfare and juvenile justice decategorization projects, education programming, early childhood Iowa areas, and other programs and services directed to youth at the state and community level.
9. *a.* Coordinate and respond to any requests from a community partnership relating to any of the following:
 - (1) Removal of barriers to community partnership efforts.
 - (2) Pooling and redirecting of existing federal, state, or other public or private funds available for purposes that are consistent with the initiative.
 - (3) Seeking of federal waivers to assist community partnership efforts.
- b.* In coordinating and responding to the requests, the commission shall work with state agencies, the governor, and the general assembly as necessary to address requests deemed appropriate by the commission.
10. Adopt rules pursuant to [chapter 17A](#) as necessary for the designation, governance, and oversight of the initiative and the implementation of [this chapter](#). The commission shall provide for community partnership and

youth program input in the rules adoption process. The rules shall include but are not limited to all of the following:

- a. Performance indicators for initiative programs, community partnerships, and the services provided under the auspices of community partnerships. The performance indicators shall be developed with input from communities.
 - b. Minimum standards to further the provision of equal access to services.
11. Monitor and evaluate the effectiveness of performance measures utilized under the initiative.
12. Submit a report to the governor and the general assembly on a periodic basis, during the initial year of operation, and on an annual basis thereafter, regarding the initiative, including demonstrated progress based on performance indicators. The commission shall report more frequently if requested by the joint appropriations subcommittee that makes recommendations concerning the commission's budget. Beginning July 1, 2005, the commission shall also perform a comprehensive review of the initiative and shall submit a report of its findings to the governor and the general assembly on or before December 15, 2005.
13. Represented by the chairperson of the commission, annually appear before the joint appropriations subcommittee that makes recommendations concerning the commission's budget to report on budget expenditures and division operations relative to the prior fiscal year and the current fiscal year.
14. Advise the director in evaluating potential candidates for the position of administrator, consult with the director in the hiring of the administrator, and review and advise the director on the performance of the administrator in the discharge of the administrator's duties.
15. Prioritize funding needs and the allocation of moneys appropriated and other resources available for the programs and activities of the initiative.
16. Review fiscal needs of the initiative and make recommendations to the director in the development of budget requests. [The director "receives and reviews budget requests from the Commission. The director shall consider these recommendations in developing the budget request for the Department." 142A.5(1)(d).]
17. Solicit and accept any gift of money or property, including any grant of money, services, or property from the federal government, the state, a political subdivision, or a private source that is consistent with the goals

of the initiative. The commission shall adopt rules prohibiting the acceptance of gifts from a manufacturer of tobacco products.

18. Advise and make recommendations to the governor, the general assembly, the director, and the administrator, relative to tobacco use, treatment, intervention, prevention, control, and education programs in the state.
 19. Evaluate the work of the division and the department relating to the initiative. For this purpose, the commission shall have access to any relevant department records and documents, and other information reasonably obtainable by the department.
 20. Develop the structure for the statewide youth summit to be held annually.
 21. Approve the content of any materials distributed by the youth program pursuant to [section 142A.9](#), prior to distribution of the materials.
3. All state boards and commissions, including the Commission, may not expand their authority beyond that granted by law.
 4. New members should read - and reread - the laws governing the Commission.

Staff, other Commission members, prior minutes of meetings, and websites are good sources of information, but Commission terms are staggered for a reason: new Commission members bring a new perspective and vitality.

5. A Commission's mission is always serving a public purpose. When serving on the Commission, you are representing the citizens of Iowa; always make decisions with the Commission's public purpose in mind.

Rulemaking

1. The Commission has rulemaking authority. The Commission's rules are contained in 641 IAC chapters 151 (community partnership initiative) and 152 (tobacco use prevention and control funding process).
2. Rules are in a very real way the Department and the Commission's laws – administrative rules have the force and effect of law.
3. Rules must be authorized by and consistent with statutes.
4. Rulemaking is a powerful authority. Rules:
 - a. Describe the organization and procedures of the Commission.
 - b. State how the Commission will implement laws.
 - c. Inform people about guidelines and policy choices that impact their legal rights and duties.
5. The Governor, Legislature, Attorney General, and the public all have a role to play when Commissions adopt rules -- there are many checks and balances. All boards and other agencies are required to review rules on a five-year rolling cycle.
6. In addition to consistency with statutes, rules should be:
 - a. Easy to read and understand.
 - b. Tied to specific needs and objectives.
 - c. Sensitive to costs - benefits should outweigh costs.
 - d. Effective.
 - e. Developed with input by those affected.
 - f. Fair - use rulemaking power wisely.

Decision making

1. No single member makes decisions for the Commission.
 2. Commissions make decisions by taking votes at Commission meetings.
 3. A “quorum” of the Commission is needed to take a vote. A majority of the voting Commission members (6 of 9) constitutes a quorum for the Commission.
 4. Once a quorum is attained, most Commission action is taken upon a majority vote of those participating – but there are important exceptions.
 - a. Commissions may only go into closed session upon a public vote by two-thirds of the members or all members present.
 - b. Discipline can only be imposed on a licensee by a majority vote of members or a higher percentage if required by law.
- Tip: Before you vote, determine if there is a quorum and how many “aye” votes are required to take the particular action.
5. The votes of all members must be public and clear during the meeting and in the minutes. No secret voting allowed!

Commission Meetings – Open Meetings Law

1. The Commission is governed by the Open Meetings Law at Iowa Code chapter 21. The law requires: (1) providing public notice of the Commission's meetings, (2) posting an agenda of the meeting, (3) the keeping of minutes, and (4) allowing the public to be present.
2. Commission members have the option of participating in meetings via teleconference. In 2019, the General Assembly enacted a requirement that all statutorily established boards, councils, and commissions under the purview of the Department must provide a teleconference option for members to participate in meetings. (Iowa Code § 135.12). Telephone or other electronic modes of participation constitute presence at the meeting for all legal purposes.
3. Count Heads! If a majority of the Commission is present (in person or electronically), do not discuss Commission business unless you are at a Commission meeting preceded by proper notice to the public and a posted agenda.
4. Purely social or ministerial gatherings are not meetings as long as no Commission business is discussed, but be careful to avoid even the appearance of holding an illegal meeting.
5. Agendas are a Commission's invitation to the public to watch the Commission in action.
 - a. Post agendas at least 24 hours in advance.
 - b. Identify all topics on which votes will be taken and matters that will be discussed.

Tip: Read the agendas posted for your Commission over the past year. Can you tell what the Commission planned to vote on or discuss? If not, advocate more detail in your Commission's agendas.

6. Stick to the posted agenda. If a new idea comes up at a meeting and there is no emergency requiring immediate action, place the topic on the agenda for the next meeting.
7. Lights! Cameras! Action! The public has a right to observe the open sessions of your Commission meetings and may record them or take photographs.
8. The public does not have the right to participate in your meetings, but Commissions may provide an opportunity for public comment at meetings.

Commission Meetings - Minutes

1. Minutes of Commission meetings create a permanent record of who met, when they met, what they discussed, what they decided, and by what votes.
 2. Accurate minutes are a key tool for conducting the public's business in an open and accountable way.
 - a. Minutes are a vital organizational tool for boards.
 - b. Minutes are a crucial way for citizens to review public action taken on their behalf.
 3. Minutes of open sessions must always include:
 - a. The date, time, and place of a meeting.
 - b. Which members were present.
 - c. Actions taken, with sufficient information to reflect members' votes.
- Tip: Read your Commission's minutes for the past year. Can you tell what the Commission voted on or discussed? If not, advocate more detail in your Commission's minutes.

4. If a closed session is held, the minutes of the open session must include the legal grounds for a closed session, the vote of each member on whether to go into closed session, and any final action taken – no final votes may be taken in closed session.
5. When applicable, minutes must also explain the legal basis for holding a telephonic meeting, an emergency meeting (less than 24 hours notice), or a meeting at a time or place not reasonably accessible to the public.

Commission Meetings - Closed Sessions

1. Closed sessions are serious business! Never ask the public to leave the meeting so the Commission can talk in private – unless the Commission has a legal basis to hold a closed session.
2. In order to go into closed session, a board must first meet in open session with proper advance notice and posted agenda.
3. A board can only close an open session if expressly authorized by statute. For example, a board is authorized to go into closed session to discuss confidential records, pending litigation with counsel, certain personnel matters, or the decision to be issued in a contested case.

Tip: You should always ask your Commission's assigned AAG for legal advice if you are not confident you have grounds to vote to go into closed session. Get the advice in writing or make sure the advice is reported in the minutes of the meeting.

4. After announcing the legal basis for a closed session, take a roll call vote. Remember, a Commission can only close a session upon an affirmative vote of two-thirds of the members or all members present.
5. While in closed session, Commissions must:
 - a. Record the session (and keep the recording at least a year).

- b. Take detailed minutes.
 - c. Limit the discussion to the announced basis for the closed session.
6. Final action must be taken in open session. When the closed session discussion is finished, return to open session and allow those who left the room for the closed session to return. Then make a motion and take a vote on any final action in open session.

Commission Records - Public Records Law

1. The Commission is subject to the Public Records Law at Iowa Code chapter 22. Commission records are open to public examination unless specifically made confidential under law.
2. Public records can be in any form, including e-mail. Commission members should not commingle official Commission business emails with personal emails. Your Commission's staff or AAG can advise on methods of separating emails.
3. Assume any record you create or receive as a Commission member is a public record that may be open to the public upon request.

Tip: Practice that old adage – only say what you would be comfortable reading on the front page of your local newspaper!
4. The public records contact for the Commission is the Department's communications director.
 - a. Requests for public records should be referred to the Commission's public records contact.
 - b. The public records contact is familiar with the law and can assure proper response to requests for public records.
5. Be aware of any Commission records you create or receive which may be confidential – but note it is rare for Commission members to receive confidential information.
 - a. There may be severe penalties for releasing some types of confidential records -- another good reason to refer all requests for records to the Commission's public records contact!
 - b. Examples of records that may be fully or partially confidential include applications containing social security numbers or credit card numbers, mental health or other health records, and certain personnel records.

Sunshine Law Enforcement

1. Actions to enforce Iowa's Open Meetings and Public Records Laws can be brought by a citizen of Iowa, a person who pays taxes of any type to the state of Iowa, a person individually aggrieved by a violation, a county attorney, and the Attorney General. Such actions may be brought in court or before the Iowa Public Information Board.
2. Complaints about alleged violations may be made directly to the Board, its staff or counsel, or to the Ombudsman's Office, Attorney General, the Governor's Office, the Iowa Public Information Board or legislators.
3. Take all alleged violations seriously.
4. Remedies include removal from office upon a second violation, damages (up to \$2,500 for a knowing violation), expenses and attorney fees, and injunctive relief.

Tip: Iowa public officials, by and large, will comply with Iowa's Sunshine laws when they know what they are. Educate yourself and ask staff or the AAG assigned to the Commission if you are unsure.

5. Even an honest mistake can be a violation of Iowa's Sunshine laws, but individual Commission members can avoid personal liability when they rely upon the advice of counsel, formally given in writing or provided orally and memorialized in the minutes.
6. Attorney General Tom Miller has issued dozens of "Sunshine Advisories" to educate public officials and the public about Iowa's Open Meetings and Public Records Laws. The advisories (with index) are found at: <https://www.iowaattorneygeneral.gov/about-us/sunshine-advisories/>. You may also wish to consult the web page of the Iowa Public Information Commission at: <https://www.ipib.iowa.gov>.

Commission Members as Judges

1. The Commission operates as the appeal body for tobacco funding RFP appeals. (641 IAC 152.3) The Commission makes a final decision after an administrative law judge (ALJ) conducts a hearing and issues a proposed decision.
 2. Commission members who conduct hearings or review proposed decisions of an ALJ are governed by the Administrative Procedure Act (APA) and a Code of Administrative Judicial Conduct.
 3. The Code of Administrative Judicial Conduct may be found at: <https://www.legis.iowa.gov/docs/iac/chapter/01-30-2019.481.15.pdf>
 4. “A presiding officer shall uphold and promote the independence, integrity, and impartiality of the administrative judiciary.” Canon I.
 - a. All parties are entitled to unbiased, fair treatment – free from improper influences of family, social, political, or other relationships, or prejudgment of the facts.
 - b. All decisions must be made solely on the record in the case. Commission members shall not communicate with a party to the case without notice to and an opportunity for all parties to participate.
 - c. Commission members may not personally investigate facts and then sit in judgment on those facts.
- Tip: Commission members acting in the role of judge generally receive specific training on this important role. During hearings, Commissions are aided by an ALJ and Commission staff.

Additional Laws Governing Commission Members

1. Gift Law. Commission members may not accept gifts (i.e., receiving something for free or for less than it is worth) from those they regulate or contract with. Ask your AAG, Commission staff, or the Ethics and Campaign Disclosure Board <http://www.iowa.gov/ethics> for guidance on gift law compliance.
2. Sales or leases of goods or services. If you sell or lease goods or services to those regulated by your Commission, ask the Commission's AAG, Commission staff, or the Ethics and Campaign Disclosure Commission for guidance on applicable laws.
3. Lobbyist. The Department has a designated, registered lobbyist who represents the Commission. Individual Commission members should not lobby legislators on behalf of the Commission or the Department. The Commission is authorized as a body to advise and make recommendations to the general assembly relative to tobacco issues. Seek advice from the Commission's AAG if you have specific lobbying questions.
4. Conflicts of interest. Conflicts of interest should be avoided, but how and when they arise can be unique to certain boards, especially because the law requires the appointment of at least some persons who are regulated by the Commission. Anytime your objectivity may be impaired or there is an appearance of impropriety, seek advice from your Commission's AAG.
5. Judicial review. All Commission action (or inaction) is subject to review in court on a variety of grounds including whether the action is:
 - a. Compliant with the U.S. or Iowa Constitution, statutes or rules.
 - b. Consistent, nonarbitrary, logical, and reasonable.
 - c. Supported by the facts and law.

6. Litigation. If the Commission or its individual members are sued related to Commission action, Commission members acting in good faith in their official Commission capacity are generally defended by the Attorney General and indemnified by the State.