

TO: KEOKUK CITY COUNCIL AND MAYOR THOMAS D. MARION
FROM: CITY ATTORNEY DOUGLAS DORANDO, ESQ.
SUBJECT: LEGAL OPINION ON THE PSAP "PROPOSED 28E AGREEMENT"
DATE: MARCH 29, 2016
CC: CITY ADMINISTRATOR AARON BURNETT, POLICE CHIEF DAVE HINTON, FIRE
CHIEF GABE ROSE

Joint Emergency Communications Service Proposed 28E Agreement

BACKGROUND

As you know, the City of Keokuk's Emergency Dispatch Center was replaced with the "PSAP" (often referred to informally as "LeeComm") created by a 28E drafted and entered into in 2009. This Agreement terminates on June 30, 2016. As a result of painstaking negotiations, the attached document, which will be referenced as the "Proposed 28E Agreement" or "the Document", was provided to the City of Keokuk and its representatives for vote.

The conversation regarding a modification to the 28E agreement currently in place began at some point in 2015, with the intent to modify the funding stream to utilize a county-wide levy authorized by Iowa Code Sections 29C.17(2)(a) and 331.424. Meeting minutes of the current PSAP Control Board indicate that it was not until November 16, 2015 that the discussion moved from minor modifications of the funding to a complete overhaul of the agreement. It should be noted that over the past two years of meeting minutes, there are repeated conversations regarding the concerns of Keokuk Police Chief Dave Hinton and Keokuk Councilman Mike O'Connor who was Keokuk's representative to the PSAP Control Board. These concerns largely focused on what Chief Hinton referred to as "service issues" rather than the revenue stream. Troublingly, during the November 16, 2015 meeting, Chief Hinton's concerns turned to the communication failures between the PSAP board and those organizations that were part of the PSAP Organization.

Proposals were made by both the City of Keokuk, through Police Chief Hinton, and by the City of Fort Madison, through City Manager David Varley. Although similar language was used in both proposals and substantively they are largely similar, a

number of policy differences existed between the two, especially in regard to the duration, the number of votes required for passage, the function of the User Oversight Committee, and the distribution of property.¹ You can read more about these discussions in the meeting minute notes and in the communications from Keokuk City Administrator Aaron Burnett. None of Keokuk's proposals made it to the final "Proposed 28E Agreement." This would not be concerning in and of itself, except there appear to be communications failures and negotiations failures between the entities, causing the need for this legal review of the Proposed 28E Agreement.

Should you consult the meeting minutes from December 2015, and again from January 14, 2016, you will note that Police Chief Hinton repeatedly asks for an outside, independent attorney to review this agreement and provide advice. No such formal review took place, or if it did (as some members maintain), the organization has been unwilling to share the findings of that review.

On January 12, 2016 the Lee County Board of Supervisors passed the Proposed 28E Agreement. On January 14, 2016, as a result of the PSAP Control Board meeting, the Proposed 28E Agreement before you was voted to be recommended to the communities of Lee County listed as "parties" in Section One. As will be discussed below, Councilman O'Connor was unable to attend, and thus the lone "no" vote to recommend this agreement came from Keokuk Police Chief Hinton.

Only days later, Keokuk chose to appoint City Administrator Aaron Burnett to fill the seat that Councilman O'Connor vacated. Following his appointment, Mr. Burnett sent a letter of introduction, which is in the packet of correspondence attached, requesting a discussion of several additional amendments. Many of these issues overlap with legal concerns addressed in this memorandum.

¹ Interestingly, it appears from the recorded minutes of the November 16th, 2015 meeting that it was at Mr. Varley's suggestion that Keokuk proposed changes to address their concerns with the service, all of which were rejected out of hand.

Before reading this document, I would encourage you to review City Administrator Burnett's memorandum as well as some of the correspondence provided. It would also be best to have a copy of the Proposed 28E Agreement, as this memorandum will reference specific sections.

The purpose of this memorandum is to provide a legal review for the City of Keokuk as to the legal issues with this Proposed 28E Agreement and where the potential for disagreements over the language of the agreement could develop in coming months and years. This review stems from the Keokuk City Administrator and Police Chief having raised concerns over the choice of language in the agreement proposed. This, coupled with the lack of a written legal opinion² on this document, either for the PSAP organization or for any of the entities involved in the creation of the Proposed 28E Agreement, make this opinion in the best interests of the City of Keokuk.

LEGAL CONCERNS

A. Open Meetings Violations Regarding the Recommended Passage of the Proposed 28E Agreement.

Chapter 21 Of the Iowa Code is the State's requirement for "Open Meetings." See IOWA CODE § 21.1 (2015). Specifically, section 21.3 requires that "Meetings of governmental bodies shall be preceded by public notice . . .". IOWA CODE § 21.3. This notice must include the agenda and be posted in "a manner reasonably calculated to apprise the public of that information. . . [and] shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body. . .". IOWA CODE § 21.4. The legislature was also clear that the meeting of an "entity organized under chapter 28E, or by the administrator or joint board" of that 28E agreement is a governmental body. IOWA CODE § 21.1(j) (2015).

The bylaws of the 28E agreement currently in effect require notices to be mailed 10

² Although the Current PSAP Control Board meeting minutes reflect that opinions were given, no written documentation or results of those opinions have been provided after requests by the City Administrator and Police Chief.

days in advance to the participants, and shall “include any pertinent information” for that meeting. Lee County PSAP Association Bylaws, Section 5. This is in addition to the 24 hour meeting notice requirements in Chapter 21 of the IOWA CODE, and Section Four of those same bylaws. *Id.* at Section 4.

On January 14, 2016, the Lee County PSAP Association held a meeting. Chief Dave Hinton of the Keokuk Police Department was present, having only received notice and the agenda on the morning of the 14th. Chief Hinton’s attendance was in good faith to try to make sure that at least some representative from Keokuk would be present to voice the City’s concerns about the Proposed 28E Agreement. Councilman Mike O’Connor, who at the time was the City of Keokuk’s representative to the board, was absent. According to Councilman O’Connor, Chief Hinton called that morning after he received the email to ask if the Councilman was going. Councilman O’Connor says that he did not get the call from Chief Hinton in time to reschedule his day, but had he been provided the requisite notice, he would have attended. The Councilman also confirmed that he received no notice before the day of the meeting that such a meeting would occur.³

This failure to provide proper, adequate, and legal notice of the meeting and the agenda gives any number of parties the ability to sue the 28E body and a court shall void all actions taken at that meeting. IOWA CODE § 21.6 (2015).

There also exists another Open Meetings concern, centered around the Lee County Board of Supervisors Meeting on January 12, 2016. At that meeting, Supervisor Folluo moved for the adoption of a proposed 28E for the Lee County PSAP, a motion

³ The reason the notice was so important here was that Councilman O’Connor had missed the prior meeting where the meeting for the 14th was scheduled. At the meeting on the 14th, Chief Hinton expressed his concern about the lack of notice, and his concerns seem validated by the record that the agenda had not been properly posted. He was informed that Sheriff Sholl had checked with County Attorney Short to see if the meeting could still be held. Purportedly, Mr. Short allowed the meeting to proceed. I have concerns that this action was not enough to release the members of the board from legal liability under Chapter 21, as Mr. Short is not the 28E’s attorney (not “the attorney for the governmental body”. IOWA CODE § 21.6(a)(3).), but I am less concerned with the individual liability here than I am the fact that the actions themselves are voidable.

that was seconded by Supervisor Pflug.⁴ This Proposed 28E Agreement passed with unanimous consent. However, you will note that this meeting and vote occurred two days prior to the meeting of the Control Board, which at best is highly suspicious timing. At that time, and as far as the City of Keokuk was aware, the Proposed 28E Agreement, was just a proposal, not necessarily the final form of the document to be entered into. It is disconcerting that the Board of Supervisors already had the document and felt comfortable voting on it while the City of Keokuk and other members were still at the bargaining table. This action was rectified last week, by the Lee County Board of Supervisors re-passing the 28E, although it is unclear what affect this has on the budget and certification of the County's Levy under Chapter 29C.

B. Regarding the Proposed 28E Agreement.

Chapter 28E allows the joint exercise of power by state and local governments. *See* IOWA CODE § 28E.3 (2015). Chapter 28E, however, requires the parties to enter into an agreement containing specific provisions, and that the agreement be properly filed and recorded. *See Generally, Warren Co. Bd. of Health v. Warren Co. Bd. of Supervisors*, 654 NW 2d 910 (Iowa 2002). *See also*, IOWA CODE §§ 28E.5-8.

This is precisely the type of agreement that the legislature would have envisioned for a proper joint exercise of power,⁵ and many counties across Iowa have adopted similar 28E agreements to address Joint Emergency Communications or dispatch.⁶ Therefore, it is reasonable to believe that this is a valid exercise of powers and a proper delegation of powers.

However, it is in the specific provisions that the Iowa Code requires where this document fails to deliver, and is left fatally flawed.

⁴ *See* Board of Supervisors Meeting Minutes, http://www.leecounty.org/bosinfo/minutes/january_12_2016_minutes.pdf (accessed 1/27/2016).

⁵ For a discussion of what criteria might be considered for a proper exercise of 28E agreements *See Generally, Goreham v. Des Moines Met. Area Solid Waste Agency*, 179 NW 2d 449, 455-56 (Iowa 1970).

⁶ Specifically consulted agreements included Mahaska County, Johnson County, Scott County, Warren County, and others.

For your reference, I quote IOWA CODE § 28E.5 in its entirety:

28E.5 SPECIFICATIONS.

Any such agreement shall specify the following:

1. Its duration.
2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of sections 12B.10 and 12B.10A through 12B.10C and other applicable law.
3. Its purpose or purposes.
4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.
5. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
6. Any other necessary and proper matters.

As you can see, this is a very lenient standard, but is intended that some of the key provisions of an agreement are considered. Although additional requirements are imposed in later sections for other organizations, this is the sole list of requirements for the 28E before you to be valid. Unfortunately, you will note that this Proposed 28E Agreement fails to address two of these five criteria.

1. Duration.

You will note that Section 3 of the Proposed 28E Agreement purports to be the duration of the agreement. However, in reading the words printed it attempts to set an “initial duration” to be for “an indeterminate period.” The duration of the agreement can be perpetual or indefinite, but that is neither an initial duration nor indeterminate.

As I note above, Chapter 28E, Section 5, subsection 1 of the Code of Iowa specifies

that a 28E agreement, in order to be valid, shall *specify the duration*. Black's Law Dictionary, defines "indeterminate" as "That which is uncertain, or not particularly designated." BLACK'S LAW DICTIONARY 889 (10th Ed. 2014). Substituting that definition into the agreement, you can see that "Indeterminate" is not a duration— it is an undecided length or a length that is not being specified.⁷ That is, by definition, not specific, or worse, not decided. Ergo, I would contend that this document fails on its face at this point to meet the standards set by §28E.5(1).⁸ If instead the language had adopted this as a "perpetual agreement" or something akin to that with mandatory reviews every two years or so, this would not be an issue.

2. Termination.

Paragraph 22 of this Proposed 28E Agreement is titled "termination." However, once again, we are left wanting. This paragraph tells us nothing about HOW the agreement terminates, it just assumes that the agreement terminates. Note the language of Iowa Code § 28E.5(5): "The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination."

Even if you reading paragraph 21 entitled "Withdrawal" and combine the two paragraphs, we are still provided no more information about whether a withdrawal of one party is enough to terminate the agreement, or if it is a majority of parties, or if it requires something more. This is not specific to what methods accomplish a partial or complete termination of the agreement. This is anything but 'identifying clearly and definitely.'⁹ Nor does this tell us whether, if a party withdraws from the agreement, dispatch or other services provided by PSAP will continue to serve their community or emergency services departments. Therefore, it is clear that this document fails to deal with a second of the five criteria required by § 28E.5.

These two issues are probably enough to render this agreement entirely void on

⁷ Definition of designate: "... to specify or stipulate"

⁸ *cf.* footnote 11.

⁹ Specific "Of, relating to, or designating a particular or defined thing; explicit." BLACK'S LAW DICTIONARY 1616 (10th Ed. 2014).

face.¹⁰

OTHER CONCERNS WITH THE CONSTRUCTION OF THE AGREEMENT.

In addition to the fatal flaws considered above, there exist a number of issues of construction of the “Proposed 28E Agreement” which leaves it difficult, if not impossible, to enforce. These should be enough to drive the parties back to the table to correct it. In addition to those I will consider directly, the Document overall could use a good proof-reading, as there are an exorbitant number of typographical errors which should be addressed.

For this section of my opinion, I want to review the document in chronological order, highlighting some of the more problematic terms; this should not be read to be an exhaustive list of my concerns.

Overall, my view is that in a document like this, which will control the organization of an emergency communications center and consolidated public safety answering point, it is akin to other statutory work—the words matter. The construction of the document is critical. This is how courts will view these terms if they are challenged—by their use and as they can interpret the intent of the bodies that are entering into the agreement. Make no mistake, this is not a threat, but for an

¹⁰ Ordinarily courts have found that under Iowa law, “when a portion of an agreement is deemed invalid, the remaining portions of the agreement can be enforced as long as they can be separated from the illegality.” *Heintz v. City of Fairfax*, No. 6-1039/06-0979 (Iowa Ct. App. Feb. 28, 2007) (Citing *Miller v. Marshall County*, 641 N.W. 2d 742, 752 (Iowa 2002)). What that means is that the illegality of a provision in a contract does not vitiate the entire contract. *Id.* (Citing *Sisters of Mercy v. Lightner*, 274 N.W. 86, 95 (Iowa 1937)). “For example, if the invalid portion is merely incidental to the primary purpose of the contract, the contract remains in effect.” However, if the contract would not have been entered into independent of the invalid portion, the entire contract is void. *Id.* (citing *Miller* 641 N.W. 2d at 752).

However, the difference here is one of statutory construction. Although there is no existing case law that addresses the situation we find ourselves in, or where the validity of a 28E was challenged for having failed to meet these requirements, the Legislature specifies that for the agreement to be valid it must contain these five provisions. Therefore, an agreement lacking those terms would be invalid. But even should a court find that ordinarily the duration criteria could still be lacking the fact that the agreement in no way specifies its termination must be considered a fatal flaw that prevents it from ever being operable—there is no way out.

organization that has already been sued over language usage in the current 28E Agreement, it is almost beyond comprehension that they would take a tack of being more negligent in the drafting of this Document.

The most egregious of the oversights in this Proposed 28E Agreement relates to the actual purpose of the organization, purportedly defined in Section Two. While it purports to be the establishment and operation of a joint emergency response communication service, at no point does the document disclose what services will be provided. There is no discussion of rights or responsibilities, no elaboration of what the service will be, or if it would be provided in the event the city did not sign or waited to sign. No one should sign a contract without a clear statement of what is provided for in the contract, and by signing this Proposed 28E Agreement, we can only hope that it shall be what we all read into these words, as on its face there is no discussion of what services will be provided to signatories. This is the most basic purpose of a contract of any sort. It protects all the parties involved, and provides recourse if services are not provided, or not done properly, but this Proposed 28E Agreement leaves us wanting for even this most basic necessity. Section Twenty-Eight reminds us in clear language that “this Agreement sets forth **all** of the covenants, promises, agreements and conditions among the parties...” [emphasis added] yet sets forth none of them beyond the creation of three governing boards. For a founding document such as this, not spelling out what we are even talking about is an unforgivable error and should be fatal to this draft of the Proposed 28E Agreement. This is not to mention the historic and documented disagreements between the parties and their representatives in enforcing and governing the organization. Keokuk can only be protected if we have an airtight agreement, know what it is that we are signing, and know that the services which are being provided right now by the Lee County PSAP will continue unaltered.¹¹

¹¹ Even basic language additions to the Section 2 Purpose and Scope would help correct this oversight. I would suggest something to the effect of:
“The purpose of this Agreement is to provide all residents of Lee County, Iowa, a single answering point for processing their calls for emergency and non-emergency assistance for all police, fire, emergency medical and rescue service responders. The entity herein created shall further provide

Section Three also references that a mandatory review would have to be made with five votes of “the Board” but does not specify which of the three boards the document establishes would actually be “the Board.” Nor does this preclude it from being an outside board, such as the “Board of Supervisors” or the “E911 Board” to which the document also refers-- we just do not know. This is unacceptable vagueness in a section that needs to be absolutely clear.

This is a problem peppered throughout this document. Interchangeable terms seem to be used to refer to various boards, entities, and associations, but at no time are the uses of these terms defined. You will note beginning in Section Four the term “the Association” begins to appear, but is not defined as belonging exclusively to the Lee County PSAP entity which it purports to create. Beginning in Section Six, the terms “directors” and “board” begin to appear, but again are not defined as exclusive to the Control Board, and with three other boards controlling various matters within the Agreement, it should be concerning that the document uses them so haphazardly.

Section Five, “Governance.” I have no objections to the association being governed by three separate boards, with substantial overlap, but as a political matter, this should raise some flags for City Officials.

Section Seven “Bylaws.” This section is weak at best. From an organizational standpoint, it should include additional sections, at the very least including the following: the various boards in and of themselves, along with their duties; financing; the manner for electing or appointing of officers, as well as the terms of office thereof for the various boards; procedure for withdrawal of a party or

primary communications for all public safety agencies responding within the jurisdictional boundaries, as defined by this agreement to be all of Lee County, Iowa, and the municipalities therein, and shall insure prompt, professional, and efficient services across Lee County. This Agreement serves to establish and govern the operation of this joint emergency response communication services and Public Safety Answering Point, hereinafter PSAP for all communities and emergency services located in Lee County, Iowa pursuant to Chapter 28E of the Iowa Code (2015).“

termination of the agreement. While strong bylaws are probably not legally mandated, I would again direct you back to the discussion on 28E.5(2) here, but this is best practice for anyone forming any organization or corporation. Moreover, because as I have already discussed, services are not addressed in the agreement, the bylaws should in addition, and at minimum, spell out some of the rights and responsibilities of the members.

Section Eight contains a number of startling issues. Right from the first sentence, the purpose of the proposed “UOC” conflicts with other sections of the agreement, including subsection (f) of the same section. Subsection (f), in addition to this, fails to include by what procedure the Control Board will use to approve such a recommendation. Subsection (g) conflicts with Section 9, and fails to specify what extent its advice has to the Executive Director. Subsection (g) and (h) also fail to define what an “operational issue” is, which renders these provisions, at best, weak and unenforceable, and leave the board with almost no power whatsoever. This section and its language seem to fly in the face of Fort Madison City Manager David Varley’s statements that the purpose of the UOC will be able to “be actively engaged and use the authority it is being given to provide continuous improvements...”.¹²

Additionally, in the negotiations leading to this agreement, Keokuk, on numerous occasions, proposed giving the UOC the ability to set metrics for determining how the organization functions. In an email from Fort Madison City Manager David Varley on January 25th, 2016, he notes that he hopes that the UOC will generate what these criteria are. However, a reader of this document will note the absence of authority for gathering relevant information or making such requests of the Executive Director in either this section or the next.

A final concern with this section—with six voting members, an even number, there is no guidance on what happens in the event of a tie. This eventuality should be

¹² Email from David Varley to Aaron Burnett and the PSAP Control Board, *Re: 28E Special Meeting*, January 27, 2016 6:06PM. (A copy of this correspondence can be found attached.)

provided for in the agreement, or an additional member should be added, or the Lee County Fire Chiefs Association member to non-voting status due to the fact that they do not lack a voice by non-voting status, and they already are granted vote through other members.

Section Nine “Executive Director.” Right from the first words, the Control Board is permitted to do the hiring, leaving no mention of the advisory power that the UOC should have been granted under Section Eight subsection (f). This weakens the UOC to be a pointless gathering of the most important voices in this process—those who actually USE the services that the PSAP entity should supply. A note regarding accreditation here, the document reads that those standards used in accreditation “should be used as guidelines” but this is not a requirement. This provision is extremely dangerous to the City of Keokuk, especially as it relates to our services’ accreditations and insurance premiums. These standards should be mandatory.

Section Ten, “Staff.” Regarding the term “it” here, is unclear to what “it” refers. Is it the Agreement? the Association? the Executive Director? A plain reading would seem to suggest that “it” refers to “this Agreement” but clearly such circular logic would be better served by specifying that “it” instead refers to “the Association’s funding” or something of that ilk. Here again, I raise the issue of what “Association” is being referenced. There is no reason to obfuscate to whom we are referring.¹³

The third sentence should also refer to “the separate entity” created, not “a separate entity” unless we are creating a separate “LeeComm” entity in this provision, which it seems to do. Are we creating multiple entities with this agreement? That should

¹³ This may sound petty, but at the end of this second sentence, the document refers to an outdated Code of Iowa. Why are we not using the 2015 edition? Was there a change, which would now be law anyway and therefore be enforceable regardless, but that “the Association” is trying to avoid? This becomes a problem throughout this document, but this is the first instance. This should have been a simple change to make, and yet, no voting members seem to have expressed concern about this. The alternative is equally disturbing and only serves to further highlight the lack of attention to detail prevalent throughout this document.

be disconcerting to you, as it does not satisfy any of the legal requirements for this “LeeComm” entity’s creation, nor again does it define the scope of services that “LeeComm” would provide.

Similarly, subsections (a) and (b) of this seem to fly in the face of the understanding regarding personnel and their separate existence from the County, which was a major legal issue in the initial agreement. Instead, this entity should specify the procedures for establishing and modifying these policies.

Section 11 subsection (a), another “its” that should just specify to whom or to what “its” refers. It seems that this should instead be a reference to the Emergency Management Levy, but in a plain reading it appears to be a reference to the General Assembly, which given the context makes little sense.

Section 12 contains the creation of yet a third board. This looks fine, although somewhat redundant in membership. One note I would have is that here, too, the Financial Board is referred to as “the Board.” Is this the board to which the Document refers every time the phrase “the Board” is used? If so, why is this Financial Board the one who can open the mandatory review in Section 2? As noted elsewhere, I would appreciate clarification of these references throughout the document. This is an issue again in Section 15, although with the term “Association.” To what or which Association are we referring--PSAP or LeeComm? Regardless, subsection (c) of Section 15, the final clause should read “or to dispose of property so acquired which is no longer necessary for the purposes of the Association.”

Additionally, I would draw your attention to subsections (f) and (i), and this is one of my favorites. What does the term “and things” refer? This is a mockery of legal terminology. If chapter 28E and F of the Code of Iowa confers authority to perform an act, or use a power, that is not a “thing.” Nor does this document make use of Chapter 28F at any other point, to say nothing of the fact that the scope of chapter

28F is water, sewage, and electric facilities, for what purpose is that authority being conferred to this organization?

Section 15, Subsection (l). “[s]urveys necessary”: should this refer to surveys that are “deemed necessary,” or only those that are ACTUALLY necessary? Can that determination be made before the survey is completed? This should give the PSAP entity (or is it the perhaps separate “LeeComm” entity here?) the power to actually have studies and surveys that are determined to be helpful to be done without later finding that it was not necessary and therefore impermissible.

Section 16. I strongly disagree that the term “permit to use” should be included here. Even if it were a lease for \$1, it would give the organization using the space the option to set some parameters what that space is. In this reading, a supply closet, jail cell, or even a locker would be all that is required to be provided to the “Association PSAP” (another new term of art, is this another entity?!))

Section 18. This is an issue I hinted at before, and one that City Administrator Burnett articulates a passionate defense of: what should be included in this report? Do we need to set measurable metrics? No guidance or standards are given here, and as noted above, no one is given the authority to establish what metrics or standards should be given in the report. If you see the attached documentation from City Administrator Burnett, you will note last year’s report only included the number of calls received and the number to which each department responded to. That is not the only useful information that should be collected and reported.

Section 20. I do not even understand what this says. In its current form it reads closer to meaning that the Association may join another party, instead of an additional party may join the Association. Instead of an “affirmative vote by all parties thereto,” it appears that the organization requires a unanimous vote. This language should be used to clarify that point, and it should establish who is doing the voting. I really have no idea what this says in its current form.

Section 21 and 22. I deal with this at some length above from the requirements of 28E.5. The final clause of this section should read “with the withdrawal to become effective July 1st of the following year” in order to provide enough time for the members to plan their new budgets or enter into negotiations for a new 28E agreement. Again, at the very least these sections should specify what happens to the agreement after a party withdraws. Is that enough to trigger termination, and if not, what is?

Section 23. This is the first reference to the 911 Board in the Document. At a minimum, this section needs to be amended to give the reader enough information to know who and what the 911 Board is, including its legal name and address. As discussed by City Administrator Burnett, there are some policy considerations here too. The Lee County E911 Board has no tangible space, and no authority to create a dispatch or communications center.¹⁴

Section 24. Is ordinary mail enough for our purposes to serve notice? Would Certified Mail be a better option? Or Electronic Mail? Or some combination thereof? It seems that in recent years most notices, especially those regarding the meetings, are produced electronically and distributed to the appointed members of this body. Those electronic notices need to be addressed as well, and would be best done so in this section.

Section 26. I believe that it should read “The Executive Director shall submit, on behalf of the legal entity,” or something substantially similar to that, rather than a separate report.

CONCLUSION OF THE CITY ATTORNEY

¹⁴ City Administrator Burnett asked if the E911 board even has the legal authority to own property, but this is something I have not researched. It seems irrelevant given his policy concerns with that board receiving the equipment.

The consequences of any action either to enter into, or to outright reject, the proposed 28E at this time are unclear. Signing this document can only lend credibility to an agreement that could be voided at any time by any number of parties, and gives us no clear direction on many of points that this memo has raised, including those issues that are so important the State Legislature has required them to be addressed by the agreement. Similarly, the consequences of rejecting this agreement are entirely unclear at this point. Signatory members of the proposed 28E have suggested that amendments are possible to punish a non-signer, and it is at best uncertain if this would have any effect on dispatch services to Keokuk.

That said, there are a substantial number of issues that need to be addressed before the City of Keokuk should adopt this Proposed 28E Agreement. Despite the fact that its recommendation stems from a meeting which violates open meeting laws, in its current form, the Proposed 28E Agreement simply does not comply with the legal requirements of Chapter 28E, and as such no action should be taken by the Keokuk City Council until such time as those are addressed. It would be ill-advised for this body to enter into an agreement which includes no viable method to terminate our membership, nor any procedure for how that could or would occur in the event any party backs out.

The Proposed 28E Agreement's failure to spell out what services the Lee County PSAP Association will provide should also cause the Council to pause before voting. This failure is an inexcusable oversight, and as a result, should be the fatal blow to this draft agreement. When enforcing a document of this magnitude, courts look for specific and clear language and provisions that can be enforced. This document fails to provide those grounds. The raised herein are a minimum of the legal and grammatical changes that must be addressed to make this document enforceable, and not a reflection of the additional policy changes that the City may wish to consider going forward.

It strains credulity to suggest that this document could have been sent out for votes of government entities without addressing the bare bones and basic requirements set forth in Chapter 28E to govern such agreements, to say nothing of its failure to address the key rights and responsibilities of the participants. In this Document's current form, the City of Keokuk should refuse to participate, at least until these legal concerns are addressed.