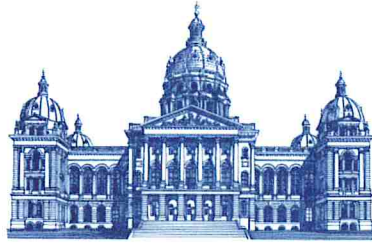


NATE BOULTON
STATE SENATOR
Sixteenth District
Statehouse: (515) 281-3371

HOME ADDRESS
3127 Thompson Ave
Des Moines, IA 50317
H: (515) 265-1389
O: (515) 288-4148
nate.boulton@legis.iowa.gov



The Senate
State of Iowa
Eighty-Ninth General Assembly
STATEHOUSE
Des Moines, IA 50319

ASSISTANT MINORITY LEADER

COMMITTEES

Labor and Business Relations, *Ranking Member*
Natural Resources and Environment
Judiciary
State Government

Justice Systems
Appropriations Subcommittee

September 20, 2022

The Honorable Thomas J. Miller
Attorney General of Iowa
Hoover State Office Building
Des Moines, Iowa 50319

Dear Attorney General Miller:

I am writing to request an official opinion regarding Governor appointed, Senate-confirmed appointments. First and foremost: If the Governor appoints an individual to a Senate-confirmed position, whether an interim or regular appointment, then the name is withdrawn by the Governor, is it legal for that individual to continue to serve in that Senate-confirmed position?

Specifically, can the Governor legally circumvent the required Senate confirmation process by routinely withdrawing a name before the Senate acts upon that appointment and then appointing the same individual to another position on the same board? For example, Erik Helland was appointed by Governor Reynolds in 2020 as a member of the Public Employment Relations Board (PERB). In 2021, the Governor withdrew Helland's name. The Senate did not act on the appointment because of the withdrawal in the 2021 session. Helland continue to serve in that position until the Governor appointed him as Chair and PERB member in 2021. The Governor then withdrew his name in 2022. The Senate did not act on the appointment because of the withdrawal in the 2022 session. Now the Governor sent a letter to the Senate which stated she appointed Erik Helland to PERB effective July 22, 2022. Erik Helland has been a PERB member since 2020 without ever receiving a Senate vote and seems to be destined to continue to do so until the Senate convenes again in 2023—when his name may be withdrawn again and then potentially reappointed to another open PERB position.

Additionally, can an appointee that fails to receive a two-thirds vote be reappointed to the same board but in a different position/term? Can an appointee that fails to receive a two-thirds vote be reappointed to the same board a year later? For example, Cheryl Arnold was appointed as the PERB Chair in 2019 and received disapproval from the Senate on June 10, 2020. Now, on August 15, 2022, Governor Reynolds appointed Arnold to PERB, replacing Erik Helland's position.

Finally, can a state board or commission operate when the board does not meet the partisan balance per Iowa Code (69.16)? Since October 2021, the PERB membership consisted of two members of the same party and one vacancy. Further, can a board without a majority of its membership filled legally execute its duties? For example, if the board only has one of three members appointed, does it have the legal authority to act in its adjudicative and rule-making functions?

To be clear, while the concern is about these specific appointments to this specific board right now, it is certainly a legal question of great importance to establish if a governor can wholly avoid required Senate confirmations by leaving positions vacant on boards to allow interim appointments to be made and withdrawn indefinitely. It would seem that the current situation runs afoul of the law and erodes an essential aspect of the constitutionally shared powers of the legislative and executive branches of state government.

Another concern involving recent PERB changes is that PERB administrative law judges will no longer hear PERB cases and that Department of Inspection and Appeals judges will take on that function. DIA administrative law judges will, by result, now have extremely broad jurisdiction to evaluate claims and disputes across multiple areas of law. That result seems to run afoul of the due process protections afforded Iowans as well as the statutory authority granting agencies the jurisdiction to resolve disputes. In determining what the legislature has permitted and prohibited, we look to the legislative intent in enacting the state statutes and we require that any local ordinance remain faithful to this legislative intent. In ascertaining legislative intent, we may consider the object sought to be obtained by the legislature in enacting the statute." *Kennedy v. Civil Serv. Comm'n*, 654 N.W.2d 511, 513-514 (2002). The Supreme Court has expressly held that a government entity "cannot surrender or contract away its governmental functions and powers" including judicial functions. "The power to 'hear and determine' ... refers to a judicial investigation in settlement of an issue of fact." *Id.* at 515. While Iowa Code section 20.6(4) allows PERB to generally transfer cases to DIA administrative law judges, section 20.11(2) more specifically requires a PERB-employee judge to preside over hearings: "The board may designate one of its members, an administrative law judge, or any other qualified person **employed by the board** to serve as the presiding officer at the hearing." Therefore, it is also necessary to have a formal opinion on the question of whether or not it is an illegal shift of an essential PERB duty to have specifically-assigned adjudication responsibilities transferred to an unrelated state agency.

I and many other members of the legislature thank you for your consideration of the crucially important topic and look forward to receiving your formal legal opinions on these pressing issues.

Sincerely,



Nate Boulton
State Senator

Enclosures: Senate Journal 200610 (1); Governor appointment letters PERB member 1 (8); Governor appointment letters PERB member 2 (4); Governor appointment letters PERB member 3 (5).

Ragan	Rozenboom	Schneider	Schultz
Segebart	Shipley	Sinclair	Smith, J.
Smith, R.	Sweeney	Taylor, R.	Taylor, T.
Wahls	Whiting	Whitver	Zaun
Zumbach			

Nays, none.

Absent, 1:

Bisignano

The appointee, having received a two-thirds vote, was declared to have been confirmed by the Senate.

Senator Whitver called up the appointment of Cheryl Arnold as a member of the Public Employment Relations Board, placed on the Individual Confirmation Calendar on Thursday, February 13, 2020, found on page 315 of the Senate Journal.

Senator Schultz moved that the foregoing appointment be confirmed by the Senate.

On the question "Shall the appointee be confirmed?" the vote was:

Yeas, 32:

Behn	Breitbach	Brown	Carlin
Chapman	Costello	Cournoyer	Dawson
Edler	Feenstra	Garrett	Greene
Guth	Johnson	Kapucian	Koelker
Kraayenbrink	Lofgren	Miller-Meeks	Nunn
Rozenboom	Schneider	Schultz	Segebart
Shipley	Sinclair	Smith, R.	Sweeney
Whiting	Whitver	Zaun	Zumbach

Nays, 17:

Bolkcom	Boulton	Celsi	Dotzler
Giddens	Hogg	Jochum	Kinney
Lykam	Mathis	Petersen	Quirnbach
Ragan	Smith, J.	Taylor, R.	Taylor, T.
Wahls			

Absent, 1:

Bisignano

The appointee, having failed to receive a two-thirds vote, was declared to have not been confirmed by the Senate.

RECEIVED

MAR 01 2019

SENATE
State of Iowa



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

March 1, 2019

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Please accept this notice of deferred appointment pursuant to section 2.32 of the Iowa Code for Chair of the Iowa Public Employment Relations Board, formerly held by Mike Cormack. This appointment has been deferred because the Governor's Office has initiated, but not yet completed, the selection process for this position.

If you have any questions, please contact my Senior Legal Counsel Sam Langholz by phone at (515) 537-5280 or by email at sam.langholz@iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor



KIM REYNOLDS
GOVERNOR

OFFICE OF THE GOVERNOR

ADAM GREGG
LT GOVERNOR

06/25/2019

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for their consideration, the name of Cheryl Arnold from the city of Russell in Lucas County, Iowa for appointment as Chair of the Public Employment Relations Board, pursuant to Iowa Code section 20.5, for a term beginning 07/15/2019 and term ending 04/30/2022.

Sincerely,

Kim Reynolds
Governor

KKR/ATS
Enclosure
Mike Cormack

OK
TULA



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

August 7, 2020

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Please accept this letter as a notice of deferred appointment under section 2.32(11) of the Iowa Code for the office of Chair of the Public Employment Relations Board, which was previously held by Cheryl Arnold. This appointment has been deferred because I have not yet completed the process of selecting the most appropriate person to serve Iowans in this position.

If you have any questions, please contact my Senior Legal Counsel Sam Langholz by phone at (515) 537-5280 or by email at sam.langholz@iowa.gov.

Sincerely,

A handwritten signature in cursive that reads "Kim Reynolds".

Kim Reynolds
Governor



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

July 15, 2021

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for its consideration the name of Erik Helland from the city of Des Moines, Iowa for appointment as Chair of the Public Employment Relations Board pursuant to section 20.5 of the Iowa Code. This position has a four-year term that expires on April 30, 2022 and the appointment is effective July 16, 2021.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 326-1634 or by email at michael.boal@governor.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor

Replaces: Cheryl Arnold

OK
TELLA

1



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

March 1, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for its consideration the name of Erik Helland from the city of Des Moines, Iowa for appointment as Chair of the Public Employment Relations Board pursuant to section 20.5 of the Iowa Code. The appointment is effective May 1, 2022 and serves for a term of four years ending on April 30, 2026. The political affiliation of this appointee is Republican, and the appointee can be reached by email at erik.helland@iowa.gov.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 326-1634 or by email at michael.boal@governor.iowa.gov.

Sincerely,

Kim Reynolds
Governor

Cheryl Arnold

Replaces: ~~Erik Helland~~

LA



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

May 24, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

I am withdrawing the name of Erik Helland for confirmation as Chair and member of the Public Employment Relations Board from further consideration by the Senate.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 725-3516 or by email at michael.boal@governor.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

July 22, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Please accept this letter as the notice of deferred appointment for the position of Chair of the Public Employment Relations Board, formerly held by Erik Helland. This appointment has been deferred because our Administration has initiated, but has not yet completed, the selection process which will result in determining the most appropriate person to nominate for this position.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa

RECEIVED
AUG 18 2022
SENATE
State of Iowa



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

August 15, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for its consideration the name of Cheryl Arnold from the city of Russell, Iowa for appointment as Member of the Public Employment Relations Board pursuant to section 20.5 of the Iowa Code. This appointment is effective August 22, 2022. This position has a four-year term that expires on April 30, 2024.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 326-1634 or by email at michael.boal@governor.iowa.gov.

Sincerely,

Handwritten signature of Kim Reynolds in cursive.

Kim Reynolds
Governor

Replaces: Erik Helland

CLLA
4



KIM REYNOLDS
GOVERNOR

OFFICE OF THE GOVERNOR

ADAM GREGG
LT GOVERNOR

03/01/2020

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Pursuant to Iowa Code section 2.32, please accept this letter as the notice of deferment of the appointment to the Public Employment Relations Board, which was previously held by James Van Fossen. This appointment has been deferred because our Administration has initiated, but has not yet completed, the selection process which will result in determining the most appropriate person to nominate for this position.

Sincerely,

Kim Reynolds
Governor

KKR/ATS



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

April 24, 2020

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for their consideration the name of Erik Helland from the city of Huxley, Iowa for appointment as Member of the Public Employment Relations Board pursuant to section 20.5 of the Iowa Code. This position has a four-year term and is effective May 1, 2020.

If you have any questions, please contact my Senior Legal Counsel Sam Langholz by phone at (515) 537-5280 or by email at sam.langholz@iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor

Replaces: Jamie Van Fossen

CV
T.L.

RECEIVED

MAY 19 2021

SENATE
State of Iowa



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

May 19, 2021

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

I am withdrawing the name of Erik Helland for confirmation as a member of the Public Employment Relations Board from further consideration by the Senate.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 725-3516 or by email at michael.boal@governor.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

March 1, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Please accept this notice of deferred appointment pursuant to section 2.32 of the Iowa Code for a member position on the Public Employment Relations Board, formerly held by Erik Helland. This appointment has been deferred because the Governor's Office has initiated, but not yet completed, the selection process for this position.

If you have any questions, please contact my Senior Legal Counsel, Michael Boal, by phone at 515-326-1634 or by email at michael.boal@governor.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa



KIM REYNOLDS
GOVERNOR

OFFICE OF THE GOVERNOR

ADAM GREGG
LT GOVERNOR

03/01/2020

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Pursuant to Iowa Code section 2.32, please accept this letter as the notice of deferment of the appointment to the Public Employment Relations Board, which was previously held by Mary Gannon. This appointment has been deferred because our Administration has initiated, but has not yet completed, the selection process which will result in determining the most appropriate person to nominate for this position.

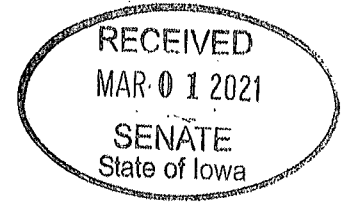
Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor

KKR/ATS

LA



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

March 1, 2021

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

Pursuant to section 2.32 of the Iowa Code, please accept this letter as the notice of deferment of the appointment to the **Public Employment Relations Board**, formerly held by **Mary Gannon**. This appointment has been deferred because our Administration has initiated, but has not yet completed, the selection process which will result in determining the most appropriate person to nominate for this position.

Sincerely,

A handwritten signature in cursive that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa

effective
5/1/21



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

September 1, 2021

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for its consideration the name of Jane Dufoe from the city of Center Point, Iowa for appointment as Member of the Public Employment Relations Board pursuant to section 20.5 of the Iowa Code. The appointment is effective October 1, 2021 and fills the remainder of a term ending April 30, 2024.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 326-1634 or by email at michael.boal@governor.iowa.gov.

Sincerely,

Kim Reynolds
Governor

Replaces: Mary Gannon

CLA



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

May 24, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

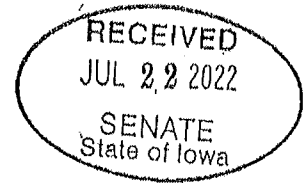
I am withdrawing the name of Jane Dufoe for confirmation as a member of the Public Employment Relations Board from further consideration by the Senate.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 725-3516 or by email at michael.boal@governor.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor of Iowa



Kim Reynolds
GOVERNOR

OFFICE OF THE GOVERNOR

Adam Gregg
LT. GOVERNOR

July 22, 2022

Mr. W. Charles Smithson
Secretary of the Senate
State Capitol Building
LOCAL

Dear Mr. Smithson:

It is my pleasure to submit to the Senate for its consideration the name of Erik Helland from the city of Des Moines, Iowa for appointment as Member of the Public Employment Relations Board pursuant to section 20.5 of the Iowa Code. This appointment is effective July 22, 2022. This position has a four-year term that expires on April 30, 2024.

If you have any questions, please contact my Senior Legal Counsel Michael Boal by phone at (515) 326-1634 or by email at michael.boal@governor.iowa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Kim Reynolds".

Kim Reynolds
Governor

Replaces: Jane Dufoe

LA
4