

Source: [Iowa](#) > / . . . / > IA Attorney General Opinions Terms: "October 12, 1984" ([Edit Search](#) | [Suggest Terms for My Search](#))*1984 Iowa AG LEXIS 2, *; 1983-84 Op. Atty Gen. Iowa 167*

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF IOWA

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1984 Iowa AG LEXIS 2; 1983-84 Op. Atty Gen. Iowa 167

October 12, 1984

CORE TERMS: supervisors, law enforcement, radio, board of supervisors, jail, county jail, county-city, authorize, elected, jailers, radio broadcasting, authority to enter, install, detention facility, county board of supervisors, delegated, entity, county officer, motor vehicle, municipality, belonging, governmental entity, deemed necessary, supervision, contractor, unaffected, installed, statutory duties, designated, personnel

SYLLABUS:

[*1]

COUNTIES AND COUNTY OFFICERS; Board of Supervisors; County Sheriff; Chapter 28E Agreements; Law enforcement communications systems; Authority of board of supervisors to enter into Ch. 28E agreements for performance of law enforcement functions without sheriff's approval. Iowa Code Chs. 28E; 331; 356; 356A; 693 (1983); §§ 28E.1; 28E.4; 331.651-331.660; 331.903; 356.1; 365A.1-356A.2; 356A.7; 693.1; 693.4. 1) A county board of supervisors is required by § 693.4 to provide the sheriff with at least two radio receiving sets even if the supervisors have already provided a number of such sets to a Ch. 28E joint county-city law enforcement center, unless the Ch. 28E agreement otherwise provides; 2) this conclusion is unaffected by the fact that the Ch. 28E entity's radio sets are operated by independent contractors rather than by employees of the Ch. 28E organization; 3) the supervisors may not enter into a Ch. 28E agreement with a city to share a radio receiving set for law enforcement purposes in the county without the approval of the sheriff because performance of law enforcement duties is within the sole jurisdiction of the sheriff's office; and 4) the supervisors may not enter into [*2] a Ch. 28E agreement regarding the employment of jailers at a Ch. 356 county jail facility without the approval of the sheriff, because Ch. 356 expressly authorizes the sheriff to operate such jails; but the supervisors may enter into such an agreement for a Ch. 356A county detention facility because that chapter provides for the facility to be operated by the board of supervisors.

REQUESTBY:

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OPINIONBY:

THERESA O'CONNELL WEEG, Assistant Attorney General

OPINION:

You have requested an opinion of the Attorney General on several questions regarding the sheriff's office and the county jail. Your questions are as follows:

(1) Under Iowa Code Section 693.4, can a sheriff require the board of supervisors to install a different radio broadcasting system in the sheriff's office and at least one motor vehicle when adequate radio broadcasting facilities, belonging to a joint county-city law enforcement center organized under Chapter 28E, are already available in the law enforcement center and all motor vehicles belonging to the sheriff's department?

(2) Would the answer to question number one change if the existing radio facilities [*3] belonging to the Chapter 28E organization were operated by an independent contractor instead of employees of the Chapter 28E organization?

(3) Can the Board of Supervisors make a valid 28E Agreement with a city government to share a radio receiving set against the wishes of the sheriff?

(4) Can an agency created by a Chapter 28E agreement between the city and county, employ persons to perform jailers duties without the sheriff's express permission under a contract with private individuals if the private persons remain under the sheriff's control, or does the contract with such independent persons violate Chapter 356, Chapter 331 or the jail standards?

We shall address each question in turn.

I.

Your first question concerns the scope of the supervisors' authority to provide radio receiving sets to the sheriff's office pursuant to Iowa Code § 693.4 (1983). That section provides as follows:

It shall then be the duty of the board of supervisors of each county to install in the office of the sheriff, such a radio receiving set and a set in at least one motor vehicle used by by sheriff, for use in connection with said state radio broadcasting system. The board of supervisors [*4] of any county may install as many additional such radio receiving sets as may be deemed necessary. The cost of such radio receiving sets and the cost of installation thereof shall be paid from the general fund of the county.

(emphasis added) As emphasized above, the supervisors are required by law to install a radio receiving set in the sheriff's office and in at least one sheriff's vehicle. See § 4.36(a) ("The word 'shall' imposes a duty.") Section 693.4 then provides that additional sets may be installed at the supervisors' discretion. We believe this language authorizes the purchase of such additional sets only for installation in the sheriff's office or other appropriate entity, such as a joint county-city law enforcement center established pursuant to a Ch. 28E agreement with the approval of the sheriff. See part III and IV, below. We do not believe the supervisors' obligation to provide the sheriff with the two sets referred to in § 693.4 is relieved by the fact that the supervisors have provided a number of sets to a Ch. 28E joint county-city law enforcement center unless the Ch. 28E agreement specifies otherwise and the sheriff has expressly approved that [*5] agreement. In sum, in the absence of the sheriff's express approval of the Ch. 28E agreement in question, § 693.4 requires the supervisors to provide the sheriff with the two radio receiving sets in question. n1 A final answer to your question will thus require reference to the specific terms of your Ch. 28E agreement.

n1 Your question specifically asks whether the sheriff may require the board "to install a different radio broadcasting system in the sheriff's office and at least one motor vehicle" when adequate broadcasting facilities exist by virtue of a Ch. 28E agreement. (emphasis added) Section 693.4 grants the supervisors the authority to provide radio receiving sets to the sheriff in accordance with the requirements of Ch. 693. We believe this authority encompasses the authority to decide what type of receiving set should be installed. Of course, the receiving sets

must be compatible with the state radio broadcasting system. See §§ 693.1, 693.4. Thus, if two radio receiving sets have been installed pursuant to § 693.4, the sheriff may not require the supervisors to provide a different type of receiving set.

II.

Your second question asks whether [*6] our answer to your first question would be affected by the fact that the radio receiving sets provided to the joint county-city law enforcement center were operated by an independent contractor instead of by employees of the Ch. 28E entity. The answer to your question is no: the statutory requirement of § 693.4 that the supervisors provide the sheriff's office with at least two radio receiving sets is absolute and is not affected by the status of the persons operating those sets. Similarly the supervisors' discretionary authority to provide additional sets is unaffected by the status of the persons who operate those sets. n2

n2 We do not address the question of whether a Ch. 28E joint county-city law enforcement center may hire independent contractors to operate radio receiving sets for the center.

III.

Your third question asks whether the supervisors may enter into a Ch. 28E agreement with a city to share a radio receiving set for county law enforcement purposes against the wishes of the sheriff.

Chapter 28E provides guidelines for the joint exercise of governmental powers. Section 28E.1 provides that:

The purpose of this chapter is to permit state and local governments [*7] in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to co-operate in other ways of mutual advantage. This chapter shall be liberally construed to that end.

Section 28E.4 further provides:

Any public agency of this state may enter into an agreement with one or more public or private agencies for joint or co-operative action pursuant to the provisions of this chapter, including the creation of a separate entity to carry out the purpose of the agreement. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies involved shall be necessary before any such agreement may enter into force.

In Barnes v. Department of Housing and Urban Development, 341 N.W.2d 766 (Iowa 1983), the Supreme Court discussed the scope of a municipality's authority to enter into a Ch. 28E agreement. There the Court held that while a Ch. 28E agreement authorizes a municipality to exercise a designated statutory function jointly with another agency, Ch. 28E does not authorize that municipality to exercise powers it does not have. The Court stated:

. . . the powers exercised by [parties [*8] to a Ch. 28E agreement] in connection with this project are not independent powers arising under Ch. 28E, but a joint exercise of powers already vested in the members.

341 N.W.2d at 768.

We concluded in 1978 Op.Att'y Gen. 668 that the supervisors were authorized to enter into a Ch. 28E agreement to establish a county communications commission to obtain police radios and maintain law enforcement communications system pursuant to the authority provided in § 693.6. n3 See also 1974 Op.Att'y Gen. 753 (Ch. 28E is an excellent management foundation for

endeavors like county-wide radio networks). While this opinion discusses the supervisors' authority to enter into such an agreement, it does not discuss the question of the supervisors' authority to enter into such an agreement in the absence of the express approval of the sheriff.

n3 Section 693.6 (former § 750.6) formerly provided as follows:

The board of supervisors of any county shall have in addition to the foregoing the discretionary authority:

1. To purchase, lease, own, and maintain additional radio, electronic communications and telecommunications systems as may be deemed necessary by said agency for the efficient operation of the law enforcement agencies under its jurisdiction, and to pay the cost thereof from the general fund of said county.
2. To enter into lease or contract arrangements for the joint ownership, maintenance, acquisition or leasing of said equipment with any other county and may jointly operate the same with such co-operating agency for the mutual economy and efficiency of both.

This section was repealed by 1981 Iowa Acts, ch. 117, § 1097. Chapter 117 was the Act which implemented county home rule and recodified the various statutes relating to county government. Arguably § 693.6 was repealed because, given home rule authority, the supervisors no longer needed express statutory authority to perform the functions described in that section. [*9]

It is our opinion that Ch. 331, the County Home Rule Act, establishes a statutory scheme whereby elected county officials, such as the treasurer, auditor, and county attorney, have been delegated jurisdiction over their offices which is generally separate and independent of the general supervisory authority over other county matters to be exercised by the board of supervisors. See §§ 331.303-331.402. Specifically, we believe the sheriff is the elected county official solely responsible for performance of law enforcement duties in the county. See § 331.651-331.660.

The Supreme Court has recently affirmed the principle that for the most part elected county officials are to exercise their statutory duties independently of the board of supervisors. In McMurry v. Board of Supervisors of Lee County, 261 N.W.2d 688 (Iowa 1978), a case involving the validity of board resolutions concerning personnel matters in another elective county office, the Court began its opinion with the following statement:

The board appears to have proceeded as though our system of county government consisted of central management with subsidiary departments. With few exceptions, however, [*10] our statutes establish autonomous county offices, each under an elected head.

261 N.W.2d at 690. See also Op.Att'y Gen. #83-11-4(L) (board of supervisors does not have the authority to initiate discipline against employees of elected county officials).

On the basis of this general rule of law, we conclude that the board of supervisors does not have the authority to assume county law enforcement functions statutorily delegated to the sheriff. What the board cannot do directly cannot be done indirectly through a Ch. 28E agreement. See Barnes v. Department of Housing and Urban Development, supra, 341 N.W.2d at 767 ("Chapter 28E does not confer any additional powers on the cooperating agencies; it merely provides for their joint exercise.") Therefore it is our opinion that absent a specific statute to the contrary, the supervisors may not enter into a Ch. 28E agreement for the exercise of a function specifically delegated to an elected county officer without that officer's express approval of that agreement. In particular, it is our opinion the supervisors do not have the authority to enter into a Ch. 28E agreement for the performance of law enforcement functions [*11] that are within

the exclusive province of the sheriff. See 1976 Op.Att'y Gen. 671 (county board of supervisors are not "required or authorized by the Code to perform as their principal function the apprehension, et cetera, of criminal offenders and are, therefore, not criminal justice agencies as defined in Chapter 749B").

For the purposes of this particular situation, we refer back to the requirement of § 693.4 that the supervisors provide the sheriff with two radio receiving sets, and may further "install as many additional such radio receiving sets as may be deemed necessary. See also § 331.322 (12). This section provides that the radio receiving sets are to be used "in connection with the state radio broadcasting system." Section 693.1 authorizes the commissioner for public safety to implement "a special radio broadcasting system for law enforcement and police work and for direct and rapid communication with the various peace officers of the state." Thus it is clear that the radio receiving sets referred to in § 693.4 were intended to be used for law enforcement purposes.

As set forth above, the sheriff is the elected county official responsible for the performance [*12] of law enforcement duties in the county. We believe § 693.4 was intended to aid the sheriff in the performance of his or her duties by requiring the supervisors to provide a minimum number of radio receiving sets to the sheriff for law enforcement purposes. However, the legislature did impose a limitation on the sheriff's authority by providing for the supervisors to retain the discretion to decide how many additional sets are needed by the sheriff. We do not believe this discretion extends to allow the supervisors to unilaterally assume responsibility for creating and equipping pursuant to a Ch. 28E agreement a county-city law enforcement center to perform certain law enforcement functions without the sheriff's approval. If permitted, such an act would result in the supervisors usurping statutory duties which have been expressly delegated to the sheriff.

Thus, we conclude that § 693.4 was intended to provide the sheriff with a minimum number of radio receiving sets to be used by the sheriff in performing law enforcement functions. The supervisors are not authorized by this section to acquire additional sets for use by county-related law enforcement entities apart from [*13] the sheriff's office without the sheriff's approval. n4 Nor is the board of supervisors authorized to enter into a Ch. 28E agreement with another governmental entity to share a radio receiving set for law enforcement purposes without the sheriff's approval. n5 n6

n4 We do not address the question of the supervisors' authority under home rule to purchase radio receiving sets to be used by the county for purposes unrelated to law enforcement, such as ambulance or fire department operations.

n5 We note that in the event the sheriff agrees to enter into a Ch. 28E agreement for a joint county-city law enforcement center a question may arise as to the sheriff's authority to enter into such an agreement for a period of time longer than the sheriff's term of office. A question involving a board of supervisors' authority to bind successor boards was addressed in Op.Att'y Gen. #83-6-4(L).

n6 Sections 28E.21-.28 do authorize a county board of supervisors to establish a unified law enforcement district among various governmental entities upon approval of the voters of the proposed district. However, we have been informed that such a statutorily-authorized district was not created in the present case and therefore is not the subject of this opinion. [*14]

We believe this conclusion is consistent with public policy. As the county officer elected by residents of the county to perform law enforcement duties, the sheriff is the county officer presumed to be most expert in law enforcement matters. Further, the sheriff is responsible to the electorate for all decisions relating to law enforcement. The decision of whether the county's interests would be best served by entering into a Ch. 28E agreement to share law enforcement

communications functions with another governmental entity is such a law enforcement-related decision and one that is best committed to the expert discretion of the sheriff, subject to review by the electorate.

IV.

Your fourth question asks whether the county may enter into a Ch. 28E agreement to employ persons to perform jailers' duties without the sheriff's permission, if the persons remain under the sheriff's control.

If the facility in question is a jail governed by Ch. 356 it is our opinion the county may not enter into a Ch. 28E agreement to employ persons as jailers without the express permission of the sheriff. A review of Ch. 356 makes clear that the sheriff is responsible for operation of the [*15] county jail. See, e.g., § 356.1 ("The jails in the several counties in the state shall be in charge of the respective sheriffs and used as prisons . . ."). (emphasis added) Supervision of the county jails under Ch. 356 is made one of the express statutory duties of the sheriff's office. § 331.653(36). The sheriff is authorized by § 331.903 to "appoint, with approval of the board, one or more deputies, assistants, or clerks . . . for whose acts the principal officers shall be responsible." It is our opinion this authority, in conjunction with the sheriff's general authority over county jails, makes the sheriff primarily responsible for the hiring and supervision of jailers for the county jail. For these reasons, and for the reasons set forth in Part III, above, we do not believe the supervisors are authorized to enter into a Ch. 28E agreement for the performance of duties that are clearly within the exclusive jurisdiction of the sheriff's office, unless the sheriff expressly approves this agreement. n7

n7 See footnote 4, supra.

However, if the facility in question is a county detention facility governed by the provisions of Ch. 356A, a different answer [*16] to your question is required. Chapter 356A authorizes the board of supervisors to establish and maintain a county detention facility, which is to be operated in lieu of, or in addition of, a county jail. § 356A.1. The board of supervisors is expressly designated as the governing body for such a facility. §§ 356A.1-.2. Inherent in the supervisors' authority to operate a county detention facility is the authority to hire personnel to oversee the day-to-day operation of the facility. Accordingly, we believe the supervisors are authorized to enter into a Ch. 28E agreement with another governmental entity for the employment of persons to serve as jailers at a Ch. 356A county detention facility without obtaining the sheriff's approval of this agreement. n8

n8 We note that § 356A.7 provides as follows:

A county board of supervisors may contract with another county or a city maintaining a jail meeting the minimum standards for the regulation of jails established pursuant to section 356.36 for detention and commitment of persons pursuant to section 356.1. A person detained or confined in the jail shall be in the charge and custody of the governmental unit maintaining the jail. The cost of detention and confinement shall be levied and paid by the city or the county to which the cause originally belonged.




(emphasis added) We do not believe this provision affects our conclusion that the sheriff must agree to any C. 28E agreement regarding employment of jailers at a Ch. 356 county jail. Instead, this provision addresses the situation where a county's prisoners are to be housed in a facility other than the county jail under the sheriff's supervision. In any case, the supervisors' authority to enter into agreements under this section is limited: as emphasized above, § 356A.7 suggests that the governmental unit maintaining the jail retains sole responsibility for its


operation. [*17]

In conclusion, it is our opinion that: 1) a county board of supervisors is required by § 693.4 to provide the sheriff with at least two radio receiving sets even if the supervisors have already provided a number of such sets to a Ch. 28E joint county-city law enforcement center, unless the Ch. 28E agreement otherwise provides and the sheriff has approved the agreement; 2) this conclusion is unaffected by the fact that the Ch. 28E organizations radio sets are operated by independent contractors rather than employees of the Ch. 28E organization; 3) the supervisors may not enter into a Ch. 28E agreement with a city to share a radio receiving set for law enforcement purposes without the approval of the sheriff because performance of law enforcement duties is within the sole jurisdiction of the sheriff's office; and 4) the supervisors may not enter into a Ch. 28E agreement regarding the employment of jailers at a Ch. 356 county jail facility without the approval of the sheriff, because Ch. 356 expressly authorizes the sheriff to operate such jails; but the supervisors may enter into such an agreement for a Ch. 356A county detention facility because that chapter provides for the [*18] facility to be operated by the board of supervisors.

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