

## Goals, Timing & Deadlines in 2012

By the time this article is published, I will have had the opportunity to participate in my first ISAC Fall School of Instruction and will be looking forward to the start of my first full Legislative Session as an ISAC staff member. I'm also thinking and planning for 2012 Legal Brief articles – so if you have a topic you would like to see discussed, please contact me. With 2011 rapidly coming to a close, we inevitably begin to look to 2012 – setting goals and developing timelines for the year. So I wanted to take a minute to remind you of a couple of deadlines coming up quickly in January 2012 that you don't want to forget:

### Construction Evaluation Resolutions

If a county chooses to use the master matrix to evaluate applications for construction permits for large animal confinement operations, the board of supervisors must adopt a “construction evaluation resolution” annually. According to the DNR's administrative rules, if the board of supervisors wants to use the master matrix between February 1, 2012 and January 31, 2013, **the board of supervisors must submit an adopted “construction evaluation resolution” to the DNR between January 1 and January 31, 2012.** The board of supervisors can adopt the resolution at any time, as long as it is actually mailed or faxed to the DNR during January of 2012. So you can adopt this resolution in December, but the DNR can only accept it during the month of January. Supervisors, you will be receiving an e-mail from me with additional information and a sample resolution on this matter. If you have any questions, please contact myself or Jerah Sheets with the DNR at (515) 313-8909.

### Gender Balanced Boards

Iowa Code Section 69.16A relates to gender balance on boards with appointed members. Regarding terms for board members that will be ending before January 1, 2012, the last sentence of the statute allows the incumbent board member to be re-appointed even if it results in gender inequity on the board – “This subsection [relating to gender balance on boards] shall not prohibit an individual whose term expires prior to January 1, 2012, from being reappointed even though the reappointment continues an inequity in gender balance.” However, beginning with terms that end after January 1, 2012, the county will have to demonstrate that it has made a good faith effort (for at least three months) to appoint a qualified person that would result in a gender-balanced board, before an appointment can be made that would result in gender inequity on the board. Good faith effort is not defined, and thus the county will have to make a judgment decision on whether its efforts meet this threshold. No one specific strategy is condoned as a good faith effort. You should consult with your county attor-

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ney to determine what process should be used to demonstrate a good faith effort when dealing with term expirations for board members.

### Recent Cases of Note

1. A jail is not a person, but naming a county sheriff's office as a defendant is sufficient to name the sheriff holding the office as a defendant. Below is the summary from the court's website:

#### No. 10-1685. [1-739] **DAVISON v. DUBUQUE COUNTY SHERIFF'S OFFICE**

Mark Davison appeals from the dismissal of his lawsuit. He contends the district court erred in finding the defendants named in his petition, “Dubuque County Sheriff's Office” and “Dubuque County Jail,” were not governmental entities that could be sued under Iowa Code chapter 670, Iowa's Municipal Tort Claims Act. He also argues the court abused its discretion in denying his motion for leave to amend to add Dubuque County and others as defendants. **OPINION HOLDS:** Upon our review, we agree with the district court's conclusion that a jail, a building, is not capable of being sued. However, viewing the petition in the light most favorable to Davison, we construe his petition against defendant “Dubuque County Sheriff's Office” as naming the sheriff holding the office, not the place where the sheriff physically works. We therefore reverse the district court's dismissal of the Dubuque County Sheriff's Office. Finally, we find the district court did not abuse its discretion in denying Davison's motion for leave to amend other defendants, as he failed to establish the other potential defendants received notice of the institution of the action prior to expiration of the statute of limitations. Accordingly we affirm in part, reverse in part, and remand for further proceedings.

2) This one has been in the news quite a bit, so you may have heard that the ACLU's request for employee records after an alleged student strip search was denied. Below is the summary from the court's website:

#### No. 11-0095. [1-534] **AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF IOWA, INC., v. RECORDS CUSTODIAN, ATLANTIC COMMUNITY SCHOOL DISTRICT**

The American Civil Liberties Union Foundation of Iowa (ACLU) appeals the district court's entry of summary judgment in favor of the records custodian of the Atlantic Community School District on the ACLU's claim seeking disclosure of employee records. Specifically, the ACLU sought in-

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## miscellaneous

### A Message from IPAIT

By: Adam Corrie

Winter is almost here. We are preparing to get our ice scrapers out, our snow plows gassed up, and our fireplaces burning. For those of you that follow the Farmers' Almanac, this winter is predicted to be relatively mild for most of the Midwest. As the marketer for the Iowa Public Agency Investment Trust (IPAIT), traveling across Iowa, I appreciate the mild prediction. Many of you are familiar with the IPAIT program, but for those of you who are not, I want to provide an overview and encourage you to contact me if you would like more information.

For over 25 years IPAIT has provided Iowa's public entities with a secure investment for their operating and reserve funds. IPAIT is a common law trust established under Iowa law pursuant to Chapter 28E of the Iowa Code, which authorizes Iowa public agencies to jointly invest monies pursuant to a joint investment agreement. IPAIT's Diversified Portfolio is an SEC-registered money market fund authorized by investment policy and statute to invest in obligations of the U.S. government, its agencies and instrumentalities; CDs and other evidences of deposit at federally insured Iowa depository institutions approved and secured pursuant to Chapter 12B of the Code of Iowa, and repurchase agreements.

IPAIT is sponsored by the Iowa State Association of Counties, the League of Iowa Cities, and the Iowa Association of Municipal Utilities. Miles Capital acts as the investment advisor and program administrator.

IPAIT provides safety of principal, daily liquidity, and a competitive yield. IPASonline is IPAIT's participant recordkeeping system specifically designed for public entity sub-accounting. Through IPASonline, participants can initiate transactions, view historical activity, view balances and accrued interest, view and download statements, future-date transactions, and pay vendors directly from their IPAIT account. There is no fee for transferring funds via ACH, no minimum balance required, and no limit to the number of transactions per month.

Currently, there are 435 participants authorized to invest in IPAIT and the fund balance is near \$500 million.

In the months to come, check your email for the *IPAIT Bulletin*, IPAIT's monthly newsletter. We look forward to talking with you in the near future – whether over the phone, at conferences, or an onsite visit. If you have any questions or concerns, or would like to be added to the newsletter mailing list, you can visit website at [www.IPAIT.org](http://www.IPAIT.org) or call 800-872-4024.

## legal briefs

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formation pertaining to the discipline of two school employees after an alleged “locker room strip search” was conducted on five female students at the school. The district court concluded, as a matter of Iowa law, that the disciplinary records requested by the ACLU were “essentially in house, job performance documents exempt from disclosure” pursuant to Iowa Code section 22.7(11) (2009). The ACLU argues the district court erred in failing to apply a balancing test to determine whether the information was exempt from disclosure. **OPINION HOLDS:** Upon our review, we agree with the district court that the facts are undisputed and all that remains is a question of law. We further conclude the district court correctly applied the law to conclude the school district was not required to disclose the records requested by the ACLU, and we affirm the court's ruling in favor of the school district.

You can see summaries, archived opinions and sign up to receive e-mail updates when new opinions are released from the Iowa Court of Appeals here:

[http://www.iowacourts.gov/Court\\_of\\_Appeals/Opinions/](http://www.iowacourts.gov/Court_of_Appeals/Opinions/)

## capitol comments

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Boettger (Shelby), Bill Dix (Butler), Sandy Greiner (Washington), Hubert Houser (Pottawattamie), David Johnson (Osceola) and Tim Kapucian (Benton) and Democratic Representatives Dan Muhlbauer (Crawford) and Roger Thomas (Clayton) and Senators Gene Fraise (Lee) and Jack Kibbie (Palo Alto).

Legislators who have interacted with the county-managed mental health and disability services issues are more difficult to find. The former county officials listed above may have some recollection of the challenges of providing services with limited funding. In addition, Representative Lisa Heddens (D-Story) and Senator Pam Jochum (D-Dubuque) are both parents of children who have received services and Representatives Renee Schulte (R-Linn), a counselor, and Mark Smith (D-Marshall), a licensed independent social worker, have worked for service providers in the system. Senator Jim Seymour (R-Harrison) is a retired hospital executive.