

Attorney General's Opinions Clarify Role of County Government

Key Opinions: I cleaned up my office recently, and in going through stacks of old documents, I kept coming across the same Iowa Attorney General's opinions over and over again. That got me thinking. Out of the hundreds of opinions that the Attorney General has issued, there are a dozen specific opinions that tell us the most about county government in Iowa. So here is my list of those 12 opinions, in no particular order. For those of you playing at home, feel free to make up your own lists. All of these opinions are posted on the front page of the ISAC website: www.iowacounties.org.

June 19, 1985: This is the best Attorney General's opinion on county home rule as it applies to budgeting matters. It explains in great detail the role of the elected officials versus the role of the board of supervisors. It also describes how the board's authority is significantly curtailed once the budgeted money has been appropriated. If you have to choose the best Attorney General opinion on county government, this one gets my vote.

October 12, 1984: This opinion, regarding law enforcement communications equipment, says that boards of supervisors cannot enter into 28E agreements regarding the functioning of another elected county official's office without the approval of that other elected official. It reaffirms the idea that elected county officials have jurisdiction over their offices, despite the general supervisory authority of the board of supervisors.

April 25, 1979: This opinion discusses the fact that every expenditure of public money must have a clearly documented "public purpose." So in this case, the question was whether public money can be spent for a retirement dinner for a public employee. The answer was a qualified "yes."

December 24, 1990: What is the term of assistant county officers? They are considered employees at will who serve at the pleasure of the principal officer making the appointment.

July 3, 1979: With certain exceptions, a county law enforcement officer only has official powers within the geographical area of his employing county. These powers can be expanded through the use of a 28E agreement, says the Attorney General.

February 15, 2000: County supervisors may not require another elected county official to comply with their comprehensive hiring policy. The opinion also clarifies that county supervisors may not unreasonably refuse to approve appointments made by other elected county officials.

June 21, 1991: This opinion provides some guidance on the thorny issue of when a county board of supervisors has to pay for requested improvements in the district court facilities. The test is whether the improvements are necessary for the immediate, necessary, efficient, and basic functioning of the court. If not, then it is up to the board of supervisors to decide whether to comply with the request.

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April 27, 2001: This opinion tackles the age-old issues of conflict of interest and incompatibility of office. The opinion confirms that due to Iowa Code § 331.216, any county supervisor can be appointed to serve on any county board, including the conservation board and the board of health.

April 12, 2001: This opinion explains the statutory role of the board of supervisors and the county auditor regarding control over the courthouse and the maintenance and custodial personnel. The supervisors and the auditor both act as caretakers of the courthouse, but the auditor acts subject to instruction from the supervisors.

September 13, 1995: County supervisors have discretionary power to determine the number of deputies, assistants, and clerks hired by an elected official.

April 22, 1991: Regarding ordinances, Iowa Code § 331.302(5) allows a county board of supervisors to suspend the multiple reading requirement and to give final approval by affirmative vote at a single meeting.

April 28, 1993: This opinion goes through the traditional incompatibility analysis and explains, for instance, that veterans affairs commissioner and county supervisor are not incompatible because a position on the veterans affair commission is not an "office."

Hiring Outside Counsel: A recent district court decision from Pottawattamie County serves as a reminder about the perils of county officials hiring outside legal counsel. In *Pottawattamie County Board of Review v. Wilbur*, the county attorney and the county assessor disagreed about who should represent the county in assessment litigation. The assessor had routinely hired outside counsel on his own, but then the county attorney advised the assessor that an assistant county attorney was going to take over that role. The two county officials disagreed and this lawsuit resulted. The district court looked to the very similar 1994 Iowa Supreme Court case of *Polk County Conference Board v. Sarcone*, as well as Iowa Code § 441.4, and held that the assessment provisions in the Iowa Code require the county attorney to have control over assessment litigation and outside counsel's involvement.

That case was just limited to assessment litigation. But it follows the 2006 Iowa Supreme Court case of *Stream v. Gordy* (716 N.W.2d 187) which talks more generally about county officials hiring outside counsel. In that case, the court held that county officials do not have authority to hire outside counsel without the advance approval of the board of supervisors. And that if county officials do not secure this advance approval, they are personally liable for any attorney's fees incurred.

Parting Ponderable: "He who is outside the door already has the hard part of his journey behind him."
-Dutch proverb