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2000 Iowa AG LEXIS 30, \*

## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF IOWA

No. 00-2-3(L)

2000 Iowa AG LEXIS 30

February 15, 2000

**CORE TERMS:** elected, supervisor, clerk, appointment, deputy, county officer, hiring, approve, personnel, unreasonably, treasurer, county sheriff, board of supervisors, recorder, appoint, authority to require, appointed, jailer, county attorney, auditor, state law, case law, classification, capricious, discipline, frivolous, terminate, initiate, normally, signifies

**SYLLABUS:**

[\*1]

COUNTY AND COUNTY OFFICERS: Imposition of comprehensive hiring policy upon all county offices. [Iowa Code §§ 331.903, 331.904](#) (1999). County supervisors lack authority to require another elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve any appointments made by other elected county officers.

**REQUESTBY:**

Mr. Thomas S. Mullin  
Woodbury County Attorney  
300 Courthouse  
Sioux City, Iowa 51101

**OPINIONBY:**

Bruce Kempkes, Assistant Attorney General

**OPINION:**

You have requested an opinion on the authority of county supervisors over the personnel policies of other elected county officers. You ask whether county supervisors may require another elected county officer to comply with their comprehensive hiring policy and, if so, whether they may withhold approval of any appointments made by other elected county officers who do not comply with that policy. You also ask about the meanings of "deputies, assistants, and clerks" and "extra help and clerks," which elected county officers may appoint pursuant to statute.

These questions primarily implicate Iowa Code chapter 331 (1999). After reviewing chapter 331, we conclude that county supervisors may not require another [\*2] elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve appointments made by other elected county officers. We cannot, however, provide any definite meanings for "deputies, assistants, and clerks" and "extra help and clerks," as used in chapter

331; whether a particular position would fall within any of these job titles would likely require a determination of facts, which we cannot do in the opinion process.

## I.

Chapter 331 is entitled County Home Rule Implementation. It provides for the principal county officers who take office by election: supervisor, auditor, treasurer, recorder, sheriff, and attorney. It also provides for the appointment of various county personnel.

Chapter 331 sets forth the duties of the supervisors regarding personnel. Section 331.321(1) provides that the supervisors shall make appointments to various county positions, and section 331.322(3) provides that they "shall . . . fill vacancies in county offices . . . and make appointments" in accordance with state law. See generally Iowa Code §§ 331.322(2), 331.323.

Chapter 331 also sets forth the duties of the other elected county officers regarding [\*3] personnel. Section 331.904(4) authorizes the county auditor, treasurer, recorder, sheriff, and attorney to appoint "extra help and clerks" and places with the county supervisors the duty to determine the compensation for these persons. See generally Iowa Code §§ 341.7, 341.8. In addition to this authority, section 331.903 provides in part:

(1). The auditor, treasurer, recorder, sheriff, and county attorney may each appoint, with the approval of the board, one or more deputies, assistants, or clerks . . . . The number of deputies, assistants, and clerks for each office shall be determined by the board . . . .

(2). When an appointment has been approved by the board, the principal officer making the appointment shall issue a written certificate of appointment. . . .

(emphasis added). Accord Iowa Code §§ 331.503(1), 331.553(2), 331.603(2), 331.652(7), 331.758(2). See Iowa Code § 331.321(3) ("except as otherwise provided by state law, a person appointed to a county office may be removed by the officer or body making the appointment"), § 331.323(2)(g) (county supervisors "may . . . establish the number of deputies, assistants, and clerks" for the offices of county [\*4] auditor, treasurer, recorder, sheriff, and attorney). See generally Iowa Code § 4.1(30) (unless otherwise defined, "shall" in statutes imposes a duty and "may" confers a power).

## II.

### (A)

You have asked whether county supervisors may require another elected county officer to comply with their hiring policy and, if so, whether they may withhold approval of any appointments made by elected county officers who do not comply with that policy.

Prior case law and opinions have answered these related questions. In McMurry v. Lee County Board of Supervisors, 261 N.W.2d 688, 689-90 (Iowa 1978), the Supreme Court of Iowa held that county supervisors lacked authority to require all persons serving as deputies in any county office to have two years' experience. In a 1984 opinion, this office explained:

[Chapter 331] 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. . . .

The Supreme Court [\*5] [of Iowa 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. Lee County Board of Supervisors, which involved] the validity of board resolutions concerning personnel matters in another elective county office, the Court began its opinion with the following statement:

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

261 N.W.2d at 690. [See 1984 Op. Att'y Gen. 94 (# 83-11-4(L))] (board of supervisors does not have authority to initiate discipline against employees of elected county officials).

1984 Op. Att'y Gen. 167, 169-70. We then concluded that county supervisors, without the county sheriff's permission, may not enter into intergovernmental agreements to share a radio receiving set or to employ persons to perform the duties of jailers: the county supervisors [\*6] have a statutory duty to provide a radio receiving set to the county sheriff, and the county sheriff has the primary responsibility for hiring and supervising jailers. Id. at 168, 170.

In view of McMurry v. Lee County Board of Supervisors and our prior opinions, we must conclude that county supervisors lack authority to require another elected county officer to comply with their comprehensive hiring policy. See Polk County Conference Board v. Sarcone, 516 N.W.2d 817, 819 (Iowa 1994) ("no dispute that the county attorney has broad powers over his regular staff"); 1986 Op. Att'y Gen. 29, 30 ("Iowa law vests elected county officers with considerable autonomy, and holds those officers accountable to the electorate rather than to the board of supervisors"); 1984 Op. Att'y Gen. 94 (# 83-11-4(L)) (county supervisors may not initiate discipline against employees of elected county officers).

In view of other opinions and case law, we also conclude that county supervisors may not unreasonably refuse to approve appointments made by other elected county officers by relying upon [\*7] frivolous, trivial, minimal, arbitrary, or capricious grounds. See, e.g., Smith v. Newell, 254 Iowa 496, 117 N.W.2d 883, 887 (1962) (county supervisors may not unreasonably refuse to approve appointments of bailiffs and deputy made by county sheriff by relying upon frivolous, trivial, minimal, arbitrary, or capricious grounds; legislature intended that "common sense would be used by [them] in approving appointments made by other elected officers"); 1992 Op. Att'y Gen. 37 (# 91-7-3(L)); 1990 Op. Att'y Gen. 81 (# 90-8-1(L)) (county supervisors should recognize and approve any reasonable and proper appointment made by an elected county officer and may not terminate the employment of any person so appointed); 1986 Op. Att'y Gen. 29, 32 ("even when the supervisors are given a certain degree of statutory approval authority over elected county officers' functions, that authority must be exercised in a limited and reasonable manner"); see also 1980 Op. Att'y Gen. 495, 496 (county supervisors may not "terminate any employment as a method [\*8] of controlling department size" or "set employment prerequisites that are beyond [their] authority"; however, they may adopt a resolution "that freezes the hiring of new full-time personnel which would increase the size of any department").

**(B)**

Pointing to section 331.903(1), you have asked about the meaning of "deputies, assistants, and clerks": Which of these job titles properly encompasses such positions as secretary, office manager, cashier, administrative assistant, and bookkeeper? Similarly, you have asked about the meaning of "extra help and clerks" as used in section 331.904(4). Nothing in chapter 331 defines any of these titles or their corresponding duties and powers.

At the outset, we perceive a distinction between the positions mentioned in section 331.903(1) and those mentioned in section 331.904(4). See 1980 Op. Att'y Gen. 495, 496. See generally 3 E. McQuillin, *The Law of Municipal Corporations* § 12.27, at 189 (1990). The adjective "extra" in section 331.904(4) presumably modifies both "help" and "clerks" and suggests that an elected county officer can appoint a person or persons for relatively short duration to help handle [\*9] unexpected increases in workload or other office emergencies. See *Fullerton v. City of Des Moines*, 115 N.W. 607, 611 (Iowa 1908) ("extra" commonly expresses an idea of something beyond, in addition to, or in excess of what is due, usual, or necessary); Webster's Ninth New Collegiate Dictionary 403 (1979) ("extra," probably short for "extraordinary," means more than is usual); see also Crabb's English Synonyms 330 (1917) ("extraordinary" signifies that which is out of the ordinary course and is not normally expected). In contrast, nothing in section 331.903(1) necessarily suggests that an elected county officer's deputies, assistants, and clerks serve on a temporary basis; at the same time, such personnel serve at the pleasure of the elected officers, 1990 Op. Att'y Gen. 97 (# 90-12-5(L)).

Your question presumes that the positions mentioned in sections 331.903(1) and 331.904(4) have precise boundaries. See generally 3 McQuillin, *supra*, § 12.27, at 188-89. Nothing in their common definitions, however, necessarily signifies separate and distinct job responsibilities. See Webster's Ninth New Collegiate Dictionary [\*10] 67, 206, 303 (1979). Indeed, depending on the particular elected county officer, these subordinate positions may have overlapping responsibilities in certain areas.

Ordinarily, "deputies" have been authorized by principal officers to exercise their office or rights that they possess, for and in their place; as seconds-in-command, deputies may possess all the powers held by their principal officers. 3 McQuillin, *supra*, § 12.33, at 217-18; see *Brown v. Overturf*, 229 Iowa 329, 294 N.W. 568, 570 (1940). Ordinarily, "assistants" have been authorized, in part, to perform the duties and exercise the powers of their principal officers and rank higher than clerks. 3 McQuillin, *supra*, § 12.32, at 215-16; see *Carson v. Chicago, M. & St. P. Ry.*, 181 Iowa 310, 164 N.W. 747, 749 (1937); *State ex rel. City of Cincinnati*, 70 N.E.2d 881, 883 (Ohio 1947). Ordinarily, "clerks" have duties primarily clerical and lack any authority to exercise judgment and discretion of an administrative or executive character; however, they do not normally engage in manual labor. 3 McQuillin, [\*11] *supra*, § 12.34, at 221-22; see *First Jackson Sec. Corp. v. B.F. Goodrich Co.*, 176 So.2d 272, 278 (Miss. 1965); *State ex rel. Edgerly v. Currie*, 55 N.W. 858, 860 (N.D. 1893); *Amyot v. Caron*, 190 A. 134, 136 (N.H. 1937); *State ex rel. City of Cincinnati*, 70 N.E.2d 881, 883 (Ohio 1947); *In re Walker*, 144 A. 288, 289 (Pa. 1928).

In general, then, a deputy has greater job responsibilities than an assistant who, in turn, has greater job responsibilities than a clerk. Nevertheless, the broadly worded titles used in sections 331.903(1) and 331.904(4) simply do not lend themselves to the creation of neat classifications of the kind commonly used by business and government for such purposes as compensation, chain-of-command, and responsibility. Such classification would likely require a determination of facts, which we cannot do in the opinion process. See 1994 Op. Att'y Gen. 46, 47; see also 61 IAC 1.5(3)(c). It might, for example, involve a consideration of such matters as the type and number of duties [\*12] and powers, the form of compensation, custom, and comparable positions within private business and government. See generally 7 C.J.S. Assistant 15-16 (1980); 26A C.J.S. Deputy 496 (1956).

We thus cannot say what the phrase "deputies, assistants, and clerks" means as a matter of



law. Rather, the question which title attaches to a specific employee depends upon his or her specific job duties and "must be determined from the relation of the particular situation to the office or department with which it is connected." 3 McQuillin, supra, § 12.32, at 216. The responsibility to make that determination belongs within the province of the elected county officer. See 1998 Op. Att'y Gen. (# 98-2-2(L)). In this vein, we point out that all persons appointed by an elected county officer pursuant to sections 331.903(1) and 331.904(4) must necessarily serve as some type of deputy, assistant, or clerk, regardless of what other title (e.g., secretary, bookkeeper, or office manager) may attach to his or her job as a matter of custom or practice. A person can wear many hats, and an employee can have many titles. Stated otherwise, the common use of other titles within a [\*13] particular office does not mean that county supervisors may subject these persons to a comprehensive hiring policy on the ground that they do not fall within the rubric of "deputies, assistants, and clerks." This rule also applies to persons appointed by elected county officers pursuant to other statutes; those appointees remain subject to the authority of the elected county officer, not the county supervisors. See, e.g., 1984 Op. Att'y Gen. 167, 168 (county sheriff has duty to hire and supervise "jailer").

### III.

In summary: County supervisors may not require another elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve appointments made by other elected county officers. This office cannot provide any definite meanings for the phrase "deputies, assistants, and clerks" and "extra help and clerks," as used in Iowa Code sections 331.903(1) and 331.904(4) (1999); whether a particular position would fall within any of these job titles would likely require a determination of facts, which we cannot do in the opinion [\*14] process.

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