

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The text is centered on the slide.

COUNTY INDEPENDENT BOARDS

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DISCLAIMER:

THIS PRESENTATION CONTAINS THE PRESENTER'S VIEWS OF COUNTY GOVERNMENTAL STRUCTURE AND THE SHARING OF COUNTY POWERS FORMED OVER 25 YEARS ADVISING COUNTY AND CITY OFFICERS REGARDING THEIR DUTIES. THE CONCLUSIONS REACHED ARE THE PRESENTER'S AND ARE NOT AN OFFICIAL OPINION OR STATEMENT OF POLICY OF THE IOWA ATTORNEY GENERAL'S OFFICE. YOU SHOULD CONSULT WITH YOUR LEGAL COUNSEL PRIOR TO TAKING ACTION UPON INFORMATION CONTAINED IN THIS WEBINAR AS, BY NECESSITY, THIS PRESENTATION DEALS WITH GENERALIZED FACTS AND LAW, WHICH MAY NOT BE APPLICABLE TO YOUR SPECIFIC CIRCUMSTANCES.

The image features a light gray background with a subtle gradient. In the top-left and bottom-right corners, there are several realistic water droplets of various sizes, rendered with soft shadows and highlights to give them a three-dimensional appearance. The text is centered horizontally in the middle of the page.

COUNTY GOVERNMENT STRUCTURE

HOME RULE POWERS:

POWER TO PROTECT THE RIGHTS, PRIVILEGES, AND PROPERTY OF THE COUNTY, AND PRESERVE PEACE, SAFETY, HEALTH, WELFARE, COMFORT AND CONVENIENCE OF RESIDENTS EXCEPT...

- ONLY ON LOCAL AFFAIRS
- CAN'T LEVY A TAX WITHOUT STATE AUTHORITY
- CAN'T LOWER STATE STANDARD
- CAN SET HIGHER STANDARD- UNLESS STATE SAYS NO.
- IF CONFLICT CITY- THEN CITY PREVAILS
- MUST BE CONSISTENT WITH STATE LAW
- CAN'T REGULATE SALE/MARKETING CONSUMER GOODS.
- NO CONDITION ON FINANCING/TRANSFER TITLE TO REAL PROPERTY. **NEW**

LEGISLATURE CAN PREEMPT COUNTY POWERS

IOWA CODE §331.301- COUNTY POWERS/LIMITATIONS

A power of a county is vested in the board (of supervisors), and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

except as otherwise provided by law.

DIVISION OF COUNTY POWERS

BOS

County legislation

Taxes

Appropriations

Not assigned to others

Home Rule Powers

COUNTY ELECTED OFFICERS

duties defined by code
areas of expertise

County Powers

STATUTORY UNELECTED OFFICERS

Assessor

Engineer

County Boards/Commissions

Duties/power defined by code.

COUNTY CREATED OFFICERS/AGENCIES

powers delegated from BOS

WHY HAVE BOARDS/COMMISSIONS?

- BROADER INPUT/ PARTICIPATION INTO DECISIONS.
- BRING EXPERTISE/PERSPECTIVE TO PROCESS
 - HEALTH BOARD- ONE MEMBER –PHYSICIAN
 - VETERAN’S COMMISSION- MUST BE A VETERAN
- DEVELOP EXPERTISE IN AN AREA.
- FOCUS ISSUES
 - EX. ZONING COMMISSION
- MANAGE WORKLOAD.
- SAVE RESOURCES?

Islands of Power

County
attorney

Compensation
Board

Auditor

Conference
Board

Board of
Adjustment

***“WITH FEW EXCEPTIONS, HOWEVER,
OUR STATUTES ESTABLISH
AUTONOMOUS COUNTY OFFICES,
EACH UNDER AN ELECTED HEAD.”***

-MCMURRAY V. BD. OF SUPERVISORS, LEE COUNTY, 261 N.W.2D 688 (IOWA 1978) (BOS EXCEEDED POWER REJECTING APPOINTMENT OF DEPUTY COURT CLERK AND SETTING MINIMUM QUALIFICATIONS FOR POSITION).

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HOLDING MULTIPLE OFFICES

Islands of Power

Board of
Health

Compensation
Board

Conservation
Board

Civil Service
Commission

Zoning
Commission

STATUTORY LIMITS...

- IOWA CODE §39.11
 - STATE-WIDE ELECTED OFFICER CAN'T HOLD OTHER ELECTED OFFICES
 - OTHER **ELECTED** OFFICERS- CAN'T HOLD MULTIPLE **ELECTED** OFFICES **AT SAME LEVEL**
 - AG OPINION #93-9 -11 SAME LEVEL = SAME POLITICAL SUBDIVISION (NOT ALL LOCAL)

COMMON LAW LIMIT-INCOMPATIBLE OFFICES

- ONLY APPLIES TO **OFFICES**

Created by
legislative
authority

Delegated
sovereign
powers

Defined
duties

Independent
of superior
power

Permanency

Incompatible if...

- One office is subordinate to other or duties inherently inconsistent or repugnant (repugnant also means inconsistent)
- Duties render improper for one person to serve both
- Example: City mayor and County Board of Supervisor (Conference Board)

CONFLICT OF INTEREST

- ASK IF INDIVIDUAL'S OBLIGATIONS AND ALLEGIANCES TO OTHER PUBLIC OFFICES HELD, NONGOVERNMENTAL ACTIVITIES, AND RELATIONSHIPS HAVE THE POTENTIAL TO AFFECT THEIR ABILITY TO MAKE AN UNBIASED DECISION.
- PERSONAL , PROFESSIONAL/OTHER EMPLOYMENT, FINANCIAL- LIKELY SOURCES.
- APPLY TO INDIVIDUAL ACTIONS- NOT STRUCTURAL LIKE INCOMPATIBILITY.

COUNTY SUPERVISORS

- **IOWA CODE §331.216**
 - **UNLESS PROVIDED BY STATUTE, SUPERVISOR CAN SERVE ON APPOINTIVE BOARD, COMMISSION, OR COMMITTEE OF STATE, POLITICAL SUBDIVISION, OR NON-PROFIT AGENCY RECEIVING COUNTY FUNDS.**
 - **RELIEVES INCOMPATIBLE OFFICE BAR ON SERVICE, BUT DOES NOT RELIEVE CONFLICT OF INTEREST. OP. ATTY. GEN. #01-4-4(L).**
 - **CAN BOARD OF SUPERVISOR/ COUNTY CONSERVATION COMMISSION MEMBER VOTE ON BUDGET FOR COMMISSION?**
 - **IF CONFLICT OF INTEREST, REFRAIN FROM DISCUSSION AND VOTE.**

28E AGENCY MEMBER/ COUNTY OFFICER

- INTENT OF CREATING SEAT ON 28E BOARD IS TO ALLOW REPRESENTATION FOR MEMBER GOVERNMENTAL ENTITY
 - ATTY. GEN. #04-11-1 (COUNTY BOARD OF SUPERVISOR ALSO DIRECTOR OF SOLID WASTE CHAPTER 28E AGENCY DOES NOT CREATE A CONFLICT ABSENT CONFLICT IN ADDITION TO DUAL SERVICE).

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REMOVAL OF COUNTY BOARD MEMBER/COMMISSIONER

IOWA CODE §331.321(3)

- PROVIDES DEFAULT PROCESS FOR REMOVAL OF APPOINTED COUNTY BOARD/COMMISSION MEMBER.
- BOS ISSUES WRITTEN ORDER OF REMOVAL
 - GIVE REASONS FOR REMOVAL
 - FILED WITH AUDITOR
 - CERTIFIED MAIL TO
- REMOVED FROM OFFICE WITH AUDITOR FOR PUBLIC HEARING W/IN 30 DAYS
- PUBLIC HEARING W/IN 30 DAYS REQUEST-ON ALL ISSUES CONNECTED WITH REMOVAL

Name Clearing Hearing

IOWA CODE §331.321(3), CONT'D

- HELMICK V. LOUISA COUNTY BD. OF SUPERVISORS (IA. CT. APP. 9/12/2018),
- REMOVED HEALTH BOARD MEMBERS NOT ENTITLED TO PROCESS OTHER THAN IOWA CODE 331.321(3).
- OTHER COUNTY BOARDS HAVE SPECIFIC REMOVAL STANDARD.
 - CIVIL SERVICE COMMISSION-BY APPOINTING AUTHORITY FOR INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE IN OFFICE, OTHER GOOD CAUSE.
 - BOARD OF ADJUSTMENT- “FOR CAUSE” BY BOS ON WRITTEN CHARGES AT PUBLIC HEARING. IOWA CODE §335.11.
- HIGHER STANDARD FOR BODIES WITH “QUASI JUDICIAL” DUTIES- FOR INDEPENDENCE?

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QUASI-LEGISLATIVE/QUASI-JUDICIAL BOARD/COMMISSION ACTIONS

QUASI-LEGISLATIVE

- POLICY/RULE-MAKING
- APPLICABLE TO MULTIPLE PARTIES/ISSUES
- DETERMINE BEST INTERESTS OF THE COMMUNITY NOT INDIVIDUAL RIGHTS OF THE SPECIFIC PARTIES
- EXAMPLES:
 - BUILDING SETBACK STANDARDS FROM ROAD-ZONING
 - COUNTY PARK CLOSING HOURS

QUASI-JUDICIAL

- APPLYING STANDARD TO PARTICULAR FACTS
- DETERMINING RIGHTS OF INDIVIDUALS
- PROCESS LIKE A COURT HEARING
 - REQUIRED PUBLIC HEARING
 - READILY IDENTIFIABLE OPPONENTS AND PROPONENTS
 - LOCALIZED DECISION
 - AFFECTS PARTICULAR GROUP MORE ACUTELY THAN THE GENERAL PUBLIC
- EXAMPLES:
 - ZONING BOARD OR ADJUSTMENT- GRANT OF VARIANCE

WHY DOES IT MATTER?

- QUASI-JUDICIAL ROLE
 - DUE PROCESS REQUIRES:
 - IMPARTIAL DECISION-MAKERS
 - DECISION BASED ON INFORMATION **RECEIVED AT HEARING**
 - AVOID *EX PARTE* (OUTSIDE OF THE HEARING) CONTACTS.
- QUASI-LEGISLATIVE ROLE:
 - MATTERS OF GENERALIZED CONCERN/POLICY
 - NOT LIMITED TO CONSIDERATION OF INFORMATION AT MEETING.
 - DOES NOT REQUIRE MEMBERS BE NEUTRAL.

GENDER BALANCE- IOWA CODE §69.16A(2)

- REQUIRES GENDER BALANCE IN LOCAL GOVERNMENT BOARD, COMMISSION, COMMITTEES AND COUNCILS ESTABLISHED BY THE IOWA CODE.
- BALANCE MEANS = NUMBER IF EVEN # OF MEMBERS, ONLY PLUS ONE FOR ODD # OF MEMBERS.
- MAY EXCUSE IMBALANCE IF GOOD FAITH EFFORT TO FILL FAILED
 - AT LEAST 3 MONTH ATTEMPT
- MUST USE FAIR/UNBIASED PROCESS TO CHOOSE BEST QUALIFIED APPLICANTS

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COUNTY BOARDS/COMMISSIONS-EXAMPLES

COUNTY CONSERVATION BOARD

IOWA CODE CH. 350

- APPOINTED BY BOS
- POWERS:
 - CUSTODY AND ACQUIRE COUNTY PARKS/PRESERVE LANDS
 - ACCEPT GIFTS FOR CONSERVATION
 - CHARGE USER FEES, CONCESSIONS
 - RULES REGULATING FACILITIES- SIMPLE MISDEMEANOR
 - DESIGNATE EMPLOYEES AS PEACE OFFICERS TO ENFORCE HUNTING/FISHING/ATV/SNOWMOBILE LAWS
- CONSERV. BD. APPOINTS DIRECTOR, APPROVES SALARY, AND APPROVES EMPLOYEE/PAY DECISIONS OF DIRECTOR OP. ATTY. GEN. #00-11-1
- NON-REVERTING RESERVE FUND FOR LAND/CAPITOL PROJECTS
- COUNTY APPROPRIATION + MONEY CREDITED TO RESERVE FUND \geq CONSERVE. REVENUE + GIFTS
- POWER TO EXPEND WITHOUT REVIEW BY BOS.
- REMOVAL BY BOS- §331.321 (WRITTEN NOTICE WITH REASONS, REQUEST PUBLIC HEARING BEFORE BOS).



BOARD OF HEALTH- CH. 137

- APPOINTED BY BOS (AT LEAST 1 DR.)
- ENFORCE STATE HEALTH LAWS
- LOCAL HEALTH REGULATIONS – APPROVED BY BOS
- PROVIDE HEALTH, ENVIRONMENTAL HEALTH SERVICES (PRIVATE WATER/SEWER)
- EMPLOY PERSONS-SUBJECT TO STATE MERIT SYSTEM OR COUNTY CIVIL SERVICE PROCEDURES.
- BOH FIXES PAY OF EMPLOYEES – OP. ATTY. GEN. # 89-8-3(L)
- REMOVAL: BOS UNDER §331.321(3), HELMICK V. LOUISA COUNTY BOS



COUNTY CIVIL SERVICE COMMISSION- CH. 341 A

- APPOINTED: 2 MEMBERS BY BOS, 1 BY COUNTY ATTORNEY. ONLY 2 OF SAME PARTY. CAN'T HOLD OTHER ELECTED/APPOINTED PUBLIC OFFICE.
- DUTIES:
 - ADOPT RULES FOR TESTS AND PROMOTIONS FOR SHERIFF'S DEPUTIES
 - ADMINISTER TESTS FOR PROMOTION AND APPOINTMENTS
 - COMPILE LISTS OF QUALIFIED CANDIDATES
 - CLASSIFY INTO RANKS AND GRADES
 - HEAR & DETERMINE REMOVAL, SUSPENSION OR DEMOTION OF DEPUTY.
- REMOVAL: BY APPOINTING AUTHORITY FOR INCOMPETENCE, DERELICTION OF DUTY, MALFEASANCE IN OFFICE, OTHER GOOD CAUSE. §341 A.2.

COUNTY BOARD OF ADJUSTMENT

- APPOINTED BY BOS.
- DUTIES:
 - HEAR APPEAL OF ZONING DECISIONS.
 - HEAR REQUESTS –SPECIAL EXCEPTIONS TO ZONING ORDINANCE
 - CONSIDER AND GRANT VARIANCES.
 - NEED 3 OF 5 MEMBERS TO APPROVE.
- CAN ONLY BE REMOVED “FOR CAUSE” BY BOS. IOWA CODE §335.11.
 - WRITTEN CHARGES.
 - PUBLIC HEARING.

ZONING COMMISSION IOWA CODE §335.8

- APPOINTED BY BOS
- STUDY AND PROPOSE INITIAL ZONING DISTRICT BOUNDARIES AND REGULATIONS
- RECOMMEND ADOPTION OF COMPREHENSIVE DEVELOPMENT PLAN TO BOS.
- RECOMMEND AMENDMENT OR CHANGES TO ABOVE.
- DON'T MAKE BINDING DECISIONS.
- REMOVAL: IOWA CODE §331.321- WRITTEN OR WITH REASONS, HEARING ON REQUEST TO THE BOARD ON REASONS FOR REMOVAL.