

Source: [Iowa](#) > / ... / > [IA Attorney General Opinions](#) ⓘTerms: "June 19, 1985" ([Edit Search](#) | [Suggest Terms for My Search](#))*1985 Iowa AG LEXIS 8, *; 1985-86 Op. Atty Gen. Iowa 29*

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF IOWA

85-6-3

1985 Iowa AG LEXIS 8; 1985-86 Op. Atty Gen. Iowa 29

June 19, 1985

CORE TERMS: supervisors, elected, budget, expenditure, line item, appropriation, deputy, board of supervisors, approve, ordinance, county officer, decrease, appointment, estimate, auditor, county budget, fiscal year, disapprove, authorize, county official, county board of supervisors, general authority, home rule, compulsory, oversight, bailiffs, settle, budgeting, budgeted, coded

SYLLABUS:

[*1]

COUNTIES AND COUNTY OFFICERS; Board of Supervisors; County Budget; Authority of board of supervisors to refuse claims of elected county officers. Iowa Code §§ 331.433; 331.434; 331.435; 331.437; and 331.476 (1985). A county board of supervisors may not disapprove a claim submitted by elected county officers on the ground that claims exceeds the appropriation for the particular line item category that claim falls within.

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 relating to the authority of the board of supervisors over the budgets of other elected county officers. Your specific questions are as follows:

1. Does the Sioux County Board of Supervisors have the authority to refuse to approve a claim submitted to them by an elected county official when that claim would cause expenditures made under a specific line item categorization to exceed the amount appropriated for that line item by the Supervisors?
2. Does the Board of Supervisors have the ultimate authority to determine whether a claim is coded [*2] properly and paid out of the appropriate line item category?
3. What is the Auditor's responsibility in determining whether an official has properly coded his or her claim in such a way as to comply with the original budget categories?

This Office has previously held in a number of opinions that a county board of supervisors may not refuse to pay a claim filed by another county official if that claim is within the approved budget for that official's office and the expenditure is for a legitimate purpose. See 1982 Op.Att'yGen. 389 (#82-4-2(L)); 1980 Op.Att'yGen. 664; 1968 Op.Att'yGen. 614. Because we believe these opinions are relevant to your first question, further discussion of them, in particular the 1980 opinion, is appropriate.

In 1980 Op.Att'yGen. 664, we reviewed a number of statutory provisions, particularly those contained in Iowa Code ch. 344 (1979), n1 which related to the supervisors' authority over the county budget process. We noted these provisions vested the supervisors with considerable authority over that process. However, once the budgets submitted by other county officers were reviewed and approved by the supervisors, we concluded there was no express [*3] statutory authority which would authorize the supervisors to exercise any additional control over the budgets of elected county officials except to "examine and settle all accounts of the receipts and expenditures of the county, and to examine, settle and allow all claims against the county, except as otherwise provided by law." Iowa Code § 332.3(5) (1979). n2 See also Iowa Code §§ 331.437 and 331.476 (1985).

n1 Chapter 344 has since been repealed but reenacted, with some substantive changes, as Iowa Code §§ 331.433-331.437 (1985).

n2 A similar provision is now found in Iowa Code § 331.401(1)(g) (1985).

Following our review of this authority, we concluded the supervisors were required to exercise some oversight function with regard to the budget, but solely to ensure the following: (1) that claims submitted by other elected county officials were within that official's approved budget, and (2) that those claims were for a legitimate purpose. 1980 Op.Att'yGen. 664. This supervisory authority did not allow the supervisors to refuse to pay claims which otherwise satisfied this criteria. Id. Our conclusion relied in part on two Iowa Supreme Court decisions, which set [*4] forth the principle that Iowa law vests elected county officers with considerable autonomy, and holds those officers accountable to the electorate rather than to the board of supervisors. See 1980 Op.Att'yGen. 663, 665, citing McMurray v. Board of Supervisors of Lee County, 261 N.W.2d 688, 690 (Iowa 1978), and Smith v. Newell, 254 Iowa 496, 502-3, 117 N.W.2d 883, 887 (1962). Cf. Smith v. Board of Supervisors of Des Moines County, 320 N.W.2d 589 (Iowa 1982). If the supervisors had unlimited authority to refuse any claim submitted by other elected county officials, we reasoned, they could potentially interfere with or unduly hinder the official business of those elected county officials. This would be impermissible.

These previous opinions did not address the specific question of whether, after approving a line item budget, the supervisors could refuse a claim submitted by an elected county officer because that claim exceeds the amount appropriated for the particular line item category which that claim falls within. However, we believe the reasoning of these prior opinions and existing statutory and decisional law similarly requires us to conclude that refusal [*5] of such claims for this reason is impermissible.

The provisions governing county budgets are now found in Iowa Code §§ 331.433-331.437 (1985). They provide that county officers are to annually submit a budget "estimate itemized in the detail required by the board," showing "proposed expenditures of the office" and "an estimate of the revenues . . . to be collected for the county by that office" for the next fiscal year. § 331.433(1). Section 331.433(2) authorizes the board to consult with county officers concerning these estimates and requests and allows the board to "adjust the requests for any county office or department." First, the language of § 331.433(1) makes clear the supervisors are authorized to require county officers to submit a line item budget if the supervisors so choose. n3 Further, these sections provide that the budget figures submitted by county officers are proposals, or estimates, and that the supervisors have the authority at this stage of the

budget process to alter those figures.

n3 We can find no express statutory requirement in Ch. 331 or any other chapter that counties use line item budgeting. You state in your opinion request that the State Auditor's Office and the State Comptroller's Office likewise know of no requirement, other than that which may be imposed by the supervisors pursuant to § 331.433(1), that counties use line item budgeting. [*6]

The procedure for adoption of the final county budget by the supervisors is set forth in §§ 331.434(1) through (5). The final budget is final by definition. However, that final budget is based on figures which the statutory language recognizes can only be estimates or proposals, and subsequent statutory provisions recognize that this final budget is subject to change. See §§ 331.434(6) and 331.435. As the final step in the budget process, § 331.434(6) requires the supervisors to then appropriate the amounts deemed necessary for each county office and department for the next fiscal year, and further provides:

. . . Increases or decreases in these appropriations do not require a budget amendment, but may be provided by resolution at a regular meeting of the board, as long as each class of proposed expenditures contained in the budget summary published under subsection 3 of this section is not increased. However, decreases in appropriations for a county officer or department of more than ten percent or five thousand dollars, whichever is greater, shall not be effective unless the board sets a time and place for a public hearing on the proposed decrease and publishes notice [*7] of the hearing not less than ten nor more than twenty days prior to the hearing in one or more newspapers which meet the requirements of section 618.14.

This section authorizes the supervisors to alter the amounts appropriated to various county offices and departments without amending the budget, so long as actual expenditures do not exceed the amount of estimated expenditures published prior to adoption of the final budget. Increases in expenditures are allowed if the budget is amended pursuant to § 331.435. Thus, the supervisors control the actual amount of the total appropriation to each county office or department, and may increase or decrease that appropriation subject to the limitation applicable when a decrease in the appropriation exceeds ten percent or five thousand dollars. However, while the supervisors control the total amount of money appropriated to an elected county office, there is no express statutory authority which would allow the supervisors to exercise further control over particular expenditures from the budgets of elected county officers.

A more thorough review of two Iowa Supreme Court cases referred to above is appropriate at this point. In McMurray [*8] V. Board of Supervisors of Lee County, *supra*, the Court struck down several resolutions by the supervisors which attempted to prescribe employment policies for the deputies of elected county officers on the ground that these policies were beyond the board's statutory authority. The Court began its decision 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, our statutes establish autonomous county offices, each under an elected head.

McMurray, *supra*, 261 N.W.2d at 690. The Court, citing a number of opinions from this office, concluded that "authority over personnel matters relating to deputies resides with the elected principals unless a statute expressly gives authority to the board." *Id.* at 691. While the Court also based its decision on statutory provisions unrelated to the question at hand, and referred to the pre-home rule principle that the supervisors have only those powers expressly or impliedly conferred by statute, we believe the Court's overall view of the relationship between the supervisors and [*9] elected county officers was a significant factor in its decision and one that applies at the present time. The home rule implementation legislation, Ch. 331, has not fundamentally altered the relationship between boards of supervisors and other independently-

elected county officials.

The McMurray decision is consistent with the Court's earlier decision in Smith v. Newell, 254 Iowa 496, 117 N.W.2d 883 (1962). In that case the supervisors refused to approve the sheriff's appointment of several bailiffs and a deputy on the ground they were beyond the compulsory retirement age. A statutory provision existed which allowed an "employer" to approve continued employment of an employee beyond the compulsory retirement age. The Court concluded with regard to the bailiffs that the supervisors had no authority over such appointments and therefore the sheriff's decision to appoint them was final and could not be overruled by the supervisors. With regard to the appointment of the deputy, the Court held that, though the supervisors had statutory authority to approve appointments of persons serving as deputies for elected county officers, that authority could not be exercised in an [*10] unreasonable manner. The supervisors' refusal to approve this deputy's appointment on the basis of age and their subsequent refusal to consider the statutory exception to compulsory retirement were found by the Court to be unreasonable. In support of its decision, the Court stated:

In the case at bar it is the responsibility of the sheriff to keep the peace in the county, and to employ deputies who will assist him. This responsibility does not rest in the Board, nor any member thereof.

In granting to the sheriff and other county officers the power to appoint deputies, bailiffs, and other employees it was the intention of the legislature that the elected sheriff could secure as deputies, able and loyal people for public service.

Smith v. Newell, 117 N.W.2d at 887. This decision not only emphasized the autonomy of elected county officers from the board of supervisors in performing those functions delegated to them by statute but also affirmed that, 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 State v. Rhein [*11], 149 Iowa 76, 127 N.W. 1079 (1910) (board of supervisors has no authority to require county treasurer to deposit county funds in a bank selected by the board absent the treasurer's approval when the statute designates the treasurer as the county officer responsible for that decision).

This office has followed the Court's lead in these two cases in a number of opinions dealing with the relationship between the supervisors and elected county officers. See, e.g., Op.Att'y Gen. #84-10-5 (supervisors may not enter into a Ch. 28E agreement with other governmental entities for the provision of certain law enforcement functions without the approval of the sheriff); Op.Att'y Gen. #83-11-4(L) (supervisors may not initiate discipline against employees of elected county officers); Op.Att'y Gen. #83-6-9(L) (board of supervisors may provide longevity pay to certain county employees, but only elected county officers have authority to determine whether their deputies should receive longevity pay). Compare 1982 Op.Att'y Gen. 391 (supervisors may promulgate policy for reimbursement of certain expenses incurred by county officers and employees). n4

n4 In 1982 Op.Att'yGen. 391 [#82-4-11(L)] we concluded the supervisors have authority pursuant to home rule to adopt policies for the reimbursement of expenses incurred by county officers and employees, including elected officials, when attending meetings or schools of instruction. This opinion may be distinguished from other opinions which conclude the supervisors have no supervisory authority over elected county officials by the fact that the supervisors are expressly authorized by statute to approve claims for mileage and expenses of county officers and employees, Iowa Code § 331.324(1) (1985), including expenses for attending educational seminars, § 331.215(2). This specific authority differs from the general authority in the present case for the supervisors "to examine and settle all accounts of the receipts and expenditures of the county and all claims against the county, except as otherwise provided by law." § 331.401(1)(q). This general authority, read in conjunction with the statutes

discussed above governing the county budget process, §§ 331.433-331.437, does not give the supervisors the direct authority to disapprove otherwise proper claims of elected county officers. When the legislature fails to expressly vest the supervisors with specific authority over elected county officers, the supervisors may not interfere with an elected officer's exercise of his or her official duties. [*12]

A more recent decision of the Court, however, raises some concerns regarding these conclusions. In Smith v. Board of Supervisors of Des Moines County, 320 N.W.2d 589 (Iowa 1982), the supervisors adopted an ordinance under their home rule powers requiring all county officials, presumably elected county officers as well, to follow centralized purchasing procedures developed by the board. Violation of the ordinance constituted a simple misdemeanor. The Court upheld this ordinance against a challenge that the county home rule amendment was unconstitutional. Though it is unclear whether the issue was raised or argued by the parties, the Court went on to state:

. . . Finally, we note that the centralized-purchasing ordinance, is not inconsistent with any statute. In fact, section 332.10, The Code 1979, n5 expressly requires the defendants to provide the county officers such needs:

The board of supervisors shall also furnish each of said officers with fuel, lights, blanks, books, and stationery necessary and proper to enable them to discharge the duties of their respective offices, but nothing herein shall be construed to require said board to furnish any county attorney with [*13] law books or library.

n5 Section 332.10 was repealed in 1981; a similar provision is now found in Iowa Code § 331.322(1)(5) (1985).

We conclude the home-rule amendment and the ordinance under which it was enacted are not invalid on any of the grounds urged.

This language, in conjunction with the conclusion upholding the ordinance's applicability to all county offices, at least raises a question as to whether this opinion limits the Court's earlier statements concerning the autonomy of elected county officers. We believe it does not. First, the McMurray and Smith v. Newell decisions and their underlying principles were not even discussed in the Smith v. Des Moines County case. Second, this latter case may be distinguished on the ground that an ordinance requiring centralized purchasing involves minor housekeeping functions of county government and its effect on the ability of elected county officers to conduct their substantive business is insignificant. In this sense Smith v. Des Moines County may be contrasted with McMurray and Smith v. Newell, which dealt with personnel matters, and the present case, which concerns expenditure of budgeted funds, [*14] all issues which more directly affect an elected county officer's ability to perform his or her official duties.

With regard to elected county officers, we believe they must act in good faith when submitting budget proposals in accordance with § 331.433(1), and must reasonably attempt to follow the final budget adopted by the supervisors. Nonetheless, we believe that in order to properly fulfill their statutory duties and effectively exercise their responsibility to the people of the county, these officers must have the option of adjusting their budgets to fit the changing needs of their offices. See 1942 Op.Att'yGen. 88 (supervisors may increase salaries of employees in county engineer's office above the amount approved in the final budget so long as those adjustments may be made within the budget for that office). That flexibility is limited only by the appropriations made by the supervisors, the supervisors' general oversight authority over the budget of elected county officers as discussed in 1980 Op. Att'yGen. 664, and the provisions of §§ 331.437 and 331.476, set forth below.

We therefore conclude that a county board of supervisors may require line item budgeting,

[*15] but it may not disapprove claims submitted by elected county officers because the claims exceed the appropriation for the particular line item category that claim falls within. The supervisors may exercise a significant degree of control over elected county officers' budgets prior to adoption of the final budget, see § 331.433(2), but once the budget is final, the supervisors' authority is significantly curtailed. The board may increase or decrease appropriations subject to the provisions of § 331.434(6) and may allow increases in expenditures pursuant to § 331.435, but there is no authority to exercise more than this general authority in overseeing the budgets of elected county officers. Consistent with 1980 Op.Att'yGen. 664, the supervisors may only disapprove a claim when that claim exceeds the total amount budgeted for that county office or when that claim is for an unlawful item or purpose.

Of course, we note that all county officials are bound by the following provisions:

331.437 Expenditures exceeding appropriations.

It is unlawful for a county official, the expenditures of whose office come under this part, to authorize the expenditure of a sum for the official's **[*16]** department larger than the amount which has been appropriated for that department by the board.

A county official in charge of a department or office who violates this law is guilty of a simple misdemeanor. The penalty in this section is in addition to the liability imposed in section 331.476.

* * *

331.476 Expenditures confined to receipts.



Except as otherwise provided in section 331.478, a county officer or employee shall not allow a claim, issue a warrant, or execute a contract which will result during a fiscal year in an expenditure from a county fund in excess of an amount equal to the collectible revenues in the fund for that fiscal year plus any unexpended balance in the fund from a previous year. A county officer or employee allowing a claim, issuing a warrant, or executing a contract in violation of this section is personally liable for the payment of the claim or warrant or the performance of the contract.


We discussed these provisions in 1938 Op.Att'yGen. 77 in holding that the supervisors may not approve, and the auditor may not issue, warrants for claims which are in excess of available funds.


Your second and third questions concern the supervisors' and auditor's **[*17]** authority to ensure that claims are properly coded and paid out of the appropriate line item category in the original budget. As set forth above, the supervisors have authority to adopt a final budget, but there are no specific statutory provisions governing the supervisors' or the auditor's authority over the coding of claims against the budget. The supervisors' oversight authority over the budget is also set forth above, and §§ 331.437 and 331.476 impose penalties in the event a county officer expends an amount beyond that budgeted for his or her office. The only other arguably relevant statutory duty the supervisors have in this regard is found in § 331.303(1)(c), which requires the board to keep a claim register "which records all claims for money filed against the county" and details how that register is to be kept. Similar bookkeeping duties for the auditor are set forth in §§ 331.504(2), (5), (7), and (8).

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