

**A Manual
for
County Supervisors
of Iowa**

January, 2015

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Chapter 1

The Office of Supervisor

Scope of Authority

Under our form of government in Iowa, counties are empowered to perform any function to "protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents" except as limited by the constitution or a statute. Iowa Code §331.301(1). This broad power is a part of county home rule, and is vested in the county board of supervisors. *Id.* § 331.301(2); Iowa Const. amend. 25. The board of supervisors, therefore, serves as the governing body of county government.

The functions of the board of supervisors are varied and its authority embraces practically every aspect of county government. Although these functions are primarily administrative in nature, the board exercises powers and characteristics of each of the three branches of government: executive, legislative, and judicial. For example, the board fills vacancies in county offices by appointing successors, fixes rules relating to the use of county buildings and grounds, and determines the disposition of claims against the county. The board acts as a general business manager for county government, plays a major role in matters of county taxation and finance, and is the governmental authority responsible for the construction and maintenance of the county road system. In some areas the duties of the board are nominal, while in others they are extensive.

County Home Rule

Following is the text of the county home rule amendment:

"Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint county-municipal governments.

If the power or authority of county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of the state."

In deciding the validity of the county's ordinances, a court must consider two concepts: (1) the county's home rule authority, and (2) the state's power to preempt local action. These concepts and their interrelationship are set forth in Iowa's constitutional grant of county home rule authority. See Iowa Const. art. III, §39A (added by amend. 37 in 1978).

Under this constitutional amendment, counties have the power "to determine their local affairs and government," but only to the extent those determinations are "not inconsistent with the laws of the general assembly." *Id.* The goal of this amendment was to grant counties "power to rule their local affairs and government subject to the superior authority of the general assembly." *City of Clinton v. Sheridan*, 530 N.W.2d 690, 693 (Iowa 1995) (citing *Bechtel v. City of Des Moines*, 225 N.W.2d 326, 332 (Iowa 1975)).

The constitutional parameters of county home rule are echoed in Iowa Code chapter 331. Iowa Code §331.301 sets forth the general scope of a county's power and its limitations:

A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of

the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

Iowa Code §331.301(1). Pursuant to this provision, counties have the authority to act "unless a particular power has been denied them by statute." *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 703-04 (Iowa 1993).

The concept of home rule envisions the possibility that state and local governments will regulate in the same area:

A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

Iowa Code §331.301(6). Thus, subject to this restriction and principles of preemption, a county may exercise its home rule powers on matters that are also the subject of state law. See *Decatur County v. PERB*, 564 N.W.2d 394, 398 (Iowa 1997); *Sioux City Police Officers' Ass'n v. City of Sioux City*, 495 N.W.2d 687, 694 (Iowa 1993).

Preemption may be express or implied. Both forms of preemption find their source in the constitution's prohibition of the exercise of a home rule power "inconsistent with the laws of the general assembly." Iowa Const. art. III, §39A. Chapter 331 further defines this limitation: "An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law." Iowa Code §331.301(4).

Express preemption occurs when the general assembly has specifically prohibited local action in an area. E.g., *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372, 373 (Iowa 1977) (holding state has expressly proscribed local regulation of obscene materials). Obviously, any local law that regulates in an area the legislature has specifically stated cannot be the subject of local action is irreconcilable with state law.

Implied preemption occurs in two ways. When an ordinance "prohibits an act permitted by a statute, or permits an act prohibited by a statute," the ordinance is considered inconsistent with state law and preempted." *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990) (quoting *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983)).

Implied preemption may also occur when the legislature has "covered a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law." *Cain*, 342 N.W.2d at 812. Iowa law requires some legislative expression of an intent to preempt home rule authority, or some legislative statement of the state's transcendent interest in regulating the area in a uniform manner. This approach is consistent with the legislature's statement in chapter 331 that "[a] county may exercise its general powers subject only to limitations expressly imposed by a state law." Iowa Code §331.301(3) (emphasis added); accord *Gruen*, 457 N.W.2d at 343 ("Limitations on a municipality's power over local affairs are not implied; they must be imposed by the legislature.").

Joint Exercise of Powers

As a means of enhancing the scope of governmental activities that may be undertaken, the legislature, in chapter 28E of the Iowa Code, has granted broad authority to units of government to undertake activities jointly. This, in effect, has permitted a county to undertake activities, which may have been previously uneconomical or impractical due to a variety of limitations.

The board of supervisors is authorized to enter into agreements with other units of government and private agencies to provide joint services and facilities [Iowa Code §§331.304(1); 28E.1-.4]. (Note: Unless otherwise indicated, section and chapter references are to the Code of Iowa 2015).

The board, as well as the other participating government units must pass a resolution, before an agreement is effective. If the participating units so choose, a separate entity may be established to carry out the purposes of the act [Iowa Code §28E.4]. Otherwise, the agreement must provide for an administrator or a joint board. In the event a joint board directs the activities, all of the public bodies

must be represented [Iowa Code §28E.6].

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or co-operative undertaking by providing such personnel or services therefore as may be within its legal power to furnish. However, the manner of financing must be specified in the agreement, and all monies must be budgeted [Iowa Code §28E.5..11]. An entity may issue revenue bonds payable from the proceeds of the project, provided that the participating units may not withdraw while any of the bonds are outstanding [Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W. 2d 449 (1970)].

In addition, the agreement must contain provisions regarding the length of time an agreement is in force, the purpose of the agreement, and a permissible method of terminating the agreement and disposing of all property. If a separate entity is created, the precise organization, composition, and delegation of powers must be specified in the agreement [Iowa Code §28E.5].

The board may contract with other public agencies to perform any service, which any of the involved agencies are authorized to perform [Iowa Code §28E.12]. The powers granted by this chapter shall be in addition to any specific grant for intergovernmental agreements and contracts [Iowa Code §28E.13]. Iowa Code chapter 28E entities are not subject to the competitive bidding requirements that apply to cities and counties. *Envirogas, L.P. v. Cedar Rapids/Linn County Solid Waste Agency*, 641 N.W.2d 776 (2002).

References to specific joint exercises of power that appear throughout this manual also may be undertaken through the broad grant of power authorized by Iowa Code chapter 28E. It is advisable for the board to seek the advice of the county attorney regarding which provisions should be followed.

Qualifications

A person is eligible for election to the board of supervisors if the person is a registered voter of the county or supervisor district of the county that the supervisor represents [Iowa Code §331.201(2)]. A qualified elector is a person who is registered to vote in compliance with the requirements of [Iowa Code chapter 48 §§48A.5 and 48A.10].

Representation

Members of the board of supervisors are elected according to one of three plans; "Plan 1" requires election at large without district residence requirements for all members [Iowa Code §331.206(1)(a)]; "Plan 2" requires election at large for all members, but with equal population district residence requirements for the members [Iowa Code §331.206(1)(b)]; "Plan 3" requires election from single-member equal-population districts, in which the electors of each district shall elect one member who must reside in that district [Iowa Code §331.206(1)(c)]. Any plan adopted by the board must remain in effect for at least six years, unless modified by petition and special election [Iowa Code §331.206(2)].

Although the board of supervisors has the initial responsibility of selecting one of the three representation plans, the electorate may select a different plan in a special election. When petitioned by at least 10% of the number of qualified electors in the county who voted in the last previous general election for the office of president of the United States or the office of governor, the board must arrange for a special election to be held [Iowa Code §331.306]. A plurality of votes is sufficient for adoption of a representation plan [Iowa Code §331.207(4)]. When a plan is chosen in this manner, it must remain in effect for at least six years [Iowa Code §331.207(6)].

If the plan adopted by a plurality of the ballots cast in the special election is not the supervisor representation plan currently in effect in the county, the terms of the county supervisors serving at the time of the special election shall continue until the first day in January which is not a Sunday or holiday following the next general election, at which time the terms of all members shall expire and the terms of the members elected under the requirements of the new supervisor representation plan at the general election shall commence [Iowa Code §331.207(4)]. The determination as to whether

a term of office shall be for two or four years shall be decided by lot before the primary election, and the results of the determination indicated on the ballot in the primary and general elections [Iowa Code §331.208(4)].

For counties with a "Plan 2" or "Plan 3" a redistrict committee shall be appointed and the committee shall establish the supervisor districts [Iowa Code §331.210A]. If "Plan 3" is selected, the supervisor districts shall follow voting precinct lines [Iowa Code §331.210].

Membership of the Board

The board shall consist of three members unless the membership is increased to five as provided in [Iowa Code §331.203 and Iowa Code §331.201(1)].

Membership Increased

The board may by resolution, or shall upon petition of the number of eligible electors of the county as specified in Iowa Code §331.306, submit to the qualified electors of the county at a general election a proposition to increase the number of supervisors to five [Iowa Code §331.203(1)]. If the majority of the votes cast is in favor of the proposed increase, two additional supervisors are elected at the next general election [Iowa Code §331.203(2)].

Membership Decreased

The number of supervisors in any county may also be reduced from five to three. The question must be submitted to the voters in the manner described above [Iowa Code §331.204]. If the voters approve the decrease, a new board of supervisors must be elected at the general election following the election at which the question was submitted [Iowa Code §331.204(3)]. The terms of all members of the board holding office at the time the decrease was approved expire on the first day in January, which is not a Sunday, or holiday following the general election [Iowa Code §331.204(2)].

Term of Office

Generally, the term of office for elected members of the board of supervisors is four years [Iowa Code §331.201(4)]. The terms are staggered so that no more than a bare majority of the board will be elected in any given election. To accomplish this, elections are held biennially [Iowa Code §§39.18; 331.203(2)(a)(b); 204(3) and 208(2)(3)].

Whenever members are elected for terms other than four years, the length of the term of each office must be indicated on the ballot. Determination of the length of the term for the various candidates is to be decided by lot [Iowa Code §§331.203(2)(c); 204(3) and 208(4)].

Qualifying for Office

Whether appointed or elected, a supervisor must "qualify" before entering upon the duties of the office [Iowa Code §63.1]. "Qualifying" consists of subscribing to an oath of office [Iowa Constitution, Art. XI, Sec. 5; Iowa Code (2001) §63.10] and posting a bond in a penal sum of \$20,000 or more [Iowa Code §64.8]. If a supervisor chooses to furnish a bond with some association or corporation acting as surety, the reasonable cost of the bond is paid by the county [Iowa Code §64.11]. In general, a supervisor must qualify by noon of the first day which is not a Sunday or legal holiday in January of the first year of the term for which the supervisor is elected [Iowa Code §63.1]. Supervisors who are appointed or elected to fill vacancies must qualify within 10 days following their election or appointment, but an officer holding over in office must qualify within 10 days after failure to elect or appoint a successor or the successor's failure to qualify [Iowa Code §63.8].

Vacancies

A vacancy on the board of supervisors may occur in several ways: by failure to elect at the proper election, or to appoint within the time fixed by law; failure of the incumbent or holdover to qualify in time; incumbent ceases to be a resident of the county or district in which elected or appointed; resignation or death of the incumbent or officer-elect before qualifying; removal of incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant; conviction of the incumbent of a felony, an aggravated misdemeanor, or of any public offense involving the violation of the incumbents oath of office [Iowa Code §69.2].

If a supervisor is absent from the county for 60 days in succession, except for a medical emergency, the supervisor is deemed to have resigned from office and the board, at its next meeting, must declare the seat vacant [Iowa Code §§69.2(1)(g) and 331.214]. Iowa Code §69.2(1)(g), as the later and more specific enactment, prevails over Iowa Code §331.214, meaning that the medical emergency exception in Iowa Code §69.7 applies to county supervisors as well as other elected officials. [1998 WL 289862 (Iowa A.G.)]. Vacation of the office in this manner, however, does not render such former member ineligible for reappointment [1943 WL 74205 (Iowa A.G.)]. In addition, common law declares that the office of supervisor is vacant if the incumbent assumes the duties of an office that is incompatible with the duties of supervisor [State v. Anderson, 155 Iowa 271, 136 N.W. 128 (1919)]. Incompatibility usually exists when the duties of the offices held would cause conflicts of interest in the individual officer.

A supervisor may also be removed from office by the district court for several specific, statutorily defined reasons. These are: willful or habitual neglect or refusal to perform the duties of office; willful misconduct or maladministration in office; intoxication, or being convicted of intoxication; corruption; extortion; conviction of a felony; or conviction of violation of the provisions of Iowa Code chapter 56 (Campaign Finance Disclosure Law) [Iowa Code §66.1A].

Filling a Vacancy

A vacancy on the board of supervisors is filled by either appointment or election [Iowa Code §69.14a].

In order to fill the vacancy, an appointment is made by the committee of county officers designated in Iowa Code §69.8(4). The appointment shall be for the period until the next pending election as defined in Iowa Code §69.12, and shall be made within 40 days after the vacancy occurs. The committee shall publish notice in the manner prescribed by Iowa Code §331.305 stating that the committee intends to fill the vacancy by appointment, but that the electors of the district or county, as the case may be, have the right to file a petition requiring that the vacancy be filled by special election. Notice may be published in advance if an elected official submits a resignation to take effect at a future date. The committee may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. The person appointed to office in this manner shall have actually resided in the county or district that the appointee represents 60 days prior to appointment [Iowa Code §69.14A(1)(a)].

However, if within 14 days after publication of the notice or within 14 days after the appointment is made, whichever is later, a petition is filed with the county auditor requesting a special election to fill the vacancy, the appointment is temporary and a special election shall be called as provided in Iowa Code §69.14A(1)(b) below. The petition shall meet the requirements of [Iowa Code §§331.306 and §69.14A(1)(a)].

A vacancy may be filled by special election [Iowa Code §69.14A(1)(b)]. The committee of county officers designated to fill the vacancy in Iowa Code §69.8 may, on its own motion, or shall, upon receipt of a petition as provided in Iowa Code §69.14A(1)(a) above, call for a special election to fill the vacancy. The committee shall order the special election at the earliest practicable date, but giving at least 30 days' notice of the election. A special election called under this section shall be held on a Tuesday and shall not be held on the same day as a school election within the county [Iowa Code §69.14A(1)(b)].

Compensation

Supervisors shall receive an annual salary or per diem compensation which shall be full payment for all services rendered to the county, except for reimbursement for mileage and other expenses authorized below [Iowa Code §331.215(1)].

Compensation for members of the board of supervisors is based upon a compensation schedule recommendation made by the county compensation board and submitted to the board of supervisors at the public budget hearing [Iowa Code §§331.215(1); 322(6); 907; 321(1)(n); 905].

A supervisor is entitled to reimbursement for mileage expenses incurred while engaged in the

performance of official duties. Official duties are defined as including the actual and necessary travel to and from sessions of the board and all committee meetings [1988 Iowa A.G. 24, 1987 WL 119606].

The total mileage expense for all supervisors in a county shall not exceed the product of the rate of mileage multiplied by the total number of supervisors in the county times 10,000[Iowa Code §331.215(2)].

The board may also authorize reimbursement for mileage and other actual expenses incurred by its members when attending an educational course, seminar, or school which is related to the performance of their official duties [Iowa Code §331.215(2)].

Organization

At its first meeting in January, the board of supervisors must choose one of its members as chairperson who will preside at all meetings during the year [Iowa Code §§331.213 and 211(1)(a)]. While the selection of a chairperson should precede the transaction of any business, a delay in electing a chairperson does not impair the validity of any action taken by the board [Beattie v. Roberts, 156 Iowa 575, 137 N.W. 1006 (1921)]. The board may also elect a vice-chairperson who shall serve during the absence of the chairperson [Iowa Code §331.211(1)(a)].

Besides being the person who presides at the meetings of the board, the chairperson is given other responsibilities by the Code of Iowa. In a civil proceeding, notice may be considered to have been served upon the county by delivery to either the county auditor or to the chairperson of the county board of supervisors [Iowa Rule Civ. Pro. 1.305(9)].

The court for the trial of contested county elections shall consist of one person named by the contestant and one person named by the incumbent. If the incumbent fails to name a judge, the chief judge of the judicial district shall be notified of the failure to appoint. The chief judge shall designate the second judge within one week after the chief judge is notified. These two judges shall meet within three days and select a third person to serve as the presiding officer of the court. If they cannot agree on the third member of the court within three days after their initial meeting, the chief judge of the judicial district shall be notified of the failure to agree. The chief judge shall designate the presiding judge within one week after the chief judge is notified [Iowa Code §62.1A].

The board shall also, at its first meeting in January, choose one of its members to be a member of the board of directors of the judicial district department of correctional services as provided in [Iowa Code §905.3(1)(a)].

The auditor shall serve as clerk to the board unless the board, with the consent of the auditor, appoints a permanent clerk. In the absence of the auditor, the auditor's designee as clerk, or the permanent clerk, the board may appoint a temporary clerk. The permanent or temporary clerk appointed by the board shall provide the auditor with all information necessary for the auditor to carry out the requirements of [Iowa Code §331.504 and §331.211(2); Thompson v. Chambers, 229 Iowa 1265, 296 N.W. 380, 383 (1941)]. A county board of supervisors may not deny a deputy auditor access to a closed session to take minutes or tape record the session when the deputy has been designated to serve as secretary to the board in the absence of the auditor. [1992 Iowa Op. Atty. Gen. 179, 1992 WL 470382].

Standing committees, if any, are also appointed at the first meeting of the year. There is no standard list of committees used by each county. Some boards choose to divide the work among the supervisors according to districts. It must be remembered, however, that the action of individual supervisors cannot bind the board.

The board of supervisors shall substantially comply with a procedure established by state law for exercising a county power and is otherwise authorized to adopt rules of procedure to govern the conduct of its meetings [Iowa Code §331.301(5)]. The attorney general has held that in the absence of such adopted rules, the board is assumed to operate under recognized rules of order and parliamentary procedure. This requires, for example, that a motion must be recorded in the records even though it dies for a lack of a second [1976 WL 375936 (Iowa A.G.)]. The law in Iowa is that

parliamentary rules are established to aid in the orderly conduct of business, but that they can be waived or ignored by the board of supervisors, and measures passed contrary to established parliamentary rules are still valid and cannot be attacked on that basis. [State of Iowa v. DeCoster, 608 N.W.2d 785 (2000); Des Moines Register v. Dwyer, 542 N.W.2d 491 (1996)].

To a certain extent, formal universal rules (such as parliamentary law) may be modified to fit the peculiarities of an organization. Rules should not be rigid or inflexible. Certain situations call for suspension or amending of rules. To facilitate the smooth flow of business at the meeting and to assure that each board member will be allowed to contribute equally in the board's decisions, each member should be provided a written summary explaining how business is to be conducted under the rules adopted by the board.

Forms of Action by the Board

There are four forms of action that a board may take to exercise its powers or perform its duties. The board may pass a motion, a resolution, an amendment, or an ordinance [Iowa Code § 331.302(1)]. A motion carries the least legal weight of the four. Basically, a motion is an official decision that requires consenter decision by the board. A motion is passed by a majority of the quorum present. It should require no special form and should be effective immediately upon the official vote.

A resolution must also be passed by a majority of the board, and the auditor must record the vote of each member on the proposed resolution [Iowa Code §331.302(7)]. A resolution becomes effective upon passage and must be recorded and authenticated by the auditor by signing and certifying the action [Iowa Code §331.302(8)(9)].

Adoption of Ordinance

An ordinance requires a different set of rules to be followed for it to become effective. The subject matter of any ordinance must be described in the ordinance title [Iowa Code §331.302(3)]. A proposed ordinance must be passed in one of two ways. The first alternative is for the board to consider and vote on the passage of an ordinance at two meetings and then vote on final passage at a third meeting of the board. The board may suspend the requirement of consideration and passage at two prior meetings by a recorded vote of the majority of the board.

The second alternative is for the board to publish a summary of the proposed ordinance and make copies available at the office of the auditor prior to first consideration of the ordinance by the board. If this is done, the board must consider and pass the ordinance at one meeting prior to the meeting at which it is finally passed. This requirement may also be suspended by a majority vote of the board as under the first alternative [Iowa Code §331.302(6)]. Final passage of the ordinance requires an affirmative vote of a majority of the board and the vote of each supervisor is recorded [Iowa Code §331.302(7)].

It appears from the Code that considering it at three, two, or just one meeting may pass an ordinance. The purpose of the additional consideration requirements are to give the public notice of the actions the board proposes and an opportunity to be heard before the board makes final passage of an ordinance. The Code also provides the board a method of acting very quickly when the situation warrants an ordinance being passed and becoming effective as soon as possible. The desirability of public input and the need for immediate action should be carefully weighed any time the board considers waiving the requirements of initial consideration in [Iowa Code §331.302(6)].

The requirements for passage of an ordinance set out in Iowa Code §331.302 are the minimum standards the board must meet. The board should be free to establish stricter procedures if it desires to give the public more notice and a greater opportunity to become involved in the actions contemplated by the board of supervisors. The maximum penalties that may be imposed for violations of ordinances are a fine of \$625 and imprisonment for 30 days [Iowa Code §331.302(2)].

After final passage of an ordinance, the auditor must record the action, publish the ordinance in a local newspaper, and authenticate the ordinance by signing it and certifying the time and manner of publication. The auditor must also keep copies of all ordinances passed for public use [Iowa Code §331.302(8)(9)]. The ordinance will take effect upon the publication or at a later date if so

provided in the ordinance [Iowa Code §331.302(8)].

Whenever an effort is made to amend an ordinance, the specific ordinance must be repealed and the amendment must set forth in full the new ordinance as amended [Iowa Code §331.302(4)]. The amendment is subject to the same requirements for consideration, passage, recordation, and effective date as an ordinance [Iowa Code §331.302(6)-(9)].

As provided in Iowa Code §331.302(5), a county may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in Iowa Code §380.8 for adoption of a proposed code of ordinances containing a proposed new ordinance or amendment, subject to the following limitations:

1. The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.
2. A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed 30 days imprisonment and a \$500 fine.
3. Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are county infractions and subject to the limitations of [Iowa Code §§331.307 and 331.302(5)(b)].

The board is also required to compile a "code of ordinances" at least once every five years. The code must contain copies of all of the county ordinances in effect [Iowa Code §331.302(10)]. County ordinances are not invalid due to the failure of a board of supervisors to compile a code of ordinances at least once every five years. [1992 Iowa Op. Atty. Gen. 130, 1992 WL 470360 (Iowa A.G.)].

Liability

County supervisors have absolute immunity for legislative actions taken as part of their official duties [Teague v. Mosley, 552 N.W.2d 646 (1996)].

If a county supervisor is sued, counties have a duty to defend and indemnify officers and employees against any tort claims arising out of their employment [Iowa Code §670.8]. This duty will not apply to punitive damages awards or acts of willful and wanton act or omission the part of a supervisor [Iowa Code §670.4].

Meetings

The board of supervisors is required to hold its first meeting on the first day in January which is not a Saturday, Sunday, or holiday. All subsequent meetings are held as scheduled by the board and must be conducted in compliance with Iowa Code chapter 21 [Iowa Code §331.213]. A quorum must be present before such meetings may be conducted [Iowa Code §331.212(1)]. If a quorum fails to appear at any meeting, the county auditor must adjourn such meeting from day to day until a quorum is present [Iowa Code §331.213(2)].

Number Required to Act on Business

The following actions of the board require the affirmative vote of a majority of its membership [Iowa Code §331.212(2)]:

Levying a tax.

Entering into a contract for the erection of a public building.

Making a settlement with a county officer.

Buying or selling real estate.

Designating a new site for a county building.

Changing the boundaries of a township.

Appropriating money to aid in the construction of a highway or a bridge.

Appointing or removing an officer from office.

In all other cases, a majority of the members present, if there is a quorum, may transact business legally in the name of the board of supervisors. If the board is equally divided on a question when less than the full membership is present, the question shall be continued until all of the members of the board are present [Iowa Code §331.212(1)].

Definitions

A "meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter [Iowa Code §21.2(2)].

Open Meetings

Unless law expressly permits closed sessions, meetings of the board of supervisors must be open to the public [Iowa Code §21.3].

Exempt from Iowa Code chapter 21 are strategy sessions discussing matters relating to employment conditions of employees not covered by a collective bargaining agreement under Iowa Code chapter 20. Employment conditions mean areas included in the scope of negotiations listed in [Iowa Code §§20.9 and 21.9].

Notice

The board is required to give at least 24 hours advance public notice of the date, time, and place of the meeting and a tentative agenda [Iowa Code §21.4(1)(2)]. Iowa Code §21.4 requires that the notice be given "in a manner reasonably calculated to apprise the public..." The point is to give the public full opportunity for knowledge and participation. The adequacy of the notice must be determined on the basis of what the words in the agenda would mean to a typical citizen or member of the press who reads it. [Barrett v. Lode, 603 N.W.2d 766 (Iowa 1999)]

As much notice as is possible shall be given in such cases 24 hour notice is not possible [Iowa Code §21.4(2)]. Reasonable notice shall include advising the news media who have filed a request for notice with the board and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held [Iowa Code §21.4(1)]. Each meeting shall be held at a place reasonably accessible and at a time reasonably convenient to the public [Iowa Code §21.4 (2)].

Minutes

The board shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and the vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection [Iowa Code §21.3].

When it is necessary to hold a meeting on less than 24 hours' notice, or at a place that is not reasonably accessible to the public, or a time that is not reasonably convenient for the public, justification for such departure from normal shall be stated in the minutes [Iowa Code §21.4 (2)].

Closed Sessions

The board of supervisors may hold a closed session only by affirmative public vote of either two-thirds of the members of the board or all of the members present at the meeting. The board may hold a closed session only when necessary for the following reasons:

- a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.
- b. To discuss application for letters patent. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.
- c. To discuss the contents of a licensing examination or whether to initiate licensee

- disciplinary investigations or proceedings if the governmental body is a licensing or examining board.
- d. To discuss the decision to be rendered in a contested case conducted according to the provisions of [Iowa Code chapter 17A(12)].
 - e. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.
 - f. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.
 - g. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.
 - h. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
 - i. To discuss information contained in records in the custody of the governmental body that are confidential records pursuant to [Iowa Code §22.7(50) and 21.5(1)]

The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. There shall not be a discussion of any business during a closed session that does not directly relate to the specific reason announced as justification for the closed session [Iowa Code §21.5(2)]. Final action by the board of supervisors on any matter shall be taken in an open session unless some other provision of the Iowa Code expressly permits such actions to be taken in closed session [Iowa Code §21.5(3)].

The board of supervisors shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection, except upon court order in an action to enforce this chapter [Iowa Code §21.5(4)].

Rules of Conduct at Meetings

The public may use cameras or recording devices at any open session. However, the board may make and enforce reasonable rules for the conduct of its meetings to assure those meetings are orderly and free from interference or interruption by spectators [Iowa Code §21.7].

Electronic Meetings

The board may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the board complies with all of the following:

- a. The board provides public access to the conversation of the meeting to the extent reasonably possible.
- b. That reasonable notice is given and minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical [Iowa Code §21.8].

Examination of Public Records (Open Records)

Every person shall have the right to examine and copy public records and to publish or otherwise disseminate public records or information contained therein. The right to copy public records shall include the right to make photographs or photographic copies [Iowa Code §22.2(1)]. These rights are in addition to the right to obtain certified copies of records under [Iowa Code §622.46].

Public records include all records, documents, tape, or other information stored or preserved in any

medium, of or belonging to the county [Iowa Code §22.1(3)]. The records shall be available for public examination any time during the customary office hours [Iowa Code §22.4].

Such examination and copying shall be done under the supervision of the lawful custodian of the records. Reasonable rules may be adopted and enforced regarding such work and the protection of the records against damage or disorganization. A reasonable fee may be charged by the custodian of the records for supervision of the public examination and copying of records, providing photocopies, or providing space for such work if it is impractical to do such work in the custodians' office. The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service. Actual costs shall include only those expenses directly attributable to supervising the examination of and making and providing copies of public records. Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian [Iowa Code §22.3].

Confidential Records

The board needs to be familiar with all of the exceptions to the open records law, which is given in [Iowa Code §22.7]. Some of the most pertinent are listed below:

1. Reports to governmental agencies that, if released, would give advantage to competitors and serve no public purpose.
2. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.
3. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors, and school districts.
4. Records of identity of owners of public bonds or obligations maintained as provided in Iowa Code §76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.
5. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to [Iowa Code §252.25].
6. Communications not required by law, rule or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.

Notwithstanding this provision:

- a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
- b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.
- c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

The provision about unsolicited communications has been construed to allow cities and counties to keep completed job applications confidential. [City of Sioux City v. Greater Sioux City Press Club, 421 N.W.2d 895 (1988)].

The provision about personnel files has been held to allow public access to government records concerning specific compensation given to individual government employees, including details about salary, sick leave and vacation. The newspaper's request was denied as to gender, address and birth date information. [Clymer v. City of Cedar Rapids, 601 N.W.2d 42 (1999)].

Legal Assistance

The county attorney is required by law to furnish written advice and opinions, without compensation, to the board of supervisors upon request by the board. Request of the board must be limited to matters in which the state or county is interested; these include questions regarding the duties of the board and its members [Iowa Code §331.756(7)].

Conflict of Interest

A supervisor should not participate in the vote on any action by the board concerning a matter in which the supervisor has a vested interest. The safest action for the supervisor to take would be to abstain from voting on matters where the role as supervisor may conflict with the role as a private businessperson or affected resident of the county. A statement by the supervisor to decline to vote by reason of conflict of interest is conclusive, cannot be challenged, and must be entered of record [Iowa Code §331.302 (14)].

A measure voted on is not invalid because a supervisor had a conflict of interest, unless the vote of the supervisor was necessary for the measure to pass. If a majority or unanimous vote of the board is required, the vote shall be computed on the basis of the number of supervisors not disqualified by reason of conflict of interest. However, a majority of all the supervisors is necessary to constitute a quorum to carry on the business of the board [Iowa Code §331.302(13)].

Iowa Code §331.216 supersedes the common law regarding conflicts of interest and permits county supervisors to appoint one of their own members to serve simultaneously on an appointive county board such as the conservation board or the board of health. [2001 WL 34636269 (Iowa A.G.); 2001 WL 34636269 (Iowa A.G.)]

Gifts Accepted or Received

Except as otherwise provided in this section, a supervisor or that supervisor's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor [see Iowa Code chapter 68B.2(24)(a)-(d) for definition of restricted donor]. A public official, or that official's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time [Iowa Code §68B.22(1)]. A number of exceptions to the no gift rule are listed in Iowa Code chapter 68B.22 and the supervisor should become familiar with them.

Control of the Courthouse

Iowa Code §331.502 provides that the auditor "shall . . . have general custody and control of the courthouse, subject to the direction of the board [of supervisors]."

"In 1949, the Attorney General issued an opinion that specifically addressed the question whether the supervisors vis-a-vis the auditor had authority over courthouse personnel. They reviewed the foregoing case law and noted as well that, for many years, supervisors across the state had exercised the power of appointing courthouse janitors. They concluded that the supervisors, not the auditor, have authority to employ a janitor for the courthouse as well as other personnel therein." [1950 A.G. 19, 21-23]

In 2001, the Attorney General revisited the issue and concluded that the supervisors have authority to hire, fire, and assign maintenance and custodial personnel for the courthouse, purchase maintenance and custodial supplies for the courthouse, and determine the budget therefore. "These determinations align with their express authority over analogous matters. [Iowa Code §331.322(5),(10) (county supervisors shall furnish fuel, lights, and office supplies to county officers and supplies for the jail, and shall appoint and pay jail assistants), and Iowa Code §602.1303(1) (county shall provide custodial services for district court)."]

The Attorney General pointed out that nothing in Iowa Code chapter 331 would prohibit the supervisors from effectively transferring much of their responsibility over the courthouse and its personnel to the auditor, who, pursuant to Iowa Code §331.502, acts subject to the direction of the supervisors.

Chapter 2

Budgeting

The county finance committee (actually a state-level committee), composed of five elected county officials, a CPA in public practice, an operations research analyst, and the state auditor or his/her designee, is generally responsible for designing the form and content of county budgets and annual financial reports required by the Iowa Code chapter 333A).

County Property Tax Levies

Part of the purpose of preparing a budget is to certify property taxes. The board may certify four categories of property tax levies [Iowa Code §331.422]:

1. Taxes for general county services shall be levied on all taxable property within the county.
2. Taxes for rural county services shall be levied on all taxable property not within incorporated areas of the county.
3. Taxes in the amount necessary for debt service shall be levied on all taxable property within the county, except as otherwise provided by state law.
4. Other taxes shall be levied as provided by state law.

Basic Property Tax Levies and Associated Funds

There are two basic property tax levies, one for general county services and one for rural county services. Annually, the board may certify basic levies, subject to the following limits [Iowa Code §331.423]:

1. For general county services, \$3.50 per \$1,000 of the assessed value of all taxable property in the county.
2. For rural county services, \$3.95 per \$1,000 of the assessed value of taxable property in the county outside of incorporated city areas.

Basically, monies levied for general county services go into the general fund and monies levied for rural county services go into the rural services fund.

General Fund [Iowa Code §331.427]

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under Iowa Code §§91.11, 101A.3, 101A.7, 123.36, 123.143, 142D.9, 176A.8, 321.105, 321.152, 321G.7, 321I.8, 331.554(6), 341A.20, 364.3, 368.21, 423A.7, 428A.8, 433.15, 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.329, 556B.1, 583.6, 602.8108, 904.908, and 906.17, and the following:
 - a. License fees for business establishments.
 - b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.
 - c. Other amounts in accordance with state law.
2. Fees and charges including service delivery fees, credit card fees, and electronic funds transfer charges payable to a third party, not to the county, that are imposed for completing an electronic financial transaction with the county are not considered county revenues for purposes of subsection 1.
3. The board may make appropriations from the general fund for general county services, including but not limited to the following:
 - a. Expenses of a local emergency management commission under Iowa Code chapter 29C.
 - b. Development, operation, and maintenance of memorial buildings or monuments under Iowa Code chapter 37.
 - c. Purchase of voting systems and equipment under Iowa Code chapter 52.
 - d. Expenses incurred by the county conservation board established under Iowa Code chapter 350, in carrying out its powers and duties.

- e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.
 - f. Expenses relating to county fairs, as provided in Iowa Code chapter 174.
 - g. Maintenance of a juvenile detention home under Iowa Code chapter 232.
 - h. Relief of veterans under Iowa Code chapter 35B.
 - i. Care and support of the poor under Iowa Code chapter 252.
 - j. Operation, maintenance, and management of a health center under Iowa Code chapter 346A.
 - k. For the use of a nonprofit historical society organized under Iowa Code chapter 504, (Iowa Code 1989) or current Iowa Code chapter 504, a city-owned historical project, or both.
 - l. Services listed in Iowa Code §331.424(10) and 331.554.
 - m. Closure and post closure care of a sanitary disposal project under [Iowa Code §455B.302].
4. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

Rural Services Fund [Iowa Code §331.428]

- 1. Except as otherwise provided by state law, county revenues from taxes and other sources for rural county services shall be credited to the rural services fund of the county.
- 2. The board may make appropriations from the rural services fund for rural county services, including but not limited to the following:
 - a. Road clearing, weed eradication, and other expenses incurred under Iowa Code chapter 317.
 - b. Maintenance of a county library and library contracts under Iowa Code chapter 336.
 - c. Planning, operating, and maintaining sanitary disposal projects under Iowa Code chapter 455B.
 - d. Services listed under Iowa Code §331.424(2).
- 3. Appropriations specifically authorized to be made from the rural services fund shall not be made from the general fund, but may be made from other sources.

Supplemental Levies [Iowa Code §331.424]

To the extent that the basic levies are insufficient to meet the county's needs for the following services, the board may certify supplemental levies as follows:

- 1. For general county services, an amount sufficient to pay the charges for the following:
 - (1) To the extent that the county is obligated by statute to pay the charges for:
 - (a) The costs of inpatient or outpatient substance abuse admission, commitment, transportation, care, and treatment at any of the following:
 - (i) The alcoholic treatment center at Oakdale. However, the county may require that an admission to the center shall be reported to the board by the center within five days as a condition of the payment of county funds for that admission.
 - (ii) A state mental health institute, or a community-based public or private facility or service.
 - (b) Care of children admitted or committed to the Iowa juvenile home at Toledo.
 - (c) Clothing, transportation, medical, or other services provided persons attending the Iowa Braille and Sight Saving School, the Iowa School for the Deaf, or the University of Iowa Hospitals and Clinics' Center for Disabilities and Development for children with severe disabilities at Iowa City, for which the county becomes obligated to pay pursuant to Iowa Code §263.12, 269.2, and Iowa Code §270.4 through 270.7.
 - (2) Foster care and related services provided under court order to a child who is under the jurisdiction of the juvenile court, including court-ordered costs for a guardian ad litem under Iowa Code §232.71(C).
 - (3) Elections, and voter registration pursuant to Iowa Code chapter 48A.
 - (4) Employee benefits under Iowa Code chapters 96, 97B, and 97C, which are associated with salaries for general county services.

- (5) Tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the county, costs of a self-insurance program, costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.
 - (6) The maintenance and operation of the courts, including but not limited to the salary and expenses of the clerk of the district court and other employees of the clerk's office, and bailiffs, court costs if the prosecution fails or if the costs cannot be collected from the person liable, costs and expenses of prosecution under Iowa Code §189A.17, salaries and expenses of juvenile court officers under Iowa Code chapter 602, court-ordered costs in domestic abuse cases under Iowa Code §236.5, the county's expense for confinement of prisoners under Iowa Code chapter 356A, temporary assistance to the county attorney, county contributions to a retirement system for bailiffs, reimbursement for judicial magistrates under Iowa Code §602.6501, claims filed under Iowa Code §622.93, interpreters' fees under Iowa Code §622B.7, uniform citation and complaint supplies under Iowa Code §805.6, and costs of prosecution under Iowa Code §815.13.
 - (7) Court-ordered costs of conciliation procedures under Iowa Code §598.16.
 - (8) Establishment and maintenance of a joint county indigent defense fund pursuant to an agreement under Iowa Code §28E.19.
 - (9) The maintenance and operation of a local emergency management agency established pursuant to Iowa Code chapter 29C.
 - (b) The board may require a public or private facility, as a condition of receiving payment from county funds for services it has provided, to furnish the board with a statement of the income, assets, and legal residence including township and county of each person who has received services from that facility for which payment has been made from county funds under paragraph "a", subparagraphs (1) and (2). However, the facility shall not disclose to anyone the name or street or route address of a person receiving services for which commitment is not required, without first obtaining that person's written permission.
 - (c) Parents or other persons may voluntarily reimburse the county or state for the reasonable cost of caring for a patient or an inmate in a county or state facility.
2. For rural county services, an amount sufficient to pay the charges for the following:
- (a) Employee benefits under Iowa Code chapters 96, 97B, and 97C, which are associated with salaries for rural county services.
 - (b) An aviation authority under Iowa Code chapter 330A, to the extent that the county contributes to the authority under Iowa Code §330A.15.

Exceeding The Basic Levy Limits

The limits on the basic property tax levies can be exceeded in either of two ways:

- 1. By a special levy election [Iowa Code §331.425].
- 2. By the board certifying additions to the basic levies if unusual circumstances create a need for more monies than can be raised under existing levy limits [Iowa Code §331.426].

A special levy election is subject to the following provisions [Iowa Code §331.425].

- 1. The board must give notice to the county commissioner of elections, not later than February 15, that the election is to be held.
- 2. The election shall be held on the second Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.
- 3. The proposition to be submitted shall be substantially in the following form: Vote for only one of the following:
 Shall the county of _____ levy an additional tax at a rate of \$ _____ each year for _____ years beginning next July 1 in excess of the statutory limits otherwise applicable for the (general county services or rural county services) fund?
 or
 The county of _____ shall continue the (general county services or rural county services) under the maximum rate of \$ _____.
- 4. The canvass shall be held beginning at one o'clock on the second day which is not a holiday following the special levy election.
- 5. Notice of the proposed special levy election shall be published at least twice in a newspaper as specified in Iowa Code §331.305 prior to the date of the special levy election. The first notice shall appear as early as practicable after the board has decided to seek a special levy. The addition to the basic levy may be certified if the proposition receives a favorable majority of the votes cast.

An addition to the basic levies may also be certified if a county has unusual circumstances creating a need for additional taxes in excess of the limits permitted under [Iowa Code §331.423 through 331.425 and Iowa Code §331.426].

1. The basis for justifying an additional property tax under this section must be one or more of the following:
 - a. An unusual increase in population as determined by the preceding certified federal census.
 - b. A natural disaster or other emergency.
 - c. Unusual problems relating to major new functions required by state law.
 - d. Unusual staffing problems.
 - e. Unusual need for additional moneys to permit continuance of a program which provides substantial benefit to county residents.
 - f. Unusual need for a new program which will provide substantial benefit to county residents, if the county establishes the need and the amount of necessary increased cost.
 - g. A reduced or unusually low growth rate in the property tax base of the county.
2. The public notice of a public hearing on the budget, as required by Iowa Code §331.434(3), shall include the following additional information for the applicable class of services:
 - a. A statement that the accompanying budget summary requires a proposed basic property tax rate exceeding the maximum rate established by the general assembly.
 - b. A comparison of the proposed basic tax rate with the maximum basic tax rate, and the dollar amount of the difference between the proposed rate and the maximum rate.
 - c. A statement of the major reasons for the difference between the proposed basic tax rate and the maximum basic tax rate.

The information required by this subsection shall be published in a conspicuous form as prescribed by the county finance committee [Iowa Code §331.426].

Debt Service Tax Levy and Associated Fund [Iowa Code §331.430]

A separate tax levy may also be certified for debt service. This levy may be used to pay principal and interest on general obligation bonds issued by the county, for payments required to be made from the debt service fund under a lease or lease-purchase agreement, and to pay judgments against the county, except those authorized to be paid from other sources [Iowa Code §331.430(2)]. There is no specific rate limit for a debt service levy. The size of the debt service levy is effectively limited by the fact that most general obligation bond issuances must be approved by vote of the people. In addition, the amount of outstanding general obligation debt is constitutionally limited to five percent of assessed valuation [Article XI, Sec. 3, Constitution of the State of Iowa].

Other Property Tax Levies

A tax levy for flood and erosion control purposes, to be levied only against agricultural valuations. It is limited to six and three-fourths cents per \$1,000 of assessed value of all agricultural lands in the county [Iowa Code §161E].

Another tax levy is for united law enforcement under Iowa Code chapter 28E. The county levy is only on property outside of incorporated areas and it is limited to \$1.50 per \$1,000 of taxable valuation. A vote of the people is required to establish this levy [Iowa Code §§28E.21-.30].

Other Taxes

The board is required to levy a tax of one-half cent on each dollar of taxable valuation of legal and special reserves of credit unions, as defined in Iowa Code chapter 533. A \$40,000 exemption is given to each credit union. [Iowa Code §533.329].

The board of supervisors may levy a hotel and motel tax, at a rate not to exceed 7%, upon the sales price from the renting of lodging. However, before such tax may be imposed, it must be approved by a majority of the qualified electors voting in that county's general election.

The tax shall not apply to the following: (1) sales price from the renting of sleeping rooms in dormitories and memorial unions at all state of Iowa universities and colleges; (2) sales price from the renting of a room, apartment, or sleeping quarters while rented by the same person for a period of more than 31 consecutive

days; and (3) the sales price of lodging furnished to guests of a religious institution if the property is exempt under Iowa Code §427.1(8) and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally. [Iowa Code chapter 423A].

Local Option Taxes

Counties and cities also have the authority to impose two types of local option taxes--vehicle and sales. In each case, voter approval is required before imposition. The vehicle tax must be imposed county-wide while the sales tax may be imposed by individual cities within a county or county-wide. If a local option sales tax is imposed, the resulting revenue is distributed by a formula that considers the population and property tax levies of each participating jurisdiction. Vehicle tax money would be distributed based on the place of residence of the person registering the vehicle. In both types of taxes, very specific guidelines must be met in order to have the issue placed on the ballot [Iowa Code chapter 423B].

Other Funds

A county may establish other funds in accordance with generally accepted accounting principles. Taxes may be levied for those funds as provided by state law. The condition and operations of each fund shall be included in the annual financial report required in Iowa Code §331.403.

Unfunded State Mandates

If a state mandate is enacted by the general assembly, or otherwise imposed, on a county and the state mandate requires a county to engage in any new activity, to provide any new service, or to provide any service beyond that required by any law enacted prior to July 1, 1994, and the state does not appropriate moneys to fully fund the cost of the state mandate or the legislation does not specify the amount or proportion of the cost of the state mandate which the state shall pay annually, the county is not required to perform the activity or provide the service. Nor shall the county be subject to the imposition of any fines or penalties for the failure to comply with the state mandate [Iowa Code §25B.2]. However, this subsection does not apply to any requirement imposed on a county relating to public employee retirement systems under Iowa Code chapters 97B, 410, and 411.

For the purposes of this subsection, any requirement originating from the federal government and administered, implemented, or enacted by the state, or any allocation of federal moneys conditioned upon enactment of a state law or rule, is not a state mandate [Iowa Code §25B.2].

County Budget Forms

Supplemental Details

The county finance committee, through the department of management, prescribes the forms to be used for reporting the county budget. The budget must provide supplemental details for county expenditures by fund and function, and supplemental details for county revenues by fund and source. In addition, county budget worksheets must indicate proposed expenditures by department and object. These worksheets do not have to be filed with the department of management.

Summary of Proposed Budget

The summary of the proposed budget, as required by Iowa Code §331.434(3), must include the following information according to administrative rules promulgated by the county finance committee [Iowa Administrative code §547-4.1-.3]:

1. Amounts required for each of the ten major areas of county services:
 - a. Public safety and legal services;
 - b. Physical health and social services;
 - c. Mental health, MR, DD;
 - d. County environment and education;
 - e. Roads and transportation;
 - f. Government services to residents;
 - g. Administration;
 - h. Non-program current;
 - i. Debt service; and
 - j. Capital projects.
2. Property tax levies, estimated credits to taxpayers, and net current and delinquent

- property taxes.
3. Amounts anticipated from each of the following seven sources of revenues:
 - a. Penalties and interest on taxes;
 - b. Other county taxes;
 - c. Intergovernmental revenues;
 - d. Licenses and permits;
 - e. Charges for services;
 - f. Use of money and property; and
 - g. Miscellaneous revenues.
 - Beginning and ending fund balances.
 4. Other financing sources and uses.

On the summary forms, funds are reported by fund type. The groupings of funds should be clear from the headings on the detail forms. The general fund is the sum of the general basic and general supplemental funds. Special revenue funds are the sum of the rural services basic, rural services supplemental, secondary roads, and all other special revenue funds. The columns for capital projects, debt service, and expendable trust funds are simply the totals carried forward from the expenditures detail forms. Only the funds and fund types listed in the budget forms should be used on the materials sent to the state [Iowa Administrative code §547-5.1-.3].

Secondary Road Fund Provision [Iowa Code §331.429]

This section reads as follows:

1. Except as otherwise provided by state law, county revenues for secondary road services shall be credited to the secondary road fund, including the following:
 - a. Transfers from the general fund not to exceed in any year the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county multiplied by the ratio of current taxes actually collected and apportioned for the general basic levy to the total general basic levy for the current year, and an amount equivalent to the moneys derived by the general fund from military service tax credits under Iowa Code chapter 426A, manufactured or mobile home taxes under Iowa Code §435.22, and delinquent taxes for prior years collected and apportioned to the general basic fund in the current year, multiplied by the ratio of sixteen and seven-eighths cents to three dollars and fifty cents. The limit on transfers in this paragraph applies only to property tax revenue and is not a limit on transfers of revenue generated from sources other than property taxes.
 - b. Transfers from the rural services fund not to exceed in any year the dollar equivalent of a tax of three dollars and three-eighths cents per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county multiplied by the ratio of current taxes actually collected and apportioned for the rural services basic levy to the total rural services basic levy for the current year and an amount equivalent to the moneys derived by the rural services fund from military service tax credits under Iowa Code chapter 426A, manufactured or mobile home taxes under Iowa Code §435.22, and delinquent taxes for prior years collected and apportioned to the rural services basic fund in the current year, multiplied by the ratio of three dollars and three-eighths cents to three dollars and ninety-five cents. The limit on transfers in this paragraph applies only to property tax revenue and is not a limit on transfers of revenue generated from sources other than property taxes.
 - c. Moneys allotted to the county from the state road use tax fund.
 - d. Moneys provided by individuals from their own contributions for the improvement of any secondary road.
 - e. Other moneys dedicated to this fund by law including but not limited to Iowa Code §§306.15, 309.52, 311.23, 311.29, and 313.28.
2. The board may make appropriations from the secondary road fund for the following secondary road services:

- a. Construction and reconstruction of secondary roads and costs incident to the construction and reconstruction.
- b. Maintenance and repair of secondary roads and costs incident to the maintenance and repair.
- c. Payment of all or part of the cost of construction and maintenance of bridges in cities having a population of eight thousand or less and all or part of the cost of construction of roads which are located within cities of less than four hundred population and which lead to state parks.
- d. Special drainage assessments levied on account of benefits to secondary roads.
- e. Payment of interest and principal on bonds of the county issued for secondary roads, bridges, or culverts constructed by the county.
- f. A legal obligation in connection with secondary roads and bridges, which obligation is required by law to be taken over and assumed by the county.
- g. Secondary road equipment, materials, and supplies, and garages or sheds for their storage, repair, and servicing.
- h. Assignment or designation of names or numbers to roads in the county and erection, construction, or maintenance of guideposts or signs at intersections of roads in the county.
- i. The services provided under Iowa Code §§306.15, 309.18, 309.52, 311.7, 311.23, 313A.23, 316.14, 468.43, 468.108, 468.341, and 468.342, or other state law relating to secondary roads.

The County Budget Process

Departmental Budget Estimates

On or before January 15, each county officer and department must submit budget estimates to the auditor (Note: another official may be designated by the board as the budget official). The estimates must be itemized in the detail required by the board, and they must be consistent with existing county accounts. The estimates must show the proposed expenditures of the office or department for the next fiscal year, and must also include an estimate of the revenues, except property taxes, expected to be collected for the county by the office during the next fiscal year [Iowa Code §331.433(1)].

On or before January 20 of each year, the auditor shall compile the various office and department estimates and submit them to the board. In the preparation of the county budget the board may consult with any officer or department concerning the estimates and requests and may adjust the requests for any county office or department [Iowa Code §331.433(2)].

Proposed Budget

The budget shall show the amount required for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, the revenues from sources other than property taxation, and the amount to be raised by property taxation, in the detail and form prescribed by the director of the department of management [Iowa Code §331.434(1)].

Not less than 20 days before the budget certification date and not less than 10 days before the date set for the public budget hearing, the board shall file the budget with the auditor. The auditor shall make available a sufficient number of copies of the budget to meet the requests of taxpayers and organizations and shall have them available for distribution at the courthouse or other places designated by the board [Iowa Code §331.434(2)].

The board shall set a time and place for a public hearing on the budget before the final certification date and shall publish notice of the hearing in the county newspapers selected under Iowa Code chapter 349 not less than 10 nor more than 20 days prior to the hearing. A summary of the proposed budget, in the form prescribed by the director of the department of management, shall be included in the notice. Proof of publication shall be filed with and preserved by the auditor. A levy is not valid unless and until the notice is published and filed [Iowa Code §331.434(3)].

At the hearing, a resident or taxpayer of the county may present to the board objections to or arguments in favor of any part of the budget [Iowa Code §331.434(4)].

After the hearing, the board shall adopt by resolution a budget and certificate of taxes for the next fiscal year and shall direct the auditor to properly certify and file the budget and certificate of taxes as adopted. The board shall not adopt a tax in excess of the estimate published, except a tax which is approved by a vote of the people, and a greater tax than that adopted shall not be levied or collected. A county budget and certificate of taxes adopted for the following fiscal year becomes effective on the first day of that year [Iowa Code §331.434(5)].

The local budgets of the various political subdivisions shall be certified by the chairperson of the certifying board or levying board, as the case may be, in duplicate to the county auditor not later than March 15 of each year on forms, and pursuant to instructions, prescribed by the department of management. However, if the political subdivision is a school district, as defined in Iowa Code §257.2, its budget shall be certified not later than April 15 of each year. [Iowa Code §24.17]

One copy of the budget shall be retained on file in the office by the county auditor and the other shall be certified by the county auditor to the state board. The department of management shall certify the taxes back to the county auditor by June 15. [Iowa Code §24.17].

Appropriations

The board shall appropriate, by resolution, the amounts deemed necessary for each of the different county officers and departments during the ensuing fiscal year. 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 published budget summary is not increased. However, decreases in appropriations for a county officer or department of more than 10% or \$5,000, 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 of the hearing not less than 10 nor more than 20 days prior to the hearing in the county newspapers selected under Iowa Code chapter 349 [Iowa Code §31.434(6)].

Budget Amendments

The board may amend the adopted county budget, subject to Iowa Code §§331.423 through 331.426 and other applicable state law, to permit increases in any class of proposed expenditures contained in the published budget summary. [Iowa Code §331.435]

The budget amendment must be prepared and adopted in the same manner as the original budget and is subject to protest the same as the original budget; except that the director of the department of management may by rule provide that amendments of certain types or up to certain amounts may be made without public hearing and without being subject to protest. [Iowa Code §331.435]

A county budget for the ensuing fiscal year shall be amended by May 31 to allow time for a protest hearing to be held and a decision rendered before June 30. An amendment of a budget after May 31 which is properly appealed but without adequate time for hearing and decision before June 30 is void [Iowa Code §331.435].

Budget Appeals

Protests to the proposed budget of any local government must be filed with the county auditor by March 25. (If a budget is certified after March 15, however, all appeal time limits are extended to correspond to allowances for a timely filing.) [Iowa Code §24.27]. An appeal for a county must be signed by at least $\frac{1}{4}$ of 1% of those voting for the office of governor at the last general election. The number signing the appeal must be at least 10, but need not be more than 100. The appeal must state the objections to the budget, expenditures, or tax levy and the grounds for the objections. [Iowa Code §24.27]

When the protest is filed, the county auditor must immediately prepare a complete copy of the protest, together with the budget, tax levy, or expenditure to which the objections are made. The auditor must then transmit this information to the State Appeal Board. The auditor must also send a copy of the

protest to the appropriate certifying board or levying board. [Iowa Code §24.27]

After the hearing by the appeal board, the appeal board certifies its decision to the county auditor and to the parties appealing. The auditor must then correct his/her records in accordance with the appeal board's decision, and the levying board must make its levy in accordance with the new decision. [Iowa Code §24.32]

Protests of amendments to budgets are considered within the same general procedures and time constraints as are applicable to original budgets. A budget must be amended by May 31 of the current fiscal year to allow time for a protest hearing to be held and a decision rendered before June 30. The amendment of a budget after May 31, which is properly appealed but without adequate time for hearing and decision before June 30, will be ruled null and void [Iowa Code §331.435].

Public Purpose Doctrine

Section 31 in article III of the 1857 Iowa Constitution limits county expenditures. It provides in part that "no public money or property shall be appropriated for local, or private purposes, unless such appropriation . . . be allowed by two thirds of the members elected to each branch of the [General Assembly]." Case law and prior opinions have applied the principle expressed in section 31--known as the "public purpose requirement" or the "public purpose doctrine"—to counties and other political subdivisions. See, e.g., Love v. City of Des Moines, 210 Iowa 90, 230 N.W. 373, 378 (1930); 1998 WL 541522 (Iowa A.G.); 1996 Iowa Op. Atty. Gen. 98, 1996 WL 776647 (Iowa A.G.).

It is impossible to conceive of a public improvement which will not incidentally benefit some private individual engaged in private enterprise for private gain. 15 E. McQuillin, *The Law of Municipal Corporations* §39.19, at 39 (1995) (footnote omitted). Accordingly, the public purpose requirement prohibits the expenditure of public funds 'strictly for private gratification.'

The phrase 'public purpose' has a flexible and expansive scope. John R. Grubb, Inc. v. Iowa Hous. Fin. Auth., 255 N.W.2d 89, 93 (Iowa 1977). It should not be construed narrowly. Dickinson v. Porter, 35 NW2d 66 (Iowa 1948). Like beauty in the eye of its beholder, a public purpose may take many forms. The proper inquiry for the public purpose requirement is to determine if a public interest is served, regardless of whether incidental private purposes exist. In other words, a violation occurs in the absence of any public purpose.

A challenger to an expenditure of public funds bears the heavy burden of showing its unconstitutionality beyond a reasonable doubt and negating every reasonable basis in its support. 1998 Op. Atty Gen. (# 98-1-2(L)). The absence of any public purpose must be so clear as to be perceptible by every mind at first blush. 1996 Op. Atty Gen. 9, 11 (citations omitted). As a result, courts generally do not invalidate expenditures. See 2000 Op. Atty Gen. (# 99-6-1 (L)). Each case, however, "must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare." 15 McQuillin, *supra*, at 40 (footnote omitted).

The existence of a public purpose in any given situation typically depends upon an assessment of specific facts and circumstances. See, e.g., 1990 Op. Atty Gen. 79 (# 90-73(L)) (public purpose requirement does not *per se* prohibit cities and counties from providing loans to private businesses in order to create jobs). Certain expenditures, however, generate no dispute among reasonable minds about their public purpose. The construction of buildings for education or athletics is a public purpose. 15 McQuillin, *supra*, at 50. The promotion of public health is a public

purpose. *Fleming v. Hull*, 73 Iowa 598, 35 N.W. 673, 678 (1887). Indeed, the General Assembly has expressly invested counties with statutory authority to preserve or improve the public welfare, comfort, and convenience as well as the public health. See Iowa Code § 331.301(1).

We can therefore conclude as a matter of law that a county may contribute money to a regional wellness center, owned and operated by a school district, which will have an aquatic area, track, cardio-respiratory room, and other facilities that promote good health.

Nevertheless, a county should make findings on the public purpose underlying the expenditure if it is in doubt. See 1990 Op. Att'y Gen. 11 (# 89-2-6(L)); 1986 Op. Att'y Gen. 113, 119; see also 1996 Op. Att'y Gen. 9, 12 ("legislative declaration of public purpose underlying statute controls courts if 'zone of doubt' exists about statute's public purpose"). Cf. 1976 Op. Att'y Gen. 604, 605 ("funds appropriated by [a] county to a nonprofit corporation do not constitute an unrestricted gift," but must be applied "to those purposes set out [by] statute).

We have previously explained that in determining whether a specific expenditure would serve public rather than private purposes, a court would review the adequacy of the governing body's findings of public purpose and the reasonableness of achieving that purpose through the expenditure. The court would also consider any evidence tending to show that the expenditure is in fact for a private purpose. 1986 Op. Att'y Gen. 113, 118.

2001 Iowa AG LEXIS 12, No. 1-4-2(L) (April 27, 2001).

Preparing the County Road Budget

On or before April 15 of each year, the board of supervisors, with the assistance of the county engineer, shall adopt and submit to the department of transportation for approval the county secondary road budget for the next fiscal year [Iowa Code §309.93].

Included in the budget shall be an itemized statement of: (1) estimated revenues to be raised by property taxation for secondary roads, (2) estimated revenues to be received from the state road use tax, (3) estimated revenues received from all other sources for secondary road purposes, (4) the proposed expenditures from the road fund during the next fiscal year (the estimates of such proposed expenditures shall be itemized and classified in a manner which the department shall prescribe), the actual expenditures for the preceding two fiscal years and the estimated expenditures for the current fiscal year (these shall be itemized and classified in the same manner as the proposed expenditures), (6) the cash balance of the road fund at the end of the preceding fiscal year, an estimate of the cash balance at the end of the current fiscal year, and an estimate of the cash balance at the end of the next fiscal year; and (7) A detailed cost accounting of all instances in the previous fiscal year of the use of day labor or public or private contracts for construction, reconstruction, or improvement projects on either the farm-to-market or secondary road system, in the manner prescribed by rule of the department under Iowa Code §314.1A. The statement shall also include the costs of purchasing, leasing, or renting construction or maintenance equipment and an accounting of the use of such equipment for construction, reconstruction, or improvement projects on either the farm-to-market or secondary road system during the previous fiscal year. [Iowa Code §309.93].

The department of transportation has the power to approve or to disapprove the budget adopted by the board of supervisors. The department will act upon the budget and return the budget to the county not later than June 1. In the event the budget is not approved by the department, the department shall state the reasons for disapproval when the budget is returned to the county [Iowa Code §309.94]. In the event that a county secondary road budget or amended budget thereto is disapproved by the department, the county may elect either to revise such budget or amended budget so as to receive approval or the county may elect to operate with such disapproved budget or amended

budget. Within 20 days of receipt of budget or amended budget disapproval, the board of supervisors shall publish a notice of a public hearing to be held within 10 days of publication. At the hearing the department recommendations shall be considered, and the board of supervisors shall amend or adopt its original budget [Iowa Code §309.96(2)]. If the board of supervisors amends the budget, a revised budget may be submitted to the department for approval. The department will act upon the revised budget within 30 days [Iowa Code §309.94].

No county may spend money from its secondary road fund in excess of the amount fixed in the budget adopted by the board of supervisors, whether such budget is approved or disapproved by the department of transportation. In order to permit any county to adjust its secondary road income to changing needs that may occur after the budget has been approved, the expenditures for any individual item within the budget may exceed by not more than 10% the amount originally budgeted for that item without permission from the department. This may be done only if other items are less than budgeted so that the total expenditures from the secondary road fund do not exceed the total secondary road budget [Iowa Code §309.96(1)].

A secondary road budget, after final adoption by the board of supervisors, is binding in all cases unless bona fide unforeseen conditions arise. In such cases the board may amend the budget and submit the amendment to the department for approval. If the amendment is not approved, the same hearing procedure is used as in the case of the original budget [Iowa Code §309.95]. It should be kept in mind that amendments to an adopted budget are permitted only in cases of unforeseen circumstances. For that reason it is imperative that any amended budget be accompanied by adequate documentation to remove all doubts as to the actual need for the amendment.

Project Priority List

On or before April 15 of each year the board shall, subject to the approval of the department of transportation, adopt a road project accomplishment list for the next fiscal year, and a project priority list for the succeeding four fiscal years based upon the construction funds, local, secondary, and farm-to-market, estimated to be available for the period. Subject to department approval, any project on the approved priority list may be advanced to and constructed in the accomplishment year and the project accomplishment list may be revised due to unforeseen conditions [Iowa Code §309.22]. The purpose of such lists is to encourage judicious planning and inform the public of how, when, and where public funds are to be expended.

Levying Taxes of Other Taxing Authorities

Local Government Levies

The board of supervisors is required to levy taxes sufficient to produce an amount required for the various taxing bodies as certified to it by the certifying boards of those bodies [Iowa Code §24.19]. The board cannot levy a tax in excess of any limitation imposed by the constitution and the laws of the state [Iowa Code §24.15]. Among the taxes certified to the board are those of schools, cities, conference boards, area community colleges, and several special districts and taxing authorities [Iowa Code chapter 24].

Other Levies

If funds from other sources are insufficient, the state secretary of agriculture may certify to the county auditor a levy for the state brucellosis and tuberculosis eradication fund [Iowa Code §165.18]. This levy is not included within the county's budget and is handled as if the state were another taxing authority.

Benefited Water District Tax

Whenever a water district has been established under the provisions of Iowa Code chapter 357, and when sufficient funds are not available from the assessments to pay the interest and retire the bonds issued for the water district improvements, the board of supervisors is required to levy the annual tax of \$0.81 per \$1,000 of assessed value of taxable property so long as the bonds are in arrears. This tax is levied only on property within the particular benefited water district [Iowa Code §357.22-.23].

Chapter 3

Business Management and Finance

Duties Pertaining to Tax Collection

After the taxes have been levied, the county auditor and the county treasurer assume most of the responsibility for the collection of the taxes. The board of supervisors, however, has a few important duties relating to the collection of taxes.

Remission of Taxes

If a taxpayer has suffered property losses because of fire, tornado, or some other unavoidable casualty, the board may exercise its discretionary powers and remit his/her taxes up to the full amount of taxes paid. The limitations on this power are that the property must not have been sold for delinquent taxes nor must the taxes have been delinquent for more than 30 days. Also, the loss for which refund is permitted is only that part of the loss not covered by insurance [Iowa Code §445.62].

Tax Compromises

If the county holds the tax sale certificate of purchase, the county, through the board of supervisors, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs. In the event of a compromise, the board may enter into a written agreement with the owner of the legal title or with any lien holder for the payment of a stipulated sum in full satisfaction of all amounts included in that agreement. In addition, if a parcel is offered at regular tax sale and is not sold, the county, prior to public bidder sale to the county under Iowa Code §446.19, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs, as provided in this section [Iowa Code §445.16]. A copy of the agreement or resolution shall be filed with the county treasurer [Iowa Code §445.16].

Tax Suspension

Whenever a person is unable to contribute to the public revenue, he or she may file a petition with the board of supervisors stating that fact and giving a statement of parcels, as defined in Iowa Code §445.1, owned or possessed by the petitioner, and other information as the board may require. The board then may order the county treasurer to suspend the collection of taxes assessed against the petitioner or his/her estate for the current year and those unpaid for prior years or may cancel and remit the taxes. The petition, when approved, shall be filed with the treasurer by March 1 of the current tax year [Iowa Code §427.8]. Whenever a person is a recipient of federal supplementary security income or state supplementary assistance, as defined in Iowa Code §249.1, or is a resident of a health care facility, as defined by Iowa Code §135C.1, which is receiving payment from the department of social services for care, such person shall be deemed to be unable to contribute to the public revenue. The director of human services shall notify the board of supervisors of the county in which the recipient owns property. Such notice shall include a listing of the property. The board when so notified and without need of petition as required in Iowa Code §427.8 will order the county treasurer to suspend the collection of all taxes on the property as long as the person continues to receive aid as described in this section [Iowa Code §427.9].

The board, in the best interests of the public and the petitioner, may make an additional order to cancel or remit taxes assessed even though prior action of suspension was ordered as provided in Iowa Code §§427.8 and 427.9 [Iowa Code §427.10]. The board also has the authority to cancel or remit taxes on the property of a deceased aged person on application of the administrator of his/her estate [1957 WL 93151 (Iowa A.G.)].

Claims

The Code of Iowa prescribes the method by which people who are owed money by the county can present their claims for payment. Although claims normally are presented to the county auditor and are paid through issuance of warrants, the board is empowered to examine the claims first and give its approval before warrants are issued [Iowa Code §331.401(1)(p)]. The function of the board is a non-delegable duty [Heath v. Albrook, 123 Iowa 559, 98 N.W. 619 (1904); 1974 WL 353860]. Some claims, however, are exempted by statute from the board's examination and approval.

A board of supervisors cannot refuse to allow payment of a specific claim or expenditure arising within an approved budget of an elected official as long as the expenditure is for a legitimate purpose and

within budget limits. [1980 Iowa AG LEXIS 58, No 80-4-2 (April 7, 1980)] A board of supervisors may not disapprove a claim submitted by an elected county official on the ground that the claim exceeds the appropriation for the particular line item category that the claim falls within. [1985 Iowa AG LEXIS 8, No. 85-6-3 (June 19, 1985)]

Handling of Warrants and Claims

In order to perform its function of approving claims against the county, the board must maintain both a warrant book and a claim register [Iowa Code §331.303(1)(b)(c)]. Claims are numbered consecutively according to the order in the order of filing. They are entered in the claim register in alphabetical order with: (1) the date of the filing, (2) the number assigned to the claim, (3) a statement of the general nature of the claim, and (4) the name of the claimant. The claim register also must have space available in which to record the action on the claim taken by the board [Iowa Code §331.303(1)(c) and Iowa Code §331.504(7)].

The board, in session, then acts upon the claim. If the claim is allowed, this will be noted in the board's minute book by reference to the number assigned to the claim [Iowa Code §331.303(1)(a)(c) and Iowa Code §331.504(7)]. The claim number provides a cross reference between the minute book and the claim register. An entry is made in the claim register showing that the claim has been allowed and that the allowance is made against a certain county fund.

The board may pursue three courses of action in regard to claims on which it must act: it can approve, refuse, or do nothing with respect to the claim. An un-liquidated claim either must be refused or "neglected" (no action taken) before a claimant can take further action against the county to enforce his/her claim [Iowa Code §331.504(8)]. Those claimants whose claims are approved and paid must be listed by name in the official publication of the proceedings of the board of supervisors [Iowa Code §349.18].

Tort Liability

"Tort means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to action based upon negligence, error or omission, nuisance, breach of duty, whether statutory or other duty, or denial or impairment of any right under any constitutional provision, statute or rule of law" [Iowa Code §670.1(4)]. Except as otherwise provided, every county is subject to liability for its torts and those of its officers and employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

Employee includes a person who performs services for a county whether or not the person is compensated for the services, unless the services are performed only as an incident to the person's attendance at a county function.

A person who performs services for a county or an agency or subdivision of a county and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violations of the law, or for which the person derives an improper personal benefit [Iowa Code §670.2].

Unless an expressed statute extends liability, the county has governmental immunity from certain claims. Claims immune from liability are enumerated in [Iowa Code §670.4].

The board may compromise, adjust and settle tort claims against the county, its officers, employees and agents, for damages under Iowa Code §670.2 or Iowa Code §670.8 and may appropriate money for the payment of amounts agreed upon [Iowa Code §670.9].

The county shall defend its officers and employees against tort claims arising out of an alleged act or omission occurring within the scope of their employment or duties. However, the duty to save harmless and indemnify does not apply to awards for punitive damages or where it is determined the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission [Iowa Code §670.8].

Support of the Poor Claims

Claims for the support of the poor, after having been allowed and certified by the general assistance director, are subject to further examination by the board. If the board finds that the claims are reasonable and proper, they shall be paid [Iowa Code §252.35].

Travel Expense Claims

When private automobiles are used by county officers and employees in performing their official duties, these officers or employees are entitled to receive reimbursement for actual and necessary travel [Iowa Code §70A.9]. When allowed mileage, the officer or employee is not permitted to be reimbursed for expenses incident to the same trip (e.g., charges for gas, oil, or vehicle maintenance) [Iowa Code §70A.10] but may be reimbursed for costs of food, lodging and vehicle storage incurred during the trip [1981 Iowa Op. Atty. Gen. 180, 1981 WL 315347 (Iowa A.G.)].

In no case shall any official or employee be allowed mileage or travel expense if transportation was gratuitous or if the person rode with another officer or employee who was entitled to mileage [Iowa Code §70A.11].

A claim for mileage or travel expense shall not be allowed by the board whenever the claimant is a peace officer unless the destination and the number of miles in each trip are given. If the peace officer's trip was an extended one, the trip's expenses, except the cost of meals, must be verified before the board can approve the claim [Iowa Code §70A.13].

Claims for Secret Investigations

The attorney general has ruled that it is proper for the county attorney to undertake secret investigations in performing official duties and may bill the county for reasonable expense incurred in carrying out such an investigation. Such claims, however, must be reviewed and approved by the board like other claims against the county, and the warrants issued by the auditor must state the purpose for which the payment is made and must be made payable to the person who performed the services. On the other hand, secret investigations by the grand jury may be made without having the board audit the resulting claims for expenses incurred because warrants on such claims must be issued if the judge of the district court has approved them [1952 WL 88263 (Iowa A.G.); 1952 WL 88263 (Iowa A.G.)].

Warrants

The county auditor cannot sign or issue a county warrant, unless the claim for which the warrant is issued, has been approved by the board of supervisors or unless the claim falls within one of the specified exceptions to the requirement of the board's approval. The board signifies its approval by a recorded vote of its members or by a resolution [Iowa Code §331.401(1)(p); Iowa Code §331.402(2)(d) and Iowa Code §331.506(1)-(3)].

There are exceptions to the requirement of the board's prior approval: (1) Bills and claims of special units that certify their own taxes usually are paid upon written order of one or more officers and employers of that unit, (e.g., board of trustees of a county hospital) [Iowa Code §347.12]. (2) The auditor may issue warrants before the board approves the bill when the bill is for expenses relating to the operation of the courts [Iowa Code §331.506(2)]. (3) The auditor may also issue warrants in cases in which the board, by resolution, has authorized payment without its prior approval. The board, however, may authorize such action by the county auditor only in cases of fixed charges such as water, light, telephone, freight, express, and postage bills that are duly verified, and salaries and payrolls if the compensation was fixed by the board, and the officer or supervisor in charge certifies that the compensation has been earned [Iowa Code §331.402(2)(d) and Iowa Code §331.506(3)].

In all cases in which a warrant is issued in payment of a bill that has not been approved previously by the board, the bill must be presented to the board for its approval at the first meeting following payment. The bill of sale is then entered in the minutes just as are other claims that the board has allowed [Iowa Code §331.506(4)].

Deposit of Public Funds

Public funds may be deposited by the county treasurer only in depositories that have been approved by the board of supervisors; funds not needed for current operating expenses may be invested as

permitted by Iowa Code §12B.10 [Iowa Code §12C.1]. The approval of the board must be in the form of a resolution or order entered in the minutes. The resolution or order must distinctly name each depository approved and specify the maximum amount of public funds that may be deposited in each [Iowa Code §12C.2]. The board, however, is limited in that it must select depositories within the county or in an adjacent county [Iowa Code §120.4]. Two exceptions are permitted: (1) If the depositories refuse to receive the deposits, the board may approve any depositories that are conveniently located within the state [Iowa Code §12C.5]. (2) For the payment of bonds, the board may authorize deposits at one or more depositories within or without the state, but these deposits may not be so placed more than ten days before the principal and interest become due [Iowa Code §76.6 and Iowa Code §120.4].

County Debt

Sometimes, there may be insufficient cash in a county fund. In these cases, the fund must incur debt to pay outstanding claims. There are two types of debt: current and noncurrent.

Current Debt

"Current debt" means a debt payable from resources which will have accrued in a fund by the end of the fiscal year in which the debt is incurred. Such debt must be approved by resolution of the board. The debt may take the form of anticipatory warrants subject to Iowa Code chapter 74, loans from other county funds, or other formal short-term debt instruments or obligations [Iowa Code §331.477].

If warrants written on a fund are presented to the treasurer for payment and there is insufficient cash in the fund to redeem the warrant, the treasurer notes on the warrant that it is "not paid due to lack of funds," signs the warrant, and marks the date on it. The warrant then draws interest at the rate determined under Iowa Code chapter 74A until moneys become available to redeem the warrant [Iowa Code §331.554(5)].

The treasurer is responsible for calling in the unpaid warrants as moneys become available to redeem them [Iowa Code §74.5]. When the warrants are paid, the treasurer notes on the warrant the date of payment and the amount of interest paid [Iowa Code §74.7].

Noncurrent Debt

Noncurrent debt is defined as debt payable from resources accruing in a fund after the end of the fiscal year in which the debt is incurred. Generally, a county fund cannot be in debt at the end of a fiscal year. Iowa Code §331.476 states that a county officer or employee cannot 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 allowing a claim, issuing a warrant, or executing a contract in violation of this provision is personally liable for the payment of the claim or warrant or performance of the contract.

Even though Iowa Code §331.476 generally prohibits non-current debt in a fund, there are several specific purposes for which the board may authorize non-current debt [Iowa Code §331.478(2)]. These purposes include:

- a. Expenditures for bridges or buildings destroyed by fire, flood, or other extraordinary casualty.
- b. Expenditures incurred in the operation of the courts.
- c. Expenditures for bridges which are made necessary by the construction of a public drainage improvement.
- d. Expenditures for the benefit of a person entitled to receive assistance from public funds.
- e. Expenditures authorized by vote of the electorate.
- f. Contracts executed on the basis of the budget submitted as provided in Iowa Code §309.93.
- g. Expenditures authorized by supervisors acting in the capacity of trustees or directors of a drainage district or other special district.
- h. Expenditures for land acquisition and capital improvements for county conservation purposes not to exceed in any year the monetary equivalent of a tax of 6 and $\frac{3}{4}$ cents per \$1,000 of assessed value on all the taxable property in the county.

- i. Expenditures for purposes for which counties may issue general obligation bonds without an election under state law.

Non-current debt for these purposes must be authorized by resolution of the board [Iowa Code §331.478(2)]. The form of the debt authorized by the board can include anticipatory warrants, advances from other funds, installment purchase contracts, or other formal debt instruments or obligations other than bonds [Iowa Code §331.478(3)].

Before the board can authorize this debt, however, it must publish proper notice [Iowa Code §331.305] and hold a hearing on the matter. The notice must include a statement of the amount of the debt, its purpose, form, the proposed time of its liquidation, and the time and place of the meeting at which the board proposes to take action to authorize the debt. After this hearing, the board may take additional action to authorize the debt or abandon the proposal [Iowa Code §331.479].

If non-current debt is authorized under these provisions, it must be retired from the resources of the fund from which the expenditure was originally made for which the debt was incurred [Iowa Code §331.478(4)].

Leases

Iowa Code §331.301(10) limits the authority of a county to enter into lease and lease-purchase contracts.

One statutory term requires the county to follow a special procedure to enter into a lease or a lease-purchase contract for real property payable from the general fund when "the principal amount of the lease or lease-purchase contract exceeds" certain enumerated limits. Iowa Code §331.301(10)(e)(2). This term is one of two general requirements set forth in Iowa Code §331.301(10)(e), which provides, in relevant part:

The board may authorize a lease or lease-purchase contract which is payable from the general fund and which would not cause the total of lease and lease-purchase payments of the county due from the general fund of the county in any future year for lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures.

The statute then describes the procedures that must be followed by a county to acquire authorization to enter into a lease or a lease-purchase agreement for personal property payable from the general fund, as well as lease agreements for real property payable from the general fund. See *id.* For leases involving personal property, the board must follow the same procedures applicable to the county for the issuance of essential county purpose bonds. Iowa Code §331.301(10)(e)(1); see Iowa Code §331.443(2) (board must first provide notice of proposed action and receive objections from residents or property owners of the county). When the lease agreement involves real property, however, the same procedure applies only "if the principal amount of the lease-purchase contract does not exceed the following limits:

- a. \$400,000 in a county having a population of 25,000 or less.
- b. \$500,000 in a county having a population of more than 25,000 but not more than 50,000.
- c. \$600,000 in a county having a population of more than 50,000 but not more than 100,000.
- d. \$800,000 in a county having a population of more than 100,000 but not more than 200,000.
- e. \$1,000,000 in a county having a population of more than 200,000.
[Iowa Code §331.301(10)(e)(1)]

A different procedure, however, applies "to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits." Iowa Code §331.301(10)(e)(2). This procedure requires the county to first give "notice of the meeting to discuss entering into the lease" and "the right to petition for an election." [Iowa Code §331.301(10)(e)(2)(a)] The notice must be published "at least 10 days prior to the discussion meeting." A second meeting must then be held by the county to propose taking

action on the lease. However, this second meeting must not be held less than 30 days following the discussion meeting. Id. If a petition is filed within thirty days after the first meeting, the board can either abandon the lease or request the county commissioner of elections to hold a special election on the propriety of entering into the lease [Iowa Code §331.301(10)(e)(2)(b)]. These procedural requirements seek to protect taxpayers from large public expenditures by providing them the opportunity to be heard on the matter. [See Wesley Retirement Servs., Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22, 26 (Iowa 1999)]

So, for instance, in a county with a population of more than 25,000 but less than 50,000, the election procedures must be followed if the principal amount exceeds \$500,000 [Iowa Code §331.301(10)(e)(1)(b)]. If the principal amount exceeds \$500,000, the board must institute proceedings before entering into the lease [Iowa Code §331.301(10)(e)(2)(a)]. If these statutory procedures are not followed, the lease agreement is null and void. [Miller v. Marshall County, 641 N.W.2d 742 (2002)]

General Obligation Bonds

The issuance of general obligation bonds also involves the incurrence of non-current debt by the county. There are two categories of general obligation bonds: essential county purpose and general county purpose. The difference between the two is that general county purpose bonds generally require a vote of the people before they can be issued, while essential county purpose bonds do not.

Essential County Purpose Bonds [Iowa Code §331.441(2)(b)]

Essential county purpose bonds may be issued for any of the following purposes:

1. An optical scan voting system.
2. Bridges on highways or parts of highways that are located along the corporate limits of cities and are partly within and partly without the limits and are in whole or in part secondary roads.
3. Sanitary disposal projects as defined in Iowa Code §455B.301.
4. Works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams.
5. Public buildings, including the site or grounds of, and the erection, equipping, remodeling, or reconstruction of and additions or extensions to the buildings and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits:
 - a. \$600,000 in a county having a population of 25,000 or less.
 - b. \$750,000 in a county having a population of more than 25,000 but not more than 50,000.
 - c. \$900,000 in a county having a population of more than 50,000 but not more than 100,000.
 - d. \$1,200,000 in a county having a population of more than 100,000 but not more than 200,000.
 - e. \$1,500,000 in a county having a population of more than 200,000.
6. Funding or refunding outstanding indebtedness if the outstanding indebtedness exceeds \$5,000 on the first day of January, April, June, or September in any year.
7. Enlargement and improvement of a county hospital acquired and operated under Iowa Code chapter 347A, subject to a maximum of 2% of the assessed value of the taxable property in the county.
8. The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.
9. The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures, or properties or the abatement of a nuisance.
10. Establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, or for other purposes as may be authorized under Iowa Code chapter 403A.
11. Acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.
12. Funding the acquisition, construction, reconstruction, improvement, repair, or equipping of waterworks, water mains and extensions, ponds, reservoirs, wells, pumping installations, real and personal property, or other facilities available or used for the storage, transportation, or

utilization of water.

- a. The county board of supervisors may on its own motion or upon a written petition of a water supplier established under Iowa Code chapter 357A or 504 direct the county auditor to establish a special service area tax district for the purpose of issuing general obligation bonds. The special service area tax district shall include only unincorporated portions of the county and shall be drawn according to engineering recommendations provided by the water supplier or the county engineer and, in addition, shall be drawn in order that an election provided for in subparagraph division(b) can be administered. The county's debt service tax levy for the county general obligation bonds issued for the purposes set out in this subparagraph shall be levied only against taxable property within the county which is included within the boundaries of the special service area tax district. An owner of property not included within the boundaries of the special service area tax district may petition the board of supervisors to be included in the special service area tax district subsequent to its establishment.
 - b. (b) General obligation bonds for the purposes described in this subparagraph are subject to an election held in the manner provided in Iowa Code §331.442(1-4), if not later than fifteen days following the action by the county board of supervisors, eligible electors file a petition with the county commissioner of elections asking that the question of issuing the bonds be submitted to the registered voters of the special service area tax district. The petition must be signed by eligible electors equal in number to at least five percent of the registered voters residing in the special service area tax district. If the petition is duly filed within the fifteen days, the board of supervisors shall either adopt a resolution declaring that the proposal to issue the bonds is abandoned, or direct the county commissioner of elections to call a special election within a special service area tax district upon the question of issuing the bonds.
13. The acquisition, pursuant to a Iowa Code chapter 28E agreement, of a city convention center or veterans memorial auditorium, including the renovation, remodeling, reconstruction, expansion, improvement, or equipping of such a center or auditorium, provided that debt service funds shall not be derived from the division of taxes under Iowa Code §403.19.
 14. The aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of Iowa Code chapter 403 and for the purposes set out in Iowa Code §403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in Iowa Code §331.442(5), without limitation on the amount of the bond issue or the population of the county, and the board shall include notice of the right of petition in the notice of proposed action required under Iowa Code §331.443(2).
 15. The establishment, construction, reconstruction, repair, equipping, remodeling, extension, maintenance, and operation of works, vehicles, and facilities of a regional transit district.
 16. Capital projects for the construction, reconstruction, improvement, repair, or equipping of bridges, roads, and culverts if such capital projects assist in economic development which creates jobs and wealth, if such capital projects relate to damage caused by a disaster as defined in Iowa Code §29C.2, or if such capital projects are designed to prevent or mitigate future disasters as defined in Iowa Code §29C.2.
 17. Peace officer communication equipment and other emergency services communication equipment and systems.
 18. The remediation, restoration, repair, cleanup, replacement, and improvement of property, buildings, equipment, and public facilities that have been damaged by a disaster as defined in Iowa Code §29C.2 and that are located in an area that the governor has proclaimed a disaster emergency or the president of the United States has declared a major disaster. Bonds issued pursuant to Iowa Code §331.443 for the purposes specified in this subparagraph shall be issued not later than ten years after the governor has proclaimed a disaster emergency or the president of the United States has declared a major disaster, whichever is later.
 19. The reimbursement of the county's general fund or other funds of the county for expenditures made related to remediation, restoration, repair, and cleanup of damage caused by a disaster as defined in Iowa Code §29C.2, if the damage is located in an area that the governor has proclaimed a disaster emergency or the president of the United States has declared a major disaster. Bonds issued pursuant to Iowa Code §331.443 for the purposes specified in this subparagraph shall be issued not later than ten years after the governor has proclaimed a disaster emergency or the president of the United States has declared a major disaster, whichever is later.

Before the board may institute proceedings to issue bonds for any of the above essential county purposes, a notice of the proposed action, including a statement of the amount and purposes of the bonds and the time and place of the meeting at which the board proposes to take action for issuance of the bonds, must be published as provided in Iowa Code §331.305. At the meeting, the board must receive oral or written objections from any resident or property owner of the county. After all objections have been received and considered, the board may take additional action for the issuance of the bonds or may abandon the proposal [Iowa Code §331.443(2)].

General County Purpose Bonds [Iowa Code §331.441(2)(c)]

General county purpose bonds, which require a vote of the people, may be issued for any of the following purposes:

(1) A memorial building or monument to commemorate the service rendered by members of the armed services of the United States, including the acquisition of ground and the purchase, erection, construction, reconstruction, and equipment of the building or monument, to be managed by a commission as provided in Iowa Code chapter 37.

(2) Acquisition and development of land for a public museum, park, parkway, preserve, playground, or other recreation or conservation purpose to be managed by the county conservation board. The board may submit a proposition under this subparagraph only upon receipt of a petition from the county conservation board asking that bonds be issued for a specified amount.

(3) The building and maintenance of a bridge over state boundary line streams. The board shall submit a proposition under this subparagraph to an election upon receipt of a petition which is valid under Iowa Code §331.306.

(4) Contributions of money to the state department of transportation to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state.

(5) An airport, including establishment, acquisition, equipment, improvement, or enlargement of the airport.

(6) A joint city-county building, established by contract between the county and its county seat city, including purchase, acquisition, ownership, and equipment of the county portion of the building.

(7) A county health center as defined in Iowa Code §346A.1, including additions and facilities for the center and including the acquisition, reconstruction, completion, equipment, improvement, repair, and remodeling of the center, additions, or facilities. Bonds for the purpose specified in this subparagraph are exempt from taxation by the state and the interest on the bonds is exempt from state income taxes.

(8) A county public hospital, including procuring a site and the erection, equipment, and maintenance of the hospital, and additions to the hospital, subject to the levy limits in Iowa Code §347.7.

(9) Public buildings, including the site or grounds of, the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost exceeds the limits stated in Iowa Code §347.7(2)(b)(5).

(10) The undertaking of any project jointly or in cooperation with any other governmental body which, if undertaken by the county alone, would be for a general county purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

(11) Any other purpose which is necessary for the operation of the county or the health and welfare of its citizens.

Before the board may institute proceedings for the issuance of general county purpose bonds, it must call a county special election to vote upon the question of issuing the bonds. At the election the proposition shall be submitted in the following form:

Shall the county of, state of Iowa, issue its general obligation bonds in an amount not exceeding the amount of \$... for the purpose of _____?

Notice of the election must be given by publication as specified in Iowa Code §331.305. The proposition of issuing bonds for a general county purpose is not carried or adopted unless the vote in favor of the proposition is equal to at least 60% of the total vote cast for and against the proposition at the election. If approved, the board may proceed with the issuance of the bonds [Iowa Code §331.442(4)].

Sale of Bonds

The board may sell general obligation bonds at public or private sale in the manner prescribed by Iowa Code chapter 75. [Iowa Code §331.444(1)] All public bonds may be sold at a price not less than 98% of par, plus accrued interest from the date of the bonds to the date of delivery of the bonds [Iowa

Code §75.5]. Bonds may be sold in one or more denominations as provided by the proceedings of the governing body authorizing their issuance [Iowa Code §75.10].

General obligation funding or refunding bonds may be exchanged for the evidences of the legal indebtedness being funded or refunded, or the funding or refunding bonds may be sold in the manner prescribed by Iowa Code chapter 75 and the proceeds applied to the payment of the indebtedness. Funding or refunding bonds may bear interest at the same rate as, or at a higher or lower rate or rates of interest than, the indebtedness being funded or refunded [Iowa Code §331.444(2)].

Taxes to Pay Bonds

Taxes for the payment of general obligation bonds must be levied in accordance with Iowa Code chapter 76, and the bonds are payable through the county's debt service tax levy (Iowa Code §331.447(1)). The annual tax must be sufficient to pay the interest and a portion of the principal that will ensure retirement of the bonds within a period of 20 years or less. General obligation bonds issued for the purposes specified in Iowa Code §331.441(2)(b)(18)-(19), or in Iowa Code §384.24(3)(w)(x) and bonds issued to refund or refinance bonds issued for those purposes, may mature and be retired in a period not exceeding thirty years from date of issue [Iowa Code §§76.1; 331.430]. The laws "not only specifically provide for the levy of taxes to pay the interest and principal of bonds issued..., they make such a levy mandatory." [Yarn v. City of Des Moines, 243 Iowa 991, 54 N.W. 2d 439].

Approval of Capital Projects not Financed by Bonds

Capital projects that are not financed by bonding (for example, from federal revenue sharing money) do not require approval of the county's qualified electors before they can be undertaken. Nevertheless, such projects must still be annually budgeted and appropriated, and they are subject to the provisions governing the letting of contracts.

Urban Revitalization

The board of supervisors, if they follow certain procedures pursuant to Iowa Code chapter 404, may designate a specified area of the county as a "revitalization area". Improvements to qualified real estate, either residential or commercial, within these areas are then eligible for a total or partial exemption from property taxes for a specific number of years.

The county must comply with the following procedure in order to have an area designated as a revitalized area: (1) adopt a resolution stating the need to revitalize the area and that the area meets the statutory criteria, (2) prepare a plan for the proposed revitalization area, (3) schedule a public hearing and notify all landowners of record in the proposed area and all tenants living in the proposed area, (4) hold a public hearing, (5) hold a second public hearing if so petitioned, and (6) adopt the proposed or amended plan [Iowa Code §404.2].

Proposals for improvement projects within the revitalized area may receive approval for a tax exemption from the board of supervisors prior to completion of the project. The supervisors shall approve an application, subject to physical review of the property by the assessor, if the project is in conformation with the revitalization plan, is located within the designated area, and if the improvements were made during the time the area was designated as a revitalization area. An improvement project approved by the county is eligible for a property tax exemption. The applicant may choose from a variety of statutory exemption schedules or another exemption schedule if one has been adopted [Iowa Code §404.4-.5].

The ordinance establishing the revitalization area is to be repealed when in the opinion of the board of supervisors the desired level of revitalization has been attained or economic conditions are such that the continuation of the exemption would cease to be of benefit to the county, but all existing exemptions continue until their expiration [Iowa Code §404.7].

Urban Renewal (Tax Increment Financing)

Tax increment financing (TIF) is a method by which the county may finance urban renewal improvements in an urban renewal area. The board of supervisors has the authority to designate urban renewal areas in unincorporated areas of the county. (Note: Urban renewal areas located within two miles of city limits need to be approved jointly by the city and county.) An urban renewal area may be designated by the board as follows:

- (1) Adoption of a resolution of necessity, which must find that:
 - (a) One or more slum, blighted, or economic development areas exist in the proposed urban renewal area.
 - (b) That rehabilitation, conservation, development, or redevelopment of the area is necessary in the interest of the public health, safety, or welfare of the residents of the county.
- (2) Preparation of a plan for the urban renewal project, such plan must conform with a general plan for the physical development of the county as a whole.
- (3) If the plan includes a division of revenues pursuant to Iowa Code §403.19, sending a draft copy of the urban renewal plan to each of the affected taxing entities and including notification of a consultation to be held between the county and the affected taxing entities prior to a public hearing on the urban renewal plan.
- (4) Hold a public hearing on the proposed project.
- (5) Approve the urban renewal project [Iowa Code §§404.4-.5].

A tax increment financing district is created within an urban renewal area by ordinance [Iowa Code §403.19]. When a TIF district is created, the assessed value of the property in the district is frozen. This base value remains part of the taxable value of all the taxing authorities in the district. Tax increment bonds are then backed by the property tax collected on the additional value to property in the urban renewal area. After the bonds have been retired, the additional revenues from the enhanced properties in the urban renewal area is distributed back to the taxing districts in the same proportion as prior to the area being designated an urban renewal area [Iowa Code §403.19].

There is no statutory provision limiting the length of time an area may be designated an urban renewal area. An exception is when an urban renewal plan is based upon a finding that the urban renewal area is merely an economic development area, but that no part contains slum or blighted conditions, then the division of revenue provided in Iowa Code §403.19 and stated in the plan shall be limited to 20 years [Iowa Code §403.17(10)].

Interfund Transfers

There are several statutory requirements applicable to operating transfers:

1. Interfund transfers cannot be made between the general and rural services funds [Iowa Code §331.432].
2. Moneys credited to the secondary road fund to construct and maintain secondary roads cannot be transferred [Iowa Code §331.432].
3. Only Iowa Code §331.430(3).
4. Transfers to the secondary road fund from the general fund not to exceed in any year the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county multiplied by the ratio of current taxes actually collected and apportioned for the general basic levy to the total general basic levy for the current year, and an amount equivalent to the moneys derived by the general fund from military service tax credits under Iowa Code chapter 426A, mobile home taxes under Iowa Code §435.22, and delinquent taxes for prior years collected and apportioned to the general basic fund in the current year, multiplied by the ratio of sixteen and seven-eighths cents to three dollars and fifty cents [Iowa Code §331.429(1)(a)].
5. Transfers to the secondary road fund from the rural services fund not to exceed in any year the dollar equivalent of a tax of three dollars and three-eighths cents per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county multiplied by the ratio of current taxes actually collected and apportioned for the rural services basic levy to the total rural services basic levy for the current year and an amount equivalent to the moneys derived by the rural

services fund from military service tax credits under Iowa Code chapter 426A, mobile home taxes under Iowa Code §435.22, and delinquent taxes for prior years collected and apportioned to the rural services basic fund in the current year, multiplied by the ratio of three dollars and three-eighths cents to three dollars and ninety-five cents [Iowa Code §331.429(1)(b)].

County Conservation Reserve

Iowa Code §350.6 permits the use of a reserve for county conservation land acquisition and capital improvement projects.

There are four basic steps to establish a base for these expenditures using the conservation reserve:

1. The reserve is established:
 - a. If requested by the conservation board, the board of supervisors must establish the reserve.
 - b. County conservation operating expenditures may not be paid from the reserve. Operating expenditures must be paid from the general basic fund or other legal source.
 - c. The determination of what constitutes a "capital improvement project" payable from the reserve is in effect left to the discretion of the conservation board.
 - d. County conservation land acquisition and capital improvement projects may be paid from the general basic fund or other legal source, as well as from the reserve.
2. Money is credited to the reserve by the board of supervisors.
 - a. The board of supervisors may credit an amount of money to the reserve at any time. Usually this will be accomplished by authorizing an operating transfer to the reserve from the general basic fund.
 - b. Once money has been credited to the reserve, it remains there until spent for county conservation land acquisition and capital improvement projects, upon warrants requisitioned by the conservation board. This includes gifts and donations of money from private sources to the fund. The reserve's fund balance does not revert to the fund that provided it.
 - c. The total amount of money credited to the reserve, plus moneys appropriated for general conservation purposes from sources other than the reserve, cannot be less than anticipated conservation board receipts (fees, licenses, other revenues). The reserve is not guaranteed all conservation board receipts. Such receipts may be credited to the reserve, or they may be applied toward conservation board appropriations from other sources. How much is placed in the reserve is the decision of the board of supervisors.
3. The reserve is budgeted and appropriated annually by the board of supervisors.
4. Warrants are issued by the auditor, only upon requisition of the conservation board.

Bids and Contracts

In order to avoid any ethical questions, or claims of favoritism, counties are required to use competitive bidding. But this only applies in certain limited circumstances. Iowa Code chapter 26 consolidates competitive bidding requirements for all local governments. Under Iowa Code §26.3, counties must use competitive bidding for any "public improvements" which have an estimated total cost of \$93,000 or more for horizontal infrastructure and \$135,00 for vertical infrastructure for FY 2015. These threshold amounts change yearly, and current thresholds can be found on the Iowa DOT's website here:

http://www.iowadot.gov/local_systems/publications/bid_limits.htm. "Public improvements" are defined as building or construction work, excluding emergency work, repair and maintenance work, and highway, bridge or culvert work.

Public improvements for vertical infrastructure costing between \$94,000 and \$130,000 may use a more informal "competitive quotation" process.

Contracts for road or bridge construction work, and for materials, which exceed \$50,000 must be advertised and let at a public letting, according to Iowa Code §309.40. Emergency work costing less than \$100,000 can be done without advertising for bids.

There is generally no other competitive bidding requirement for counties. So items such as cars, computers, and office furniture do not have to be competitively bid unless there is a local requirement. Law or no law, it is generally advisable to use a consistent practice that assures taxpayer dollars are being spent wisely.

Performance Bonds

Whenever a contract is made for the construction of any public improvement costing \$25,000 or more, a performance bond is mandatory; if the improvement costs less than that sum, a performance bond is optional [Iowa Code §573.2]. Contractors should be registered under Iowa Code chapter 91C.

The amount of the bond is fixed by the board. If payments are to be made while the improvement is under construction, the bond must equal at least 75% of the contract price; if payment is not to be made until after the completion of the public improvement, the bond may be for a lesser amount, but it may not be fixed at less than 25% [Iowa Code §573.5]. See Iowa Code §12.44 for exceptions Iowa Code §573.6 fixes certain terms of the performance bonds that should be placed verbatim on the bond. Even if they are not, they are still deemed as a matter of law to be contained in the terms of the bond [Iowa Code §573.6].

The contractor is free to provide a bond or to provide a money deposit, a certified check, a credit union certified share draft, state or federal bonds, bonds issued by any Iowa county, city, or school corporation, or highway paving district, or drainage district bonds issued in the state of Iowa [Iowa Code §573.4].

Purchasing

On ordinary purchases the board need not call for bids. Nevertheless, certain limitations are provided by statute.

Preference for Iowa Products

The Iowa Preference Law requires the county to use only products and materials grown or produced in Iowa if they are available in a marketable quantity and of a quality adequate for the purpose for which the county will use them and if the cost is no higher than that of the same products produced in a different state [Iowa Code §73.1]. The law requires that all requests for bids and all proposals for expenditures of public funds must be made in general terms so that no brand or trade names are specified. Also, all requests must contain this statement: "By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the State of Iowa." [Iowa Code §73.2].

Joint County-City Buildings

A county may contract with its county seat city for the joint acquisition, construction, maintenance, and operation of buildings for joint use by the city and the county. The contract shall be approved by resolution of the governing bodies of each of the participating counties, cities, fire districts, or school districts and shall specify the purposes for which the joint public building shall be used, the estimated cost thereof, the estimated amount of the cost to be allocated to each of the participating counties, cities, fire districts, or school districts, the proportion and method of allocating the expenses of the operation and maintenance of the building or improvement, and the disposition to be made of any revenues to be derived therefrom, in addition to the provisions of Iowa Code §§28E.5 and 28E.6, and any other applicable provision of Iowa Code chapter 28E. [Iowa Code §28E.41] For the purpose of paying its respective cost of the project, a county may issue general obligation bonds [Iowa Code §331.441(2)(c)(6)]. Before such bonds are issued, however, the board is required to submit the proposition to the voters of the county. Notice of the election must be published at least once and not less than four times, nor more than 20 days before the election in a newspaper of general circulation in the county. If 60% of the votes cast affirm the proposition, the bonds may be issued [Iowa Code §331.442]. The interest rate on bonds may not exceed a rate established by Iowa Code chapter 74A [Iowa Code §331.446(1)(b)].

A county and its county seat city may incorporate an authority for this purpose of establishing joint county-city buildings [Iowa Code §346.27(2)]. The articles of incorporation must be approved by a majority of the members of the board of supervisors and a majority of the city's council members [Iowa Code §346.27(3)]. Upon adoption, the articles of incorporation must be recorded with the county recorder

and filed with the secretary of state and must be published once in a designated newspaper of general circulation in the county [Iowa Code §346.27(6)].

The governing body of the authority is composed of three commissioners appointed for six-year terms of office. One commissioner, who must reside outside of the county seat city, is appointed by the board of supervisors. The city council appoints one member who is a resident of the county seat city. The third member is chosen through joint action of the board and the city council. If the board and the council fail to agree on an appointee within 60 days, the appointment is made by the governor. The commissioners serve without compensation, but is "entitled to reimbursement for any necessary expenditures in connection with the performance of the commissioner's duties" [Iowa Code §346.27(5)].

The authority is empowered to issue revenue bonds to finance any project which is permitted in the articles of incorporation. However, before the bonds may be issued, the authority must call an election with the concurrence of the board of supervisors and the city council. Publication of a notice of election is required once each week for at least two weeks in a newspaper published in the county. The proposition submitted to the voters must specify the amount of the proposed bond issue. If a majority of the votes cast in the county-wide election approve the proposition, it is deemed carried [Iowa Code §346.27(10)].

The principal and the interest earned by the revenue bonds are payable solely from the income produced by the operation of the project [Iowa Code §346.27(15)]. Such bonds do not constitute debt as applied to statutory or constitutional debt limits [Iowa Code §346.27(20)].

The authority is empowered to lease any or all of the building space to the city and the county. Rental terms are those agreed upon between the authority and the incorporated units; however, the rents are subject to increase through the mutual consent of the parties if it is necessary to provide additional funds to meet the obligations of the authority [Iowa Code §346.27(21)].

After the retirement of all bonds issued by the authority, the authority may convey the title to the property to the county and the city. However, before such a conveyance may be made, it must be approved by a majority of the voters of the city and the county voting on the proposition [Iowa Code §346.27(25)].

Licenses and Permits

The powers to regulate business establishments are found in Iowa Code §331.382 and as inferred from the general home rule authority in Iowa Code §331.301. These powers must be exercised in accordance with Iowa Code §331.301(2)-(6); in particular, these powers usually are exercised by the passage of a motion, a resolution, an amendment, or an ordinance [Iowa Code §331.302].

Cigarette Permits

The board is authorized to issue retail permits for the sale of cigarettes outside of the corporate limits of cities, but such action must be certified to the state department of revenue and finance [Iowa Code §331.303(3) and Iowa Code §453A.13(2)]. Sales of cigarettes may not be made until a permit has been obtained; this entails the filing of an application, the giving of a bond, and the payment of a prescribed fee [Iowa Code §453A.13(5)-(6)].

The fees required for cigarette permits are fixed by the General Assembly and are as follows [Iowa Code §453A.13(3)]:

DATE GRANTED	BUSINESS LOCATION	FEE PAID
July, Aug., Sep.	Outside city limits	\$50.00
	City less than 15,000 people	\$75.00
	City of 15,000 people or more	\$100.00
Oct., Nov., Dec.	Outside city limits	\$37.50
	City less than 15,000 people	\$56.25
	City of 15,000 people or more	\$75.00
Jan., Feb., Mar.	Outside of city limits	\$25.00
	City less than 15,000 people	\$37.50
	City of 15,000 people or more	\$50.00

Apr., May, June	Outside of city limits	\$12.50
	City less than 15,000 people	\$18.75
	City of 15,000 people or more	\$25.00

All permits expire on June 30 of each year, and no permit may be granted until all fees are paid for the period ending the following June 30. In such cases where the holder of a cigarette permit desires voluntarily to surrender the permit, the schedule of refunds established by the General Assembly is as follows [Iowa Code §453A.13(4)] :

MONTH SURRENDERED	BUSINESS LOCATION	REFUND
July, Aug., Sep.	Outside of city limits	\$37.50
	City less than 15,000 people	\$56.25
	City of 15,000 people or more	\$75.00

MONTH SURRENDERED	BUSINESS LOCATION	REFUND
Oct., Nov., Dec.	Outside of city limits	\$25.00
	City less than 15,000 people	\$37.50
	City of 15,000 people or more	\$50.00
Jan., Feb., Mar.	Outside of city limits	\$12.50
	City less than 15,000 people	\$18.75
	City of 15,000 people or more	\$25.00
April, May, June	No Refunds	

The department of revenue may hold a hearing and revoke a permit if there is a violation by the permit holder of any provisions of Iowa Code chapter 453A. If Iowa Code §453A.2 (sale to minors) or Iowa Code §453A.36 (6) has been violated, the county shall transfer the matter to the alcoholic beverages division of the department of commerce and in addition to the other penalties fixed for such violations shall assess a penalty upon hearing and notice, as follows:

- a. For a first violation, the retailer shall be assessed a civil penalty in the amount of \$300s. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of 14 days.
- b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of \$1,500 or the retailer's permit shall be suspended for a period of 30 days. The retailer may select its preference in the penalty to be applied under this paragraph.
- c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of \$1,500 and the retailer's permit shall be suspended for a period of 30 days.
- d. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of \$1,500 and the retailer's permit shall be suspended for a period of 60 days.
- e. For a fifth violation within a period of four years, the retailer's permit shall be revoked.[Iowa Code §453A.22(2)]

Whenever a permit is revoked, a new permit cannot be issued to the violator for any place of business, or to any other person for the place of business where the violation occurred, for one year unless "good cause" is shown why a new permit should be granted [Iowa Code §453A.22 (5)].

Liquor Control Licenses and Beer Permits

An application for a class "A", "B", "C", or "E" liquor control license, for a retail beer permit as provided in Iowa Code §§123.178, 123.178A or 123.178B must be filed with the board of supervisors if the premises for which the license or permit is sought is located outside the incorporated limits of a city. If a fee or bond is required, it must accompany the application [Iowa Code §123.32(1)].

A class "A" liquor control license is issued to a club and is for consumption on the premises only. Class "B" and "C" licenses permit the holder to sell liquor for consumption on the premises and to sell beer for

consumption both on and off the premises [Iowa Code §123.30(3)]. A class "E" license authorizes the holder to purchase liquor from the state only and to sell the liquor to patrons for consumption off the licensed premises and to other liquor control licensees [Iowa Code §123.30(3)(e)]. No liquor control license holder shall be required to hold a separate class "B" beer permit [Iowa Code §123.122].

The retail beer permits that the board may approve or disapprove are class "B" and class "C" [Iowa Code §§123.32(1); 123.128, .129]. A class "B" permit authorizes the holder to sell beer for consumption both on and off the premises. A class "C" permit restricts the holder to sales of beer for consumption off the premises only [Iowa Code §123.122].

The board is empowered to approve or disapprove the issuance of the license or permit, and the decision of the board must be endorsed on the application and forwarded to the alcoholic beverages division of the department of commerce. Along with the application, the board should forward the required fee and bond collected from the applicant [Iowa Code §123.32(1)-(2)].

In deciding whether to approve or disapprove an application for a license or permit, the board must determine if the applicant is fit to hold a liquor control license or a beer permit. Fitness is determined, in part, by judging the moral character of the applicant [Iowa Code §123.30(1)]. Good moral character as defined by Iowa Code chapter 123 means that the applicant has a financial standing and reputation that indicates a compliance with all the laws relating to beer and liquor control. The applicant must be a citizen of the United States and a resident of Iowa or, in the case of a corporation, licensed to do business in the state. Furthermore, the applicant must not have had a liquor control license or beer permit revoked within the previous two years nor been convicted of a felony. However, under the proper circumstances a person convicted of a felony more than five years before the date of application may be judged of good moral character [Iowa Code §123.3(34)].

In addition, the applicant is required to post bond conditioned on the faithful observance of the beer and liquor control laws. The amount of the bond is dependent upon the type and class of license or permit. The applicant's premises where he/she intends to operate must conform to all the legal requirements of the state and the county. Consent must be given by the applicant for inspections of the premises by officials without first securing a warrant [Iowa Code §§123.30(1),.127,.129]. The premises for which the applicant is seeking a license or permit cannot have been previously covered by a license or permit that has been revoked within the last year [Iowa Code §123.40].

Even though the board is empowered to disapprove the issuance of a license or permit, it may not arbitrarily, capriciously, or without reasonable cause refuse to issue the license or permit. The applicant may appeal to the administrator of the alcoholic beverages division if he/she feels the board of supervisors acted in such a manner. The administrator may overrule or uphold the decision of the board of supervisors; thus, he/she may either grant or deny the issuance of the license or permit [Iowa Code §123.32(7)]. If the hearing board rules contrary to the board of supervisors, the county board may appeal the decision to the district court in its county. The appeal must be filed in accordance with the terms of the Iowa Administrative Procedure Act. The applicant may, if he/she feels aggrieved, use the same appeal procedure [Iowa Code §123.32(8)].

Even though the board of supervisors approves the issuance of a license or permit, the administrator of the division is authorized to make whatever investigation he/she deems as necessary. If the administrator concludes from his/her findings that the applicant does not qualify to hold a license or permit, he/she may refuse to issue the license or permit [Iowa Code §123.32(6)]. The applicant has the same appeals available that are available if the board of supervisors refuses to approve the application [Iowa Code §123.32(6)-(7)].

Liquor control licenses and beer permits automatically expire one year from the date of issuance. Seasonal licenses or class "B" beer permits may be issued for periods of six months or eight months, but these cannot be renewed except after a period of two months [Iowa Code §123.34]. Renewal applications are filed in the same manner as the original request [Iowa Code §123.31].

14 day and five day class "A", "B", "C", and "D" liquor control licenses and class "B" beer permits are also available as specified in Iowa Code §123.32(3).

Since the state has the exclusive power to establish licenses and permits and levy taxes relating to beer and alcoholic beverages, the board of supervisors cannot adopt resolutions requiring local licenses and taxes [Iowa Code §123.37]. However, the board is empowered to enact regulations controlling the location of liquor or beer establishments [Iowa Code §123.39(2)]. This extends to authorizing the board to permit a holder to transfer his/her business from one location to another without obtaining a new license or permit provided the new premises meet all the qualifications [Iowa Code §123.38(3)]. The board must report all such transfers to the administrator of the of alcoholic beverages division. If the administrator establishes a uniform transfer fee to cover administrative costs, the county is permitted to assess and retain the entire sum [Iowa Code §123.38(3)]. In addition, the board may establish regulations concerning the sale and consumption of beer and alcoholic beverages and to protect the health, welfare, and morals of the community. The board is limited, though, to regulations that do not conflict with state statutes and do not diminish the number of hours during which beer or alcoholic beverages may be sold or consumed at retail [Iowa Code §123.39].

State law provides that beer and alcoholic beverages may not be sold or consumed between the hours of 2:00 a.m. and 6:00 a.m. on any weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday. However, the holder of a liquor control license or beer permit that is granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense liquor or beer between the hours of 8:00 a.m. on Sunday and 2:00 a.m. the following Monday [Iowa Code §123.49(2)(b)].

The division will remit to the county a sum equal to 65% of the fees collected for each class "A", class "B", or class "C" license and 75% for each special class "C" license, covering premises within the county's jurisdiction [Iowa Code §123.36(8)]. All retail beer permit fees collected by the county will be retained by the county [Iowa Code §123.143(1)].

Insurance

Iowa Code §517A.1 provides that all state commissions, departments, boards, etc., and agencies of all political subdivisions, of the state of Iowa, not otherwise directed, are authorized to purchase liability, personal injury, and property damage insurance covering all officers and employees while in the performance of their duties, including operating an automobile, truck, tractor, machinery, or other vehicles owned or used by the political subdivision.

A county may enter into insurance agreements obligating the county to make payments beyond the current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the county [Iowa Code §331.301(11)].

To implement a self-insurance program, a county may credit money to a reserve account for such purposes [Iowa Code §331.301(12)]. The secondary road fund may be used for the payment of insurance premiums on insurance covering secondary road employees [1993 Iowa Op. Atty. Gen. 49, 1993 WL 448732 (Iowa A.G.)].

Under Iowa Code chapter 670, a county is subject to liability for accidents causing death or injury to a person, or injury to property, which results from negligence and breach of duty on the part of the county. The board of supervisors is authorized to purchase a policy of liability insurance. The policy may insure against all or any part of the liability which the county or its officers, employees, and agents may incur. A tax in excess of any tax limitation imposed by statute may be imposed to pay the premium costs [Iowa Code §670.7].

The board is required to provide defense for any county officers, employees, or agents against any tort claim or demand arising out of an alleged act or omission occurring within the scope of their employment or duties [Iowa Code §670.8]. The board is authorized to compromise and settle any such claim [Iowa Code §670.9].

If a judgment or settlement remains unpaid at the time of adoption of the annual budget, the board

is compelled to appropriate an amount sufficient to pay the judgment or settlement with accrued interest. Taxes may be levied to pay the judgment or settlement, and these taxes may be in excess of any limitation imposed by statute [Iowa Code §670.10].

The board of supervisors may establish plans for and procure group insurance, health, or medical services for the employees of the county under its general home rule authority [Iowa Code §§331.301; 509A.1; 331.324]. The term "employee" does not include temporary or retired employees. However, a retired employee may continue, at personal expense, any existing contract [Iowa Code §509A.7,.13]. Any employee, dependent, or spouse (unless terminated for gross misconduct) may extend their participation in the group health plan at personal expense for a specified time beyond the normal termination of coverage. Likewise, an employee who has terminated service with the county is permitted to retain the life insurance policy at personal expense [Iowa Code §509A.6].

The cost of the programs may be borne wholly or in part by the county or from contributions of the employees [Iowa Code §509A.2]. The employees' contributions may be deducted from the earnings of the employees, but, first a written authorization must be filed with the county treasurer [Iowa Code §509A.3 and Iowa Code §514.16]. The administration of the programs and all the decisions relating to the carrying out of the provisions of Iowa Code chapter 509A is the responsibility of the board [Iowa Code §509A.8].

The board of supervisors may acquire through contractual agreements a deferred compensation program [Iowa Code §509A.12].

Offices and Supplies

It is the duty of the board of supervisors to furnish offices within the county for the sheriff and offices at the county seat for the recorder, auditor, county attorney, county assessor, treasurer, and county surveyor or engineer. Each office is also to be provided with necessary fuel, lights, and office supplies [Iowa Code §331.322(5)].

County Vehicles and Garages

The board of supervisors is empowered to own and operate such automobiles as the county sheriff uses or needs in the performance of the duties of that office. If the board chooses, it may contract with the employees of the sheriff's office for the use of their automobiles if the board decides this would be advantageous to the county [Iowa Code §331.322 (8)].

Chapter 4

Supervision of Personnel

Although the majority of county officers - auditor, treasurer, recorder, attorney, and sheriff are elected, the board of supervisors plays an important role in appointing and fixing the salaries of certain officers, deputies, and temporary help, and in filling vacancies in county offices.

Mandatory Appointments

The board shall appoint the following when applicable [Iowa Code §331.321(1)]:

- a. A veterans memorial commission in accordance with Iowa Code §§37.9, 37.10, and 37.15, when a proposition to erect a memorial building or monument has been approved by the voters.
- b. A county conservation board in accordance with Iowa Code §350.2, when a proposition to establish the board has been approved by the voters.
- c. The members of the county board of health in accordance with Iowa Code §137.105.
- d. One member of the convention to elect the state fair board as provided in Iowa Code §173.2(3).
- e. A temporary board of community mental health center trustees in accordance with Iowa Code §230A.110(3) when the board decides to establish a community mental health center, and members to fill vacancies in accordance with Iowa Code §230A.110(3).
- f. The members of the service area advisory board in accordance with Iowa Code §217.43.
- g. A county commission of veteran affairs in accordance with Iowa Code §§35B.3 and 35B.4.
- h. A general assistance director in accordance with Iowa Code §252.26.
- i. One or more county engineers in accordance with Iowa Code §309.17-309.19.
- j. A weed commissioner in accordance with Iowa Code §317.3.
- k. A county medical examiner in accordance with Iowa Code §331.801, and the board may provide facilities, deputy examiners, and other employees in accordance with that section.
- l. Two members of the county compensation board in accordance with Iowa Code §331.905.
- m. Members of an airport zoning commission as provided in Iowa Code §329.9, if the board adopts airport zoning under Iowa Code chapter 329.
- n. Members of an airport commission in accordance with Iowa Code §330.20 if a proposition to establish the commission has been approved by the voters.
- o. Two members of the civil service commission for deputy sheriffs in accordance with Iowa Code §341A.2 or 341A.3, and the board may remove the members in accordance with those sections.
- p. A temporary board of hospital trustees in accordance with Iowa Code §§347.9, 347.9A, and 347.10 if a proposition to establish a county hospital has been approved by the voters.
- q. An initial board of hospital trustees in accordance with Iowa Code §347A.1 if a hospital is established under Iowa Code chapter 347A.
- r. A county zoning commission, an administrative officer, and a board of adjustment in accordance with Iowa Code §335.8-335.11, if the board adopts county zoning under Iowa Code chapter 335.
- s. A board of library trustees in accordance with Iowa Code §336.4 and Iowa Code §336.5, if a proposition to establish a library district has been approved by the voters, or Iowa Code §336.18 if a proposition to provide library service by contract has been approved by the voters.
- t. Local representatives to serve with the city development board as provided in Iowa Code §368.14.

- u. Members of a city planning and zoning commission and board of adjustment when a city extends its zoning powers outside the city limits, in accordance with Iowa Code §414.23.
- v. A list of residents eligible to serve as a compensation commission in accordance with Iowa Code §6B.4, in condemnation proceedings under Iowa Code chapter 6B.
- w. Members of the county judicial magistrate appointing commission in accordance with Iowa Code §602.6503.
- x. A member of the judicial district department of corrections as provided in Iowa Code §905.3(1)(a).
- y. Members of a county enterprise commission or joint county enterprise commission if the commission is approved by the voters as provided in Iowa Code §331.471.
- z. Other officers and agencies as required by state law.

County Engineer

Because of the extensive network of roads and highways in each county, the appointment of a county engineer is highly important. The selection of one or more county engineers, who must be registered civil engineers, is a mandatory duty of the board [Iowa Code §331.321(1)(i) and Iowa Code §309.17]. The term of office for county engineers may not exceed three years, but the board may terminate appointments at any time. Compensation of the engineers is fixed by the board [Iowa Code §309.17-18].

Two or more adjacent counties may jointly appoint a county engineer. A written agreement must be approved by the participating counties and entered into the minutes of each board. Although one board must be designated to make all payments for salaries and other expenses of the joint program, that county is reimbursed according to the allocation set forth in the written agreement [Iowa Code §309.19; see also Iowa Code chapter 28E].

County Medical Examiner

The board of supervisors must appoint a medical examiner for a term of two years. The medical examiner must be licensed in Iowa as a doctor of medicine and surgery or as an osteopathic physician or a doctor of osteopathic medicine and surgery. He/she must be appointed by the board of supervisors from lists of two or more names submitted by the component medical society and the osteopathic society of the county in which he/she is a resident. If no list of names is submitted by either society, the board must appoint a county medical examiner from the licensed doctors of medicine, or licenses osteopathic physicians or osteopathic physicians and surgeons, of the county. If no qualified appointee can be found or appointed in the county, the board must appoint the medical examiner from another county. If, for good cause, a county medical examiner is unable to serve in any particular case or for any period of time he/she must notify the chairperson of the board promptly and the chairperson must designate some other qualified person to act in his/her place [Iowa Code §331.321(1)(k) and Iowa Code §331.801].

The board is authorized to provide for laboratory facilities, deputy medical examiners, and such professional, technical, and clerical assistance that may be required by the county medical examiner in the performance of his/her duties. However, such requirements are subject to prior approval by the state medical examiner [Iowa Code §§331.321(1)(k);331.801(3)].

Compensation for the duties of the county medical examiner is made from fees prescribed by the board of supervisors. These fees and the expenses, which the medical examiner actually incurs, are to be paid by the county for whom the services are performed. If an autopsy or an investigation is performed concerning a person who dies after being brought into the state for emergency medical treatment by or at the direction of an out-of-state law enforcement officer or public authority, the fees and expenses of the medical examiner must be paid by the state of Iowa [Iowa Code §331.802(2), see Iowa Code §§331.801-805 for the responsibilities of the county medical examiner].

County Judicial Magistrate Appointment Commission

The county judicial magistrate appointing commission consists of a district court judge chosen by the chief judge of the district [Iowa Code §602.6501 (1) (a)], two attorneys elected by the county bar [Iowa Code §§602.6501(1)(c),6504], and three electors appointed by the board of supervisors[Iowa Code §602.6501(1)(b)]. None of the three electors appointed by the board may be an attorney at law or an

active law enforcement officer. The board's appointments are for six-year terms [Iowa Code §§331.321(1)(w); 602.6503].

Vacancies

Under the provisions of Iowa Code §69.8(3), the board of supervisors must fill vacancies that occur in county offices, unless an election is called as provided in [Iowa Code §69.14A].

Considerations in Approving Appointments and Employment

In making or approving appointments or employment by the county, the board should be aware of the nepotism laws of the state. Under these laws it is unlawful for any person appointed or elected to any public office or position to appoint as his/her deputy, clerk, or helper any person who is related to him/her within the third degree, unless the appointment is first approved by the officer, board, council, or commission whose duty it is to approve the bond of the person [Iowa Code §71.1]. The nepotism laws are subject to the following exceptions: (1) employees receiving \$600 or less per year, (2) public school teachers, and (3) clerks employed by members of the general assembly [Iowa Code §71.1].

In addition, the laws of Iowa make it mandatory for veterans to be given preference for public employment, provided their qualifications are the same as other applicants [Iowa Code §35C.1(1)]. However, the Code specifically excludes from this requirement all appointments of private secretaries, deputies, and any person holding a strictly confidential relationship with the appointing officer [Iowa Code §35C.8].

Approval of Appointments

Deputy County Officers

The county auditor, treasurer, recorder, sheriff, and attorney may appoint deputy officers or assistants but these appointments must be approved by the board of supervisors. The board also is responsible for determining the number of deputies, assistants, and clerks to be allotted to each office. When an appointment has been approved by the board, the principal officer making the appointment shall issue a written certificate of appointment which shall be filed and kept in the office of the auditor. Revocations of appointments are made by the principal officer, who also is responsible for the acts of the assistants, deputies, and clerks [Iowa Code §§331.323(2)(g), .903(1)-(2)].

The board of supervisors has the power to determine the number, and full or part-time status, of deputies, assistants and clerks to be appointed by each of the elected county officials. 1990 Iowa Op. Atty. Gen. 81, 1990 WL 484904 (Iowa A.G.). Elected county officials have no power to hire deputies without the approval of the board of supervisors. 1995 Iowa Op. Atty. Gen. 37, 1995 WL 1778791 (Iowa A.G.).

County supervisors may not unreasonably refuse to approve appointments made by other elected county officers by relying upon 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"); 2000 WL 33258481 (Iowa A.G.) (county supervisors should recognize and approve any reasonable and proper appointment made by an elected county officer); 1986 Iowa Op. Atty. Gen. 86, 1986 WL 627808 (Iowa A.G.) ("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").

Jail Assistants

While the sheriff is to provide board and care for prisoners in the sheriff's custody, the board is to determine and pay the costs necessary for the board and care of the prisoners in the county jail. While the board may determine the manner in which meals are provided for the prisoners, the board shall appoint and pay salaries of assistants at the jails, furnish supplies, and inspect the jails [Iowa Code §§331.322(10); 331.658(1) - (2)].

Participation in Appointment of County Assessor and Board of Review

The board of supervisors is an integral part of the conference board, which appoints the assessor and the county board of review for tax assessments. The county conference board is composed of members of the board of supervisors, mayors of all the incorporated cities in the county where property is assessed by the county assessor, and one representative from the board of directors of each high school district of the county, who is a resident of the county. (A person must be a qualified elector of the county in order to be eligible for membership on the conference board [1967 WL 167053 (Iowa A.G.)]). Each classification of members constitutes one voting unit; thus, the entire board of supervisors may cast one vote. The chairperson of the board of supervisors serves as chairperson of the conference board [Iowa Code §441.2].

The three voting units of the conference board are (1) representatives from each of the school boards within the county, (2) members of the board of supervisors, and (3) the mayors of the towns within the county. See Iowa Code § 441.2. The Iowa Administrative Code provides that only members of the conference board may vote on conference board matters, except that a mayor may appoint a mayor pro tem to vote in the mayor's place. [Iowa Administrative Code. 701 - 71.19(3). See *Bailliff v. Adams County Conf. Board*, 650 N.W.2d 621 (2002)] It should be noted that a city with an assessor of its own has a conference board. Members of the board of supervisors sit on city conference boards and vote as one [Iowa Code §441.2]. At a regular meeting of the conference board, each voting unit of the conference board shall appoint one person who is a resident of the assessor jurisdiction to serve as a member of an examining board to hold an examination for the positions of assessor or deputy assessor [Iowa Code §441.3]. (Persons appointed to the examining board should not be members of the conference board [1959 WL 107733 (Iowa A.G.)]). The purpose of the examining board is to prepare lists of qualified candidates for the office of county assessor [Iowa Code §441.6]. The process by which a list of qualified candidates is compiled is described in [Iowa Code §441.5 and Iowa Code §441.6]. Within seven days of the occurrence of a vacancy in the office of county assessor, the examining board must request a list of qualified candidates for the office of assessor from the director of revenue. The examining board shall submit to the conference board names of qualified individuals as certified by the director of revenue and finance, together with a written report of any further examination, conducted by the examining board at its expense, of individuals appearing on the register, within fifteen days after the receipt of the register from the director of revenue and finance. Upon receipt of this report, the chairperson of the conference board must, by written notice, call a meeting of the conference board within seven days to appoint an assessor [Iowa Code §441.6]. The appointment is for a term of six years [Iowa Code §441.8]. Once the decision is made, the chairperson must give written notice to the director of revenue of the appointment and its effective date within 10 days of the decision [Iowa Code §441.6].

The assessor appoints his/her own deputies, but the appointments must be made from a list of qualified applicants as provided by the director of revenue [Iowa Code §441.10]. The number of deputies is determined by the conference board [See Iowa Code §441.16]. The conference board is empowered to employ appraisers and other technical or expert help to assist in the valuation of property [Iowa Code §441.50]. The board of supervisors may enter into a contract for such services which extends over a period of more than one year [1962 WL 122816].

The chairman of the conference board must call a meeting by written notice to all members for the purpose of appointing a board of review for all assessments made by the assessor. The board of review may consist of three or five members. As nearly as possible, the board should include one licensed real estate broker, one registered architect or person experienced in the building and construction field, and one farmer. No more than two members of the board of review may be of the same profession or occupation and members of the board of review shall be residents of the assessor jurisdiction. The terms of the members of the board of review are for six years and are staggered so that in any one year there will be some incumbent members on the board [Iowa Code §441.31-.32]. Members of the board of supervisors are not eligible for appointment to the board of review [1947 WL 58182 (Iowa A.G.)].

Optional and Other Appointments

A number of appointments are optional with the board of supervisors or only partially involve the board of supervisors. The county attorney, with the approval of a judge of the district court, may procure assistants necessary to prosecute a person charged with a felony. Upon presentation to the board of a certificate signed by the judge before whom the case was tried, the board is required to allow a

reasonable compensation for the services of such assistants [Iowa Code §331.757(1)]. Also, the district court has inherent power to appoint an attorney to assist in an investigation before the grand jury [State vs. Olson, 249 Iowa 536, 86 NW2d 214 (1957)].

Temporary assistance also is authorized for the county auditor in cases where a deputy has not been appointed. Although the board plays no part in the hiring of such temporary assistants, the board is required to make a reasonable allowance for their services [Iowa Code §331.503(2)].

In counties in which there is no agricultural society or in which the society fails to report to the state fair board as required for state aid, the board of supervisors is authorized to appoint a delegate to the convention held at a time and place designated by the Iowa State Fair Board. This convention meets to elect members of the state fair board [Iowa Code §§331.321(1)(d);173.2(3)].

County Weed Commissioner

The board of supervisors of each county may annually appoint a county weed commissioner who may be a person otherwise employed by the county and who passes minimum standards established by the department of agriculture and land stewardship for noxious weed identification and the recognized methods for noxious weed control and elimination. The county weed commissioner's appointment shall be effective as of March 1 and shall continue for a term at the discretion of the board of supervisors unless the commissioner is removed from office as provided for by law. The county weed commissioner may, with the approval of the board of supervisors, require that commercial applicators and their appropriate employees pass the same standards for noxious weed identification as established by the department of agriculture and land stewardship. The name and address of the person appointed as county weed commissioner shall be certified to the county auditor and to the secretary of agriculture within ten days of the appointment. The board of supervisors shall fix the compensation of the county weed commissioner and deputies. In addition to compensation, the commissioner and deputies shall be paid their necessary travel expenses. At the discretion of the board of supervisors, the weed commissioner shall attend a seminar or school conducted or approved by the department of agriculture and land stewardship relating to the identification, control, and elimination of noxious weeds.

The board of supervisors shall prescribe the time of year the weed commissioner shall perform the powers and duties of county weed commissioner under this chapter which may be during that time of year when noxious weeds can effectively be killed. Compensation shall be for the period of actual work only; although a weed commissioner assigned other duties not related to weed eradication may receive an annual salary. The board of supervisors shall likewise determine whether employment shall be by hour, day or month and the rate of pay for the employment time [Iowa Code §§331.321(1)(j); 317.3].

The responsibility for the enforcement of all the provisions of Iowa Code chapter 317 is vested in the board of supervisors. The jurisdiction of the board regarding the eradication of weeds includes all farm lands, railroad lands, abandoned cemeteries, state lands and state parks, primary and secondary roads, and roads, streets, and other lands within cities unless otherwise provided [Iowa Code §317.9]. Subsequently, the weed commissioner is subject to the direction and control of the board [Iowa Code §317.4]. In addition to enforcement, the board annually may by resolution prescribe and order a program of weed destruction [Iowa Code §317.13]. On or before the first day of November of each year, the weed commissioner shall make a written report to the board [Iowa Code §317.7].

Compensation

County Compensation Board

The annual compensation for all elected county officers in each county is determined by a compensation board in each county composed of seven residents of the county [Iowa Code §§331.905(1),.907(1)]. The members of the compensation board shall be selected as follows:

- a. Two members appointed by the board of supervisors [Iowa Code §331.905(1)(a)].
- b. One member shall be appointed by each of the following county officers: the county attorney, auditor, treasurer, sheriff, and recorder [Iowa Code §331.905(1)(b)].

The members of the county compensation board shall be appointed to four-year, staggered terms of office. The members shall not be officers or employees of the state or political subdivisions of the state. A term shall be effective on the first of July of the year of appointment and a vacancy shall be filled for the un-expired term in the same manner as the original appointment [Iowa Code §331.905(2)].

The members of the compensation board shall receive no compensation, but they shall be reimbursed for their actual expenses incurred in the performance of their official duties [Iowa Code §331.905 (3)].

The county compensation board shall elect a chairperson and vice chairperson annually from among its membership. The compensation board shall meet at the call of the chairperson or upon written request of a majority of its membership. A majority vote of the compensation board members shall determine any matter relating to its duties [Iowa Code §331.905 (4)].

The board of supervisors shall provide the necessary office facilities and the technical and clerical assistance requested by the compensation board to carry out its duties [Iowa Code §331.905 (5)].

The expenses of the compensation board members, the salaries and expenses of any technical and clerical assistance, and the cost of providing any facilities shall be paid from the county general fund [Iowa Code §331.905(6)].

In setting the salaries of the elected county officers, the county compensation board shall annually review the compensation paid to comparable officers in other counties of this state, other states, private enterprise, and the federal government. In setting the salary of the sheriff, the compensation board must consider setting the salary so that it is comparable to salaries paid to professional law enforcement administrators and command officers of the Iowa highway safety patrol, the division of criminal investigation of the department of public safety, and city police agencies in this state. The compensation board shall prepare a compensation schedule for the elective county officers for the succeeding fiscal year. A recommended compensation schedule requires a majority vote of the compensation board members [Iowa Code §331.907(1)].

At the public hearing held on the county budget the compensation board the county compensation board shall submit its recommended compensation schedule for the next fiscal year to the board of supervisors for inclusion in the county budget. The board of supervisors shall review the recommended compensation schedule for the elected county officers and determine the final compensation schedule which shall not exceed the compensation schedule recommended by the county compensation board. In determining the final compensation schedule if the board of supervisors wishes to reduce the amount of the recommended compensation schedule, the amount of salary increase proposed for each elected county officer, except as provided in the paragraph below, shall be reduced an equal percentage. A copy of the final compensation schedule shall be filed with the county budget at the office of the director of the department of management. The final compensation schedule takes effect on July 1 following its adoption by the board of supervisors.

The board of supervisors may adopt a decrease in compensation paid to supervisors irrespective of the county compensation board's recommended compensation schedule or other approved changes in compensation paid to other elected county officers. A decrease in compensation paid to supervisors shall be adopted by the board of supervisors no less than 30 days before the county budget is certified. The final compensation schedule shall be filed with the county budget and takes effect on July 1 following its adoption by the board of supervisors [Iowa Code §331.907(2)].

County Assessor and Deputies

The county conference board, of which the board of supervisors is a part, has the duty of fixing the salary of the members of the board of review, the salary of the county assessor, and the compensation of the assessor's deputies and assistants [Iowa Code §441.16].

Deputies and Assistants

Although the county auditor, recorder, and treasurer determine the salaries of their own deputies, within legal limits, the board of supervisors is required to certify the annual salary of each deputy to the county auditor. The board cannot certify a salary in excess of the amount authorized by law. The annual base salary of the first and second deputy officer of the office of auditor, treasurer, and recorder, the deputy in charge of the motor vehicle registration and title division, and the deputy in charge of driver's license issuance shall each be an amount not to exceed 85% of the annual salary of the deputy's principal officer. In offices where more than two deputies are required, the annual base salary of each additional deputy shall be an amount not to exceed 80% of the principal officer's salary [Iowa Code §331.904(1)]. Compensation for all extra help and clerks is fixed by the board of supervisors [Iowa Code

§331.904(4)].

The annual salary of each assistant county attorney shall be determined by the county attorney within the budget set for the county attorney's office by the board. The salary of an assistant county attorney shall not exceed 85% of the maximum salary of a full-time county attorney. The county attorney shall inform the board of the full-time or part-time status of each assistant county attorney. In the case of a part-time assistant county attorney, the county attorney shall inform the board of the approximate number of hours per week the assistant county attorney shall devote to official duties. [Iowa Code §331.904(3)].

Deputy Sheriff Compensation

Each deputy sheriff shall receive an annual base salary as follows:

- a. The annual base salary of a first or second deputy sheriff shall not exceed 85% of the annual base salary of the sheriff.
- b. The annual base salary of any other deputy sheriff shall not exceed the annual base salary of the first or second deputy sheriff.
- c. The sheriff shall set the annual base salary of each deputy sheriff who is classified as exempt under the federal Fair Labor Standards Act of 1938, as amended, subject to the limitations specified in paragraphs "a" and "b". The sheriff shall certify the annual base salaries of the exempt deputy sheriffs to the board and, if the limitations of paragraphs "a" and "b" are not exceeded, the board shall certify the annual base salaries to the county auditor.
- d. The board shall set the annual base salaries of any deputy sheriffs who are not classified as exempt under the federal Fair Labor Standards Act of 1938, as amended. Upon certification by the sheriff, the board shall review, and may modify, the annual base salaries of the deputy sheriffs who are not classified as exempt. The annual base salaries set by the board are subject to the limitations specified in paragraphs "a" and "b". [Iowa Code §331.904(2)]. Note that the definition of base salary varies for deputy sheriffs as compared to other deputies [Iowa Code §§331.904(1)(b) and 331.904(2)(e)].

A temporary or acting county attorney shall receive a reasonable compensation as determined by the board for services rendered in proceedings before a judicial magistrate or rendered on behalf of a county officer or employee. If the proceedings are held before a district associate judge or a district judge, the judge shall determine a reasonable compensation for the temporary or acting county attorney. If the proceedings are held before an associate juvenile judge or a judicial hospitalization referee, the temporary or acting county attorney shall be compensated at a rate approved by the judge who appointed the associate juvenile judge or referee. The compensation shall be paid from funds to be appropriated to the office of county attorney by the board [Iowa Code §331.754(6)].

In counties having two courthouses, the principal official of any county office and his/her first deputy or first assistant may enter into a written agreement for the division of their salaries. The payment cannot be greater than the sum of the two salaries. The board of supervisors must certify the agreement to the county auditor [Iowa Code §331.907(5)].

When the duties of an officer or employee are assigned to one or more elected officers, the board shall set the initial salary for each elected officer. Thereafter, the salary shall be determined as provided in Iowa Code §331.907 [Iowa Code §331.323(1)].

Civil Service for Deputy Sheriffs

All deputy sheriffs are subject to civil service requirements except the following: (1) a chief deputy sheriff, (2) two second deputy sheriffs in counties of more than 100,000 population, (3) three second deputy sheriffs in counties of more than 150,000 population, (4) four second deputy sheriffs in counties with a population of more than 200,000 [Iowa Code §341A.7]. Each county must have a civil service commission with three members. Two members are appointed by the board of supervisors, and one by the county attorney. Each member serves for a term of six years but a member of the commission may be removed by the authority that appointed him/her for good cause. However, a member of the commission cannot be removed until the member has been given notice of the nature of the charges against him/her in writing and a hearing before the board of supervisors is held concerning the charges [Iowa Code §341A.2].

The Code of Iowa requires that all appointments and promotions to classified civil service positions as deputy sheriffs must be made solely on merit, efficiency, and fitness. These qualifications are to be ascertained by open competitive examination and impartial investigations conducted by the county civil service commission [Iowa Code §341A.8]. The civil service commission is granted many duties and powers in connection with administering the tests and certifying the qualified applicants to the sheriff for his/her final selection to fill any vacancy [Iowa Code §341A.6].

In the alternative to the creation of a single county civil service commission, two or more counties in the state may establish a combined civil service system to serve all the counties. A combined system may be established by resolution of the board of supervisors in each county involved. The commissioners are to be appointed one each by joint meetings of the boards of supervisors, district court judges, and county attorneys, respectively [Iowa Code §341A.3]. [See generally Iowa Code chapter 341A for the full duties and requirements regarding the appointment of deputy sheriffs.]

Vacancies, Resignations, Removals

Elective county offices become vacant when any of the events lists in Iowa Code §69.2 occur, and removal of any appointed or elected officer may be obtained on the grounds listed in Iowa Code §66.1A. Removal, of course, creates a vacancy in office.

In addition to the above procedures, the board of supervisors has specific authorization to remove from office any county officer who refuses or neglects to make any report or give any bond within twenty days after being required by the board to do so. A majority vote of the board is required. The board of supervisors can require any county officer to report on any subject connected with the duties of his/her office or to require additional security on an officer's bond [Iowa Code §331.323(2)(a)-(b)].

When an elective county office other than that of a county supervisor becomes vacant, the board of supervisors has a duty to make an appointment to fill the position, unless a special election is called [Iowa Code §69.8(3)].

Combining County Offices

The duties of two or more county officers or employees may be combined. Offices subject to this provision are: sheriff, treasurer, recorder, auditor, medical examiner, general relief director, county care facility administrator, commission on veteran affairs, director of social welfare, assessor, and weed commissioner [Iowa Code §331.323(1)].

The board of supervisors, if petitioned by voters equal to at least 25% of the votes cast for the county office receiving the greatest number of votes at the last preceding general election, must call an election for the purpose of voting on a proposal (or proposals) for combining the duties of any of these officers or employees. If the petition contains more than one proposal, each proposal must be listed on the ballot as a separate issue. The petition must state the offices and positions to be combined and the office or position that is to be abolished [Iowa Code §331.323(1)].

If an appointive position is abolished, the incumbent's term of office terminates one month from the day the proposal is approved. When an elective office is abolished, the incumbent holds office until the completion of the term to which he/she was elected, but if the proposal is approved at a general election at which an abolished office is filled, the person elected to the abolished office does not take office [Iowa Code §331.323(1)].

The procedure for separating combined offices is the same as for combining said offices [Iowa Code §331.323(1)].

Bonds for County Officers

The bonds of members of the board of supervisors, county attorneys, recorders, auditors, sheriffs, and assessors shall each be in a penal sum of not less than \$20,000 [Iowa Code §64.8]. The county treasurer's bond shall not be less than \$50,000 [Iowa Code §64.10]. The bond of the county engineer may range from \$2,000 to \$5,000 [Iowa Code §309.18]. The assessor's bond and his/her deputies' bonds are set by the conference board [Iowa Code §441.15], but are subject to the approval of the board of supervisors and shall not be less than \$20,000 [Iowa Code §64.8]. The board may purchase a blanket surety bond insuring

the fidelity of county officers and county employees who are accountable for county funds or property [Iowa Code §§64.11;331.322(1),.324(6)].

Bonds required of deputy officers may be in any amount fixed by the board of supervisors [Iowa Code §331.903(3)]. The reasonable costs of bonds required of deputy county officers, clerks, and cashiers are paid by the county [Iowa Code §64.15]. The bonds of deputy sheriffs may be either bonds or liability policies, according to whichever the sheriff requires; subject to approval by the board of supervisors [Iowa Code §331.903(3)].

Upon petition, a surety may be relieved of his/her obligation if, after a hearing [Iowa Code §331.323(2)(a)], the board of supervisors decides that there is "substantial ground for apprehension" [Iowa Code §65.4, .7]. In this event, the county officer must supply a new bond or the office is declared vacant [Iowa Code §§65.7-.8].

Within five days after the presentation of bonds to the board of supervisors by the county officers, township clerks, and assessors, the board must approve (by endorsing approval on the bond) or disapprove the bond [Iowa Code §64.20]. If the board refuses or neglects to approve the bond of a county officer, he/she may present the bond within five days to a judge of the district court for approval. If, upon hearing, the bond is found to be sufficient, the judge's approval has the same effect as that of the board of supervisors [Iowa Code §64.22].

Whenever a bond is presented to the board of supervisors after final adjournment of the board's January session, the county auditor may give his/her approval to all bonds, except those of the county auditor and county treasurer. The county auditor then must report this approval to the board at its next meeting. Unless the board disapproves, the bonds the auditor has approved will be deemed approved by the board. However, if the board disapproves of the bond, a new bond sufficient for approval must be furnished by the officer within five days. Nevertheless, the disapproved bond will cover all acts done up to the time of substituting an approved bond [Iowa Code §64.21].

Those officers whose bonds are approved by the board of supervisors may be required by the board to furnish a new bond as additional security if it is the board's opinion that public security requires it. In such cases, the board must give the officer ten days' notice to show cause why a new bond should not be required. Upon failing to show cause, the officer must furnish a bond within the time prescribed (which the law requires to be no less than a "reasonable time) by the board [Iowa Code §65.2]. The result is that one officer will be covered by two valid bonds. If the officer does not furnish the second bond, his/her office becomes vacant [Iowa Code §65.3].

If a judgment has been rendered against any county officer and the sureties to his/her bond, in favor of the county, and if the board is satisfied that the full amount cannot be collected, the board of supervisors may compromise the judgment [Iowa Code §331.323(2)(c)].

If any officer refuses or neglects to provide a bond within 20 days after he/she is required to do so, the board of supervisors is authorized to remove him/her from office upon a majority vote of the board [Iowa Code §331.323(2)(b)]. In addition, action by any officer in an official capacity without giving bond when it is required constitutes ground for removal from office [Iowa Code §64.25].

Reports and Records of County Officers

The board of supervisors may require any county officer to report to it, under oath, on any subject connected with the duties of his/her office [Iowa Code §331.323(2) (b)]. In addition to this general provision, the various county officers are required by law to make certain reports quarterly and annually to the board and to keep certain records ready for inspection at all times.

All fees and charges collected by the county auditor, recorder, sheriff, and their deputies or clerks must be reported quarterly to the board of supervisors. This mandatory report must give an itemized account of all fees collected during the preceding quarter. County treasurers may make these quarterly reports if they choose, or they may choose instead to provide a monthly report to the auditor and supervisors and credit any fees daily to the county treasury. The county auditor's transfer fees are paid by the recorder directly to the treasurer [Iowa Code §331.902(3)].

In addition, the Code specifies that unless otherwise provided, all officers required to collect and pay over fines must make a sworn report in writing to the board on the first Monday in July each year. This report must indicate the amount of the fines assessed, the amount of the fees and fines collected, and the vouchers showing payments of these sums to the proper officials [Iowa Code §70A.7].

In all counties, the sheriff is accountable to the board of supervisors for all fees collected or due for the boarding, lodging, and cares of federal prisoners in his/her custody [Iowa Code §331.658(3)].

The weed commissioner must submit to the board of supervisors an annual report of his/her activities on or before the first day of November [Iowa Code §317.7].

When county libraries are established under the provisions of Iowa Code chapter 336, the board of trustees is required to make a report to the board of supervisors within 90 days of the close of each fiscal year. The report covers the general condition of the library and the business it has transacted during the fiscal year [Iowa Code §336.11].

The board of supervisors may authorize a county officer to destroy records in the officer's possession which have been on file for more than 10 years and are not required to be kept as permanent records [Iowa Code §331.323(2)(d)].

Personnel Policy

The passage of a county-wide personnel policy is not mandatory under the laws of Iowa but it is advisable that each county have such a policy. This is designed to ensure that the hiring, firing, and promotion practices of the county offices are uniform and not arbitrary or capricious. The personnel policy adopted may be very general and need not go through the requirements of each and every county position. The purpose is to protect the county in case it is charged or sued for discriminatory or illegal practices in its employment procedures.

Probably the best way to achieve a personnel policy which all the county officers will respect is to have their participation in the drafting of the policy. The board will have to finalize and adopt the policy but this participation by the officers in the creation of the policy will allow them to better understand the purpose of the policy and what is required of them in their dealings with employees of their respective offices.

The Iowa Supreme Court has 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, 261 N.W.2d 688 (1978), 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." [See 1983 WL 856635 (Iowa A.G.) (board of supervisors does not have authority to initiate discipline against employees of elected county officials).]

In view of McMurry v. Lee County Board of Supervisors, county supervisors lack authority to require another elected county officer to comply with their comprehensive hiring policies. [2000 WL 33258481 (Iowa A.G.)]

An employment manual can constitute an agreement by a county board of health to follow county employment policies and procedures. However, if the parties do not identify any specific provision within the manual that will constitute a specific delegation of the decision-making authority to terminate a public health employee, but the record only reveals the county board of health agrees to follow certain procedures and guidelines in exercising its power, there is no specific authority given to the county board of supervisors in such a county employment manual to make the decision to terminate public health employees. [Warren County Board of Health v. Warren County Board of Supervisors, 654 N.W.2d 910 (Iowa 2002)]

Chapter 5

Collective Bargaining

The general assembly has declared that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of the state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations [Iowa Code §20.1].

Public Employment Relations Board

For purposes of directing collective bargaining, a board known as the "Public Employment Relations Board" has been established. The board consists of three members appointed by the governor, subject to confirmation by the senate. [Iowa Code §20.5(1)].

The duties of the Public Employment Relations Board (PER board) are to administer the provisions of the Public Employment Relations Act. The purpose of the public employment relations board established by the Public Employment Relations Act is to implement the provisions of the Act and adjudicate and conciliate employment related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include, but are not limited to, the following:

- Determining appropriate bargaining units and conducting representation elections.
- Adjudicating prohibited practice complaints and fashioning appropriate remedial relief for violations of the Act.
- Adjudicating and serving as arbitrators regarding state merit system grievances and grievances arising under collective bargaining agreements between public employers and certified employee organizations.
- Providing mediators and arbitrators to resolve impasses in negotiations.
- Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.
- Preparing legal briefs and presenting oral arguments in the district courts, the court of appeals and the supreme court in cases affecting the board. [Iowa Adm. Rule 621-1.2]

The board also collects and disseminates data relating to terms and conditions of public employment; and maintains a list of mediators, fact-finders, and arbitrators, and establishes their rate of compensation. The staff of the board includes an executive director and labor relations examiners, who may act as hearing officers, conduct investigations of prohibited practices, act as election agents, and conduct research projects for the board. The executive director is responsible to the board, and is responsible for administrative matters and general supervision of the board staff [Iowa Code §20.6]. (See Chapter 621 of the Iowa Administrative Code for detailed information on PER board procedures).

The Public Employer

The employer of county employees for the purpose of all matters pertaining to the Collective Bargaining agreement is the county board of supervisors [Iowa Code §331.324(1)(a)]. County elected officials are also public employers and they retain the right to hire, fire, and direct the work of their employees within the context of the Collective Bargaining agreement [1975 WL 368712 (Iowa A.G.)].

Employer Rights

Under the provisions of collective bargaining the county supervisors should keep in mind that they retain specific employer rights in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act [Iowa Code §20.7]. Under Iowa Code §20.7, the supervisors retain the exclusive power, duty, and right to:

1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign, and retain public employees in position within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments, and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify, and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

The Public Employee

Employee Rights

Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the PER board as the exclusive bargaining representative for the public employees in that bargaining unit [Iowa Code §20.16]. Under the provisions of collective bargaining, public employees are granted explicit rights with regards to collective bargaining activities. Under Iowa Code §20.8 employees have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representation of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.
4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees, or assessments or service fees of any types.

Excluded Employees

Certain employees of the county are excluded from the provisions of collective bargaining. These include: elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission [Iowa Code §20.4(1)]. Also excluded are representatives of a public employer, including the administrative officer, director, or chief executive officer of a public employer or major division thereof as well as his/her deputy, first assistant, and any supervisory employees. The Code explicitly defines a supervisory employee as any individual having authority in the interest of the public employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority that is not merely routine or clerical in nature, but requires the use of independent judgment [Iowa Code §20.4(2)]. Confidential employees [Iowa Code §20.4(3)] and temporary public employees employed for a period of four months or less are also excluded from the provisions of collective bargaining [Iowa Code §20.4(5)].

Scope of Negotiations

The Code specifically defines the scope of negotiations that may take place between the board of supervisors and employee organizations for the purposes of collective bargaining. The two parties shall negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues check-off for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties [Iowa Code §20.9].

It should be noted by the county supervisors that the obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession [Iowa Code §20.9].

It should also be noted that all retirement systems are excluded from the scope of negotiations [Iowa Code §20.9].

Prohibited Practices

Employers

The Code is also very specific with regards to prohibited practices. First, it shall be a prohibited practice for any public employer, public employee, or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in Iowa Code §20.9 [Iowa Code §20.10(1)].

In Iowa Code §20.10(2) it is specifically prohibited for county supervisors or their designated representative to:

- a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this chapter.
- b. Dominate or interfere in the administration of any employee organization.
- c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.
- d. Discharge or discriminate against a public employee because he/she has filed an affidavit petition or complaint or given any information or testimony under this chapter, or because he/she has formed, joined, or chosen to be represented by any employee organization.
- e. Refuse to negotiate collectively with representatives of certified employee organizations.
- f. Deny the rights accompanying certification or exclusive recognition.
- g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in Iowa Code chapter 20.
- h. Engage in a lock out.

Employees

The board of supervisors should be aware of practices prohibited on the part of employees or employee organizations in order to insure a fair and representative bargaining process. Under Iowa Code §20.10(3) public employees, or an employee organization or any person, union, or organization or their agents are prohibited to:

- a. Interfere with, restrain, coerce or harass any public employee with respect to any of the employee's rights under this chapter or in order to prevent or discourage the employee's exercise of any such right, including, without limitation, all rights under Iowa Code §20.8.
- b. Interfere, restrain, or coerce a public employer with respect to rights granted in this chapter or with respect to selecting a representative for the purposes of negotiating collectively or the adjustment of grievances.
- c. Refuse to bargain collectively with a public employer as required in this chapter.
- d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.
- e. Violate Iowa Code §20.12.
- f. Violate the provisions of Iowa Code §§732.1 to 732.3, which are hereby made applicable to public employers, public employees, and employee organizations.
- g. Picket in a manner which interferes with ingress and egress to the facilities of the public employer.
- h. Engage in, initiate, sponsor or support any picketing that is performed in support of a strike, work stoppage, boycott or slowdown against a public employer.
- i. Picket for any unlawful purpose.

Strikes

Strikes are expressly prohibited by statute [Iowa Code §20.12].

Expression of Views

The expression of views, arguments, or opinions, whether in written, printed, graphic, or visual form, does not constitute a prohibited labor practice, if such expression contains no threat of reprisal, force, or promise of benefit [Iowa Code §20.10(4)].

Violations

If the board of supervisors feels an employee or employee organization has violated the provisions of Iowa Code §20.10, a complaint may be filed with the public employment relations board within 90 days of the alleged violation. The accused is given 10 days to file a written answer to the complaint. The board of supervisors should be aware that employees or employee organizations may file complaints against the supervisors as public employers in the same manner for alleged violations on the part of the board of supervisors or their designated representative [Iowa Code §20.11(1)]. (See Iowa Code §20.11 for details on how the PER board handles complaints)

Impasse Procedures

As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty days prior to the certified budget submission date of the public employer. However, if public employees represented by the employee organization are teachers licensed under Iowa Code chapter 272, and the public employer is a school district or area education agency, the agreement shall provide for implementation of impasse procedures not later than 120 twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the public employer is a community college, the agreement shall provide for implementation of impasse procedures not later than 120 days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the public employer is not subject to the budget certification requirements of Iowa Code §24.17 and other applicable sections, the agreement shall provide for implementation of impasse procedures not later than 120 days prior to the date the next fiscal or budget year of the public employer commences. If the parties fail to agree upon impasse procedures under the provisions of this section, the impasse procedures provided in Iowa Code §§20.20 - 20.22 shall apply.

Parties who by agreement are utilizing a cooperative alternative bargaining process shall, at the outset of such process, agree upon a method and schedule for the completion of impasse procedures should they fail to reach a collective bargaining agreement through the use of such alternative bargaining process.

Mediation

Mediation is incorporated when requested by either party in the absence of an impasse agreement or if either party fails to utilize its procedures 120 days prior to the certified budget submission date. The PER board shall appoint an impartial and disinterested party to act as mediator. The function of the mediator is to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree [Iowa Code §20.20].

Arbitration

If an impasse persists after the mediator has been appointed, the PER board shall have the power, upon request of either party, to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party [Iowa Code §20.22(1)]. (See Iowa Code §20.22 for the provisions of arbitration).

Public Right to Know

The results of collective bargaining sessions must be made public, protecting the public's right to know the contracted terms agreed upon in the negotiations. Pre-negotiation material relative to collective bargaining, as well as working papers and studies are not subject to Iowa Code chapter 22, and are confidential [1976 WL 375898 (Iowa A.G.)].

Federal Funds

If any provisions of Iowa Code chapter 20 jeopardizes the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or other federal allotment of money, the provisions of Iowa Code chapter 20 shall insofar as the fund is jeopardized, be deemed to be inoperative [Iowa

Code §20.27].

Individual's Right to a Closed Meeting

Remember, that if an individual's employment is being discussed at a meeting of the board, the individual may request that the matter be considered at a closed session to prevent any needless and irreparable injury to his/her reputation [See Iowa Code §21.5(1)(i)].

Chapter 6

Secondary Roads and Bridges

The board of supervisors is charged with the jurisdiction and control of the secondary roads and farm-to-market extension roads within a city of a population of less than 500. The board of supervisors has concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. [Iowa Code §306.4].

Although the board of supervisors has general supervision of the secondary road system, all construction and maintenance work is performed under the immediate supervision of the county engineer, who bears the responsibility for seeing that the work is performed efficiently and economically [Iowa Code §309.21].

The attorney general has ruled that the county engineer is not merely an employee of the board, but is a public official charged with certain defined powers and duties. Since the engineer has special knowledge and training, the legislature has chosen to place upon him/her the responsibility for performing the work. It is within his/her authority to direct the work and to supervise the county employees. In short, the board establishes policy and the engineer executes that policy [Sec. 309.67; McKinley v. Clarke County, 228 Iowa 1185, 293 N.W. 449 (Iowa 1940); 1948 WL 66729 (Iowa A.G.)].

The Iowa Code contemplates that the board of supervisors and the engineer will work together toward secondary road construction and maintenance. There is no conflict of power, duty or authority. The supervisors have the power and the duty, not only to pass upon the necessity and desirability of the construction and maintenance work of such roads in their county, but also have the authority to direct the county engineer to proceed with the job. The manner and method or procedure is within the responsibility of the engineer, subject to the final inspection of the board and the engineer is responsible to the board to the extent of his efficient, economical and good-faith performance of the work directed to be done by the board of supervisors. 1979 Iowa Op. Atty. Gen. 424, 1979 WL 21084 (Iowa A.G.).

While the statute contemplates a cooperative relationship allowing the county board of supervisors to benefit from the county engineer's experience, knowledge and training in maintaining the secondary road system, the final authority for such maintenance clearly rests with the board. The board establishes the "policy," supervises the work product and approves the recommendations of the county engineer. The board allocates funds to allow the engineer to proceed with the work submitted to the board for approval. See Iowa Code §309.21 and Iowa Code §309.67. The responsibility to establish policy can result in very detailed involvement on the part of the board; the expertise of the county engineer should be fully utilized, however, and his or her responsibilities to adopt methods to carry out work should not be undercut. [1979 Iowa Op. Atty. Gen. 424, 1979 WL 21084 (Iowa A.G.)]

Iowa Code §331.362 provides that a county has jurisdiction over its secondary roads. [Iowa Code §306.4(2)]. See Iowa Code §306.3(9) (defining "secondary roads"); see also Iowa Code §368.7A(2). Iowa Code §331.429 creates the "secondary road fund." Iowa Code §331.429(2)(i) provides that a county may make appropriations from the secondary road fund for the services provided under sections various code sections relating to secondary roads.

Iowa Code chapter 309 governs secondary roads. Iowa Code §309.67 provides that county supervisors have the responsibility to provide adequate funds "to properly maintain" secondary roads and that the county engineer shall adopt such methods and recommend such personnel and equipment "to maintain continuously, in the best condition practicable, the entire mileage" of secondary roads. Iowa Code §309.16 provides that county supervisors may seek advice from the Iowa Department of Transportation "as to the manner of constructing and maintaining" their secondary roads. Under Iowa Code §309.21, "all construction and maintenance work" shall be performed under the direct and immediate supervision of the county engineer.

Iowa Code §309.93 provides that county supervisors shall, before April 15 of each year, adopt a secondary road budget for the next fiscal year. Iowa Code §309.22 provides that county supervisors at that time shall also adopt a "secondary road construction program" – which shall include a "project priority list" for the succeeding four fiscal years and a "project accomplishment list" for the upcoming year – based upon the secondary road fund.

Under Iowa Code §309.26, county supervisors shall consult with the county engineer, select in a provisional way the roads they then consider advisable to embrace in the secondary road construction program, and direct the county engineer to make a reconnaissance survey and estimate of all such roads or parts thereof "as, in view of the public necessity and convenience, present the most urgent need and necessity for early construction." Iowa Code §309.27 provides that the county engineer shall designate the roads considered "most urgently in need of construction," and Iowa Code §309.28 provides that the county engineer may recommend that the county omit or add certain roads or parts thereof to a particular project.

Financing

Qualification of County for Aid

The board of supervisors has been given a general grant of power to make arrangements and agreements with federal or state authorities for federal or state financial aid for secondary road construction [Iowa Code §310.2].

Source of Secondary Road Funds

Counties maintain a fund for secondary road expenses: the secondary road fund. It consists of transfers from the general fund not to exceed 16 and seven-eighths cents per \$1,000 of assessed value per year on all taxable property in the county, transfers from the rural services fund not to exceed \$3.00 and three-eighths cents per \$1,000 of assessed value per year on all taxable property not located within the corporate limits of a city, funds allotted to the county from the state road use tax fund, funds provided by individuals for improvement of secondary roads, and other funds provided by law [Iowa Code §331.429(1)].

Use of the Secondary Road Fund

The secondary road fund may be used for any or all expenses relating to secondary roads as specified by Iowa Code §331.429(2). It is against the law to use these funds for a private owner. If the county does work for another political subdivision, the secondary road fund must be reimbursed for the costs.

Anticipatory Certificates

The board of supervisors is empowered to issue anticipatory certificates (anticipating secondary road revenues) that are similar to bonds. However, before these certificates can be issued, the board must obtain the advice of the state department of transportation [Iowa Code §309.46].

Construction Program

Department of Transportation Advice

Supervisors should be aware that the state DOT is available for advice regarding the manner of construction and maintenance of secondary roads [Iowa Code §309.16]. On or before April 15 of each year the board of supervisors, with the assistance of the county engineer, must prepare and adopt a secondary road construction program which must include a project accomplishment list for the next fiscal year and a project priority list for the next four fiscal years. The secondary road construction program is subject to the approval of the DOT. The lists shall be based upon estimated local secondary and farm-to-market construction funds available for the periods. The project accomplishment list may be revised only due to unforeseen circumstances and any revision must pre-approved by the DOT [Iowa Code § 309.22]. See above for discussion of secondary road budgets and note the interrelation of the preparation of the budget and accomplishment and priority lists.

After consulting with the county engineer, the board must select roads tentatively to be included in the improvement program, being mindful that the objective should be to provide the best possible system of intra-county and inter-county connections of all roads in the county, and directs the county engineer to make a reconnaissance survey and estimate of costs [Iowa Code §§309.25-.26]. Also, the board may order the engineer to file a written report with the board designating the order of urgency

of construction for those roads included in the plan [Iowa Code §§309.27-.30]. Before the program can be initiated by the board of supervisors, it must be approved by the DOT [Iowa Code §309.23]. Upon final adoption of the comprehensive road program, it is given to the county auditor for recording in the county road book [Iowa Code §309.34]. The county shall provide copies of its annual construction program to the soil conservation district commissioners' office for review. Any recommendations by the soil conservation district commissioner must be reported to the DOT [Iowa Code §§306.50 -.54].

Contracting for Construction Work

The board of supervisors, as the contracting authority for the county's road construction program, may require, if it so elects, that each person or company filing a bid shall also file with the board a statement disclosing the bidder's financial standing, the nature and extent of equipment, and experience in performing similar work. Such statements must be filed before the letting in which the bidder expects to bid. Prior to letting the bid, the board may notify the bidder of the limits on the amount and nature of work for which the bidder is deemed qualified to bid [Iowa Code §314.1].

If the engineer's estimate exceeds \$50,000, a contract for road or bridge construction shall be advertised and let at a public letting. However, this does not apply to contracts for surfacing materials obtained from local pits and quarries [Iowa Code §309.40]. Contracts not falling under the provisions of Iowa Code §309.40 shall be either advertised and let at a public letting; or, where the cost does not exceed the engineer's estimate, let through informal bid procedure by contacting at least three qualified bidders prior to letting the contract. The informal bids received together with a statement setting forth the reasons for use of the informal procedure and bid acceptance shall be entered in the minutes. A third alternative open to the board in such cases is to have the construction project built by regularly employed county road personnel if the project is within their capability as determined by the county engineer [Iowa Code §309.41].

Awarding of Contracts

Insofar as possible, each contract awarded should be accompanied by standard specifications and in no case may the contract call for a traveled roadway to be less than 22 feet from shoulder to shoulder [Iowa Code §309.39]. In awarding a contract, the board shall consider the prices bid and the nature and extent of each bidder's equipment, financial responsibility, and experience in performing similar types of work [Iowa Code §314.1].

Iowa Code §331.341 provides: Contracts for improvements which may be paid for from the secondary road fund shall be awarded in accordance with Iowa Code §§309.40 to 309.43, 310.14, 314.1, 314.2, and other applicable state law. If the project is to be paid for from the secondary road fund, Iowa Code §314.1 applies. That provision in relevant part provides: In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. The agency may reject any or all bids, or may let by private contract or build by day labor, at a cost not in excess of the lowest bid received. . . . All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law.

Iowa Code §314.1 does not speak as to the form of the contract and has no requirement of signature, seal, structure or other technical requirement. If there is a written bid and a written approval of that bid, then the requirement in Iowa Code §314.1 that "all contracts shall be in writing" is satisfied if the bid and the Board's approval constitute an otherwise binding agreement. [Horsfield Contract., Inc. v. Dubuque County, 653 N.W.2d 563 (2002)]

The contract must be in writing and it must be secured by a bond [Iowa Code §314.1]. Any provision in the contract that seeks to limit the time for suit on the bond to less than five years for bonds covering concrete work or to less than one year for bonds covering other work is invalid [Iowa Code §309.58]. Also, if any state or county official or employee, whether elected or appointed, is directly or indirectly interested financially in the contract, the contract will be invalidated [Iowa Code §314.2].

Purchase and Condemnation of Right-of-Way

If additional land is required in the maintenance, improvement, relocation, or establishment of a secondary road, or if additional land is required to provide drainage of the road or to obtain materials for improving or maintaining a secondary road (including obtaining access to such materials), the board of supervisors may enter into an agreement with the property owner for the purchase of the land. As an alternative, the board may bring a condemnation proceeding, or it may use a special proceeding as provided in Iowa Code §§306.28-.37 for acquiring land [Iowa Code §306.19].

The board may on their own motion change the course of any part of any road or stream, watercourse, or dry run, and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or straighten any road, or to cut off dangerous corners, turns, or intersections on the highway, or to widen any road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run upon such highway. The board shall conduct its proceedings to accomplish the above in the form prescribed in Iowa Code §§306.28 to 306.37 or as provided in Iowa Code chapter 6B [Iowa Code §306.27].

State Monitored Right-of-Way Acquisition Procedures

In order to gain federal-aid funds to be utilized in any phase of construction of a project, the supervisors must observe certain procedures during right-of-way acquisition. To insure compliance on federally funded projects, the supervisors should contact the state DOT for guidance prior to starting any right-of-way activities.

Transfer of Rights-of-Way Between the State and Political Subdivisions

The state DOT is required to transfer its legal and equitable title and interest in rights-of-way for roads to the county having jurisdiction over the road. Similarly, the board of supervisors is required to transfer its legal and equitable title and interest in rights-of-way for roads to the state DOT where said state agency has jurisdiction over the road [Iowa Code §306.42(1)-(3)].

All transfers shall be made by quit claim deed [Iowa Code §306.42(2)-(3)]. All available descriptions, plats, maps, or engineering drawings may be used to facilitate such transfers [Iowa Code §306.42(1),(5)]. Transfers shall be subject to the right of a utility, association, company, or corporation to continue in possession of a right-of-way in use at the time of the transfer. Transfers shall also be subject to rights of ingress and egress to land adjacent to the right-of-way [Iowa Code §306.42(4)].

Maintenance of County Roads

It is the duty of the board of supervisors to establish policies and provide adequate funding in order to properly maintain the secondary road system [Iowa Code §309.67]. Since bridges and approaches are considered an integral part of the system, the board is obligated to repair, maintain, and keep in reasonable safe condition all such bridges and approaches [*Larsen v. Pottawattamie County*, 173 N.W. 2nd 579 (1970)]. The board is charged with removing all obstructions in highways under their jurisdiction [Iowa Code §318.4]. The county engineer, pursuant to Iowa Code §309.21 and board policy, shall adopt methods and recommend personnel and equipment necessary to maintain continuously in the best condition practicable, the entire mileage of the secondary road system [Iowa Code §309.67].

Farm-to-Market Roads

The farm-to-market road system of a county consists of those main secondary roads as defined in Iowa Code §306.3(3) [Iowa Code §310.10].

In general, the board of supervisors plays a less significant role in farm-to-market road construction than in the construction of other secondary roads. The reason is that the state DOT assists in the contracting and letting for the construction [Iowa Code §310.14]. The DOT maintains a farm-to-market road fund, crediting and debiting the fund according to receipts and disbursements, and allotting to each county its share of the fund [Iowa Code §310.6]. Each quarter the county engineer receives a statement from the DOT showing the transactions pertaining to the county's account and the balance remaining in the county's account at the quarter's end [Iowa Code §310.8]. The board may increase the account's revenue only by passing a resolution making available for improvement or construction of farm-to-market roads any portion of the county's allotment of road use tax funds the board sees fit [Iowa Code §310.20].

If funds allotted to a county are not expended within three years following the close of the year in which the funds were allotted, the balance unspent at that time is apportioned among all the counties as if it were an original allocation. The funds are deemed expended if a contract has been let which obligates the payment of the funds upon performance of the contract. Upon request by the county, the DOT may, at its discretion, temporarily allocate additional monies up to five fiscal years of the county's anticipated farm-to-market road fund [Iowa Code §310.27].

Planning and Contracting

The board of supervisors of a county that has qualified itself to receive farm-to-market road funds may draft and submit to the DOT for its approval projects for the construction, reconstruction, or improvement of farm-to-market roads [Iowa Code §310.11]. The county engineer makes surveys, plans, and cost estimates of the project, submitting these both to the board of supervisors for approval and to the DOT for authorization for letting [Iowa Code §310.13].

The DOT handles the letting. It then recommends to the board of supervisors that it award the contract, which the board may agree or decline to do [Iowa Code §310.14].

Claims for work performed under the contracts may be approved the chairperson of the board or a majority of the board's members signing the claim, and all claims are paid from the farm-to-market fund and are charged to the county's allotted share of the fund [Iowa Code §§310.16,.18].

The county engineer has the duties of supervising, inspecting, and directing the work performed. He/she is, in performing these duties, responsible for the efficient, economic, and good-faith performance of the work [Iowa Code §310.19].

Obtaining Right-of-Way

The right-of-way for farm-to-market projects must be acquired by the county in accordance with Iowa Code chapter 306 and Iowa Code chapter 316 [Iowa Code §310.22].

Maintenance of Farm-to-Market Roads

The board of supervisors must maintain federal aid secondary roads in a manner satisfactory to federal authorities and the state DOT. If this is not done, the DOT will give notice to the board and 60 days will be allowed to put the road into a proper condition of maintenance. After 60 days, the DOT may withhold authorization for letting of any project using farm-to-market funds until a proper condition of maintenance has been restored [Iowa Code §310.29].

Extensions of Secondary Roads in Municipalities

Except in cities that have populations exceeding 2,500 and in which the houses or business places average less than 200 feet apart, the board of supervisors may construct, reconstruct, improve, repair, and maintain any street or road that is an extension of any secondary road subject to the approval of the municipality's council [Iowa Code §314.5]. If a farm-to-market road is located along the corporate boundary line of any municipality, it may be included in the farm-to-market road system and subjected to the board's authority over farm-to-market roads [Iowa Code §314.6].

Changes in Highways

The board, on its own motion, has the power to alter, vacate, or close any secondary road or railroad crossing thereon and to establish new roads within the county if such roads are intended to become part of the county's road system [Iowa Code §306.10].

In order to exercise this power, however, it is necessary for the board to conduct a hearing before vacating and closing a road [Iowa Code §306.11]. Notice of the hearing must be published not less than four or more than 20 days before the hearing date and must fix the time and place and state the subject of the hearing [Iowa Code §306.12-.13]. Further, the DOT, any state board or commission controlling lands that may be affected, the adjoining property holders and utility companies whose facilities adjoin the right-of-way must be notified by certified mail [Iowa Code §306.12]. However, if the action proposed is the establishment of a new secondary road, the board may provide a hearing and publish notice of its action but it is not required to do so [Iowa Code §306.18].

Those parties served with mailed notice, and any persons interested in the proposed action of the board, have a right to appear, object, and have a hearing with the board. The parties owning land abutting a road that the board proposes to vacate or close may file a written claim for damages with the board no later than the date fixed for hearing [Iowa Code §306.14]. Upon completion of the hearing, the board must enter either an order dismissing the proceedings or an order to vacate or close the road which must include the damages to be allowed to those claimants. The order is final in all aspects except the issue of damages [Iowa Code §306.16]; notwithstanding the Iowa Administrative Procedure Act, appeal may be made as to the amount of damages to the district court of the county in which the land is located [Iowa Code §306.17].

Secondary Road Assessment Districts

The *Code of Iowa* provides for a source of revenue for surfacing secondary roads in addition to the general secondary road funds of the county [Iowa Code §311.1A]. If petitioned by 50% or more of the owners of land within a proposed district, or by 50% of the owners of the land within the proposed district who reside in the county, the board may create a special assessment district [Iowa Code §311.6]. The petition cannot propose a payment of less than 50% of the county's costs [Iowa Code §311.3], and in no case can the proposed district or the special assessment district actually created extend more than one-half mile on each side of the road to be improved [Iowa Code §311.2]. It is also possible to include property in a city in such an assessment district if both the board of supervisors and the city council concur [Iowa Code §311.5].

The owners of at least 75% of the land that abuts a secondary road or is adjacent thereto may request by petition, prior to October 1 of any year that the road be improved. The petition must state that the owners of abutting or adjacent land will pay a fixed percent (but at least 50%) of the estimated costs. When the petition has been filed, the board reviews the proposed project and accepts or rejects it. If the proposed project is accepted, the board establishes a priority for the project in the secondary road construction program [Iowa Code §311.7].

The petition is originally filed with the county engineer who prepares a report on the proposed district that contains an estimate of the project's cost and an apportionment of the percentage of the cost [Iowa Code §§311.8-.10].

The board of supervisors then fixes a time for a hearing and directs the county engineer to publish a notice concerning the hearing [Iowa Code §§311.11-.12].

On the final hearing, the board may reject or approve the proposed district, or it may adopt a modified version of the originally proposed district. Thereafter, no lands can be added to or removed from the special assessment district [Iowa Code §311.15].

The board, at the final hearing, also considers the assessments to be made, hears all objections, and orders the assessments increased, diminished, annulled, or adopted as fixed by the engineer's report. The assessments are levied on all realty in the district and collected at the time the semi-annual installment of other taxes is collected in March [Iowa Code §311.16]. Within 15 days of the levy by the board, any landowner whose lands are within the district may institute an appeal to the district court regarding the board's assessment and if the district court orders an adjustment of the assessment, the board must adjust it at once as ordered [Iowa Code §311.24].

If immediate cash is needed to finance the project, the board may issue certificates in anticipation of the revenue to be received from the special assessment district [Sections. 311.28, .29].

Any road established by petition does not preclude the board from exercising its responsibility over these roads as secondary roads [Iowa Code §311.32].

Bridges and Culverts

Requirements for All Bridges and Culverts

The state DOT will furnish, free of cost, standard specifications for bridges and culverts [Iowa Code §309.79]. The statute requires that all culverts have a clear width of roadway of at least 20 feet and that bridges

have at least 16 feet [Iowa Code §309.74].

Inter-county and Interstate Bridges

Where a bridge is required on a county line road, the boards of supervisors of the adjoining counties may agree to locate the bridge wholly within one county in order to obtain a proper site for the bridge or to avoid unnecessary expense in attempting to use a less favorable site on the county line. The boards shall determine jointly the proportionate share of the expense that each county is to bear [Iowa Code §309.68].

Toll Bridges (Interstate)

A county that would benefit from an interstate bridge is empowered to enter into agreements with the state for the purpose of investigating the feasibility of any interstate toll bridge across a navigable river [Iowa Code §313A.4].

Approval of Contract Work

All claims for construction, reconstruction, improvement, repair, or maintenance of any highway must be itemized on voucher forms prepared for that purpose, sworn to by the claimant, certified by the engineer in charge, and then forwarded to the board of supervisors for final audit and approval. If the work is performed on a farm-to-market road, the board and the DOT both must approve the claim before the state comptroller may pay the claimant [Iowa Code §§314.3-.4].

When at least 95% of any contract for the construction of a public improvement has been completed satisfactorily, and the remaining work cannot proceed for a period of more than 60 days because of conditions beyond the control of the contractor, the board may make full payment for the completed work and enter into a supplemental contract with the contractor on the same terms and conditions as far as applicable for the remaining work, provided the contractor's bondsperson consents and agrees that the bond will remain in full force and effect [Iowa Code §573.27].

Miscellaneous

Payrolls for Day Labor

If the board so elects, it may authorize the county auditor to draw warrants for payrolls for labor furnished under the day labor system of construction. The auditor draws warrants for payrolls certified by the engineer in charge of the work. These warrants are passed on by the board at its next meeting [Iowa Code §309.61].

Gravel Beds

The board is empowered to purchase or condemn land within the county outside the limits of cities for the purpose of obtaining gravel or other suitable material for the improvement of the county's secondary roads. However, if the board so chooses, it may purchase the gravel or other material from a source outside the county [Iowa Code §309.63]. If the board has given permission, private parties or municipal corporations may take materials from this land if the materials are used to improve any street or highway within the county. However, it is a serious misdemeanor for the board to dispose of any of these materials for any purpose other than the improvement of streets or highways within the county [Iowa Code §309.66].

Procurement of Gravel for Road Improvement

If the board is seeking suitable surfacing materials or locating a highway, it shall give written notice by restricted certified mail to any landowner and the occupant of the land; and after 30 days enter upon the land [Iowa Code §314.9].

Interstate Highways and Bridges

If the board of supervisors controls a part of a road or bridge that lies on or crosses a state line, it is empowered to negotiate and make agreements with the proper authorities of the bordering state regarding plans for the improvement and maintenance of the road or bridge and permit utility companies use of the bridge for suspension of pipes and lines [Iowa Code §§314.10 -.11].

Inter-county Highways

The boards of supervisors of contiguous counties must act to provide proper connections of secondary roads

that cross county lines and provide continuous lines of travel. Likewise, boards must adopt a joint agreement for the maintenance, construction, and location of roads that lie wholly in one county but are located so as to provide the most practical and economical method of inter-county access [Iowa Code §309.68].

Mains, Walks, and Ways

If the board of supervisors receives written application, the board has discretionary power to grant the applicant permission to lay gas or water mains under the highway, or to construct and maintain cattle ways over or under the highway, or to build sidewalks upon or along the highway [Iowa Code §§320.4-.5; 331.362(8)].

Obstructions upon the Highways

The board of supervisors is charged with the duty of removing all obstructions from secondary highways, and is empowered to remove billboards and advertising signs from property devoted to secondary road use [Iowa Code §318.3,.4-.5]. An obstruction which constitutes an immediate and dangerous hazard shall, without notice or liability in damages, be removed by the county. An obstruction not constituting such a danger may be removed by the county after 48 hour notice [Iowa Code §318.5].

The remedy of a court injunction restraining obstruction of the road is also available to the board upon application to a proper court [Iowa Code §318.7].

Obstructions may be treated as a public nuisance and have the persons responsible for the erection of the nuisance punished as provided in Iowa Code chapter 657 [Iowa Code §318.6].

Cemeteries

The board should note that a road may not be established through any burying ground without the consent of all interested parties [Iowa Code §306.20].

Road Plans, Plats, and Field Notes

All road plans, plats, and field notes for rural subdivisions must be filed with and approved by the board of supervisors and the county engineer before the subdivision is laid out and platted [Iowa Code §306.21].

Sale of Unused Right-of-Way

When the title to any tract of land has been or may be acquired for the construction or improvement of any highways under the control of the board of supervisors, and when in the judgment of the board, the tract will not be used in connection with or for the improvement, maintenance, or use of the highway, the board may sell the tract for cash [Iowa Code §306.22].

The conveyance is made in the name of the county and may contain such provisions as the board may prescribe. The chairperson of the board and the county auditor are required to sign the conveyance [Iowa Code §306.25].

Rental of Acquired Property Pending Use

If the land acquired for highway improvement is not needed immediately for such improvement, the board of supervisors may rent the land or the buildings for a cash rental consistent with the fair market value of similar property [Iowa Code §306.38].

Traffic Control

Speed Limits

Iowa Code §321.285 of the Code provides that speed on secondary highways shall be "reasonable and proper," but not to exceed fifty-five miles per hour in the daytime or at fifty miles per hour at night. However, the board of supervisors may declare a lesser speed to be reasonable and proper on any secondary road within a county. The declaration must be based on engineering and traffic investigation conducted by the state DOT at the board's request [[Iowa Code §321.285]; 1970 WL 207651 (Iowa A.G.)]. The lower speed limits become effective when appropriate signs that give notice of the speeds are erected by the board [Iowa Code §321.285(4)].

Temporary Closing of Roads

The board or the county engineer when designated by the board may temporarily close sections of a

highway by formal resolution entered upon the minutes. Such closings should be made reasonably necessary because of construction, reconstruction, maintenance, or natural disaster. Further, such closings must be marked with "Road Closed" signs and partial or total barricades in the roadway at each end of the closed highway section [Iowa Code §306.41].

Detours

Any numbered road closed for over 48 hours shall have a designated detour route. Unless damages to vehicles using said road are the result of gross negligence of the board, the county will not be liable for any such accidents [Iowa Code §306.41].

Signs

The board may designate through highways and erect stop signs or yield signs in accordance with specifications of the DOT [Iowa Code §321.345]. Other signs may be placed upon highways for the purposes of regulating, warning, and guiding traffic [Iowa Code §321.255]. The cost of such signs is to be paid by the county [Iowa Code §321.346].

Parking

The board may adopt, amend, or repeal rules regulating or prohibiting the parking or standing of vehicles within the right-of-way of any road under its jurisdiction [Iowa Code §321.239].

Parks and Cemeteries

The board may by general rule, ordinance, or regulation exclude vehicles from parks and cemeteries. The general rule, ordinance, or regulation is not enforceable, however, until such time as a sign is posted which is plainly legible from the middle of the highway indicating the exclusion of vehicles. The board may limit the exclusion to commercial vehicles if the resolution applies equally to all vehicles used for the same purposes [Iowa Code §321.248].

School Zones

Counties are empowered to establish school zones and provide for the stopping of all vehicles approaching the zone when movable signs are placed in the roads at the limits of the zone [Iowa Code §321.249].

Snow Routes

The board may designate highways or portions of highways as snow routes. Vehicles traveling these routes when conditions of snow or ice exist are required to be equipped with special accessories. However, the provisions are not enforceable until signs giving notice of such local traffic regulations are posted [Iowa Code §§321.236(12); 321.237].

Rural Residence Districts

The board may establish rural residence districts by resolution or ordinance, and regulate the speed and parking of vehicles on the roads in such districts. The proposed district must be contiguous to and include a secondary road; 40% of the frontage on the highway for a distance of 300 feet or more must consist of dwellings or dwellings and buildings used for business. Farm houses and buildings are not to be considered. Before establishing such a district, the board must hold a public hearing, notice of which must be published in a newspaper having general circulation in the area of the proposed districts at least 20 days before the date of the hearing [Iowa Code §§321.1(67); 321.236(13)].

Oversized and Overweight Permits

The board of supervisors may issue permits to parties operating vehicles of excessive size and weight for travel on roads under the board's jurisdiction [Iowa Code §321E.1]. The board should consult Iowa Code chapter 321E for the limits on size, weight, time, distances, and methods of movement within which the board may issue permits [Iowa Code §321E.1].

Annual, multi-trip, and single-trip permits shall be issued by the authority responsible for the maintenance of the system of highways or streets. However, the department may issue permits on primary road extensions in cities in conjunction with movements on the rural primary road system. The department may issue an all-system permit under Iowa Code §321E.8 which is valid for movements on all highways or streets under the jurisdiction of either the state or those local authorities which have indicated in writing to the department

those streets or highways for which an all-system permit is not valid. The department may issue annual permits pursuant to Iowa Code §321E.8A valid only for operation on non-interstate highways in counties stipulated in the permit.

At the request of a local authority, the department shall issue annual, multi-trip, and single-trip permits that are under the jurisdiction of the local authority[Iowa Code §321E.2].

Embargoes

The board may, by resolution, prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of the vehicles for a period not exceeding 90 days in any one calendar year whenever climatic conditions will contribute to seriously damaging or destroying the highway [Iowa Code §321.471]. No resolution may be enforced until signs are erected and maintained designating the provisions of the resolution at each end of that portion of any highway so affected [Iowa Code §321.472].

Snow and Ice Removal Policy

If a government entity has complied with its own snow and ice removal policy, no percentage of fault will be assigned to that entity in a suit brought under the "comparative fault" statute [Iowa Code §668.10].

For optimum protection, a county should adopt an ordinance establishing its policy and level of service regarding snow and ice removal.

Airports

A county may enter into an agreement to provide for the creation and establishment of a joint airport commission [Iowa Code §330.4]. The commission shall annually certify the amount of tax to be levied and make payments for the indebtedness arising from the acquisition and construction of airports and their maintenance, operation, and extension [Iowa Code §330.21].

A county is permitted to incur indebtedness in establishing airport facilities. General obligation bonds or revenue bonds may be issued to pay the cost of constructing and equipping an airport [Iowa Code §§331.441,.442,.463].

Chapter 7

Human Services

Traditionally the local units of government have been responsible for the social welfare of their citizens. At the same time, the General Assembly has prescribed many statutory requirements and limitations, and many controls are exercised through state agencies.

Service Area Advisory Boards

A service area advisory board shall be established in each service area. Service areas are designated by the Department of Human Services (DHS) [Iowa Code §217.42(1)]. The purpose of the advisory boards is to improve communication and coordination between the department and the counties and to advise the department regarding maintenance and improvement of service delivery in the counties and communities comprising the service areas. [Iowa Code §217.43(2)].

Each of the county boards of supervisors of the counties comprising the service area shall appoint two service area advisory board members. The following requirements apply to the appointments made by a county board of supervisors: the membership shall be appointed in accordance with Iowa Code §69.16, relating to political affiliation, and Iowa Code §69.16A, relating to gender balance; not more than one of the members shall be a member of the board of supervisors; and appointments shall be made on the basis of interest in maintaining and improving service delivery. Appointments shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and the service area manager. A vacancy on the board shall be filled in the same manner as the original appointment. The boards of supervisors shall develop and agree to other organizational provisions involving the advisory board, including reporting requirements. [Iowa Code §217.43(1)].

The department shall determine the community in which each county office will be located. The county board of supervisors shall determine the location of the office space for the county office. The county board of supervisors shall make reasonable efforts to collocate the office with other state and local government or private entity offices in order to maintain the offices in a cost-effective location that is convenient to the public. [Iowa Code §217.43(3)].

The board of supervisors may appoint an individual to serve as the executive officer of the service area advisory board in all matters pertaining to relief for that county [Iowa Cod §251.7].

Welfare Duties of Supervisors

Emergency Relief

The state division of child and family services of the department of human services is charged with supervision and administration of any federal emergency relief funds that come into the state [Iowa Code §251.2]. If the county is granted emergency relief funds from the state division, the service area advisory board shall administer the funds, if the board of supervisors so requests [Iowa Code §251.5(3)]. The service area advisory board is also given responsibility for preparing requests for grants of state funds (at the request of the board of supervisors), administering state and county relief funds, and any other duties which the administrator of the department of human services or the board of supervisors may prescribe [Iowa Code §251.5(2),(4),(5)]

The board of supervisors is charged with supervising the administration of emergency relief. This supervision includes determining the minimum amount of relief required by such persons and their families and which persons seeking relief are employable. The supervisors shall determine whether and under what conditions persons receiving emergency relief may be employed by the county [Iowa Code §251.6].

Support of the Poor

Those people who have no property and are unable to earn a living by their own labor because of physical or mental disabilities are classified as "poor persons" by the Iowa Code. However, aid may be given other needy persons also, even though these persons may have some means of support, if conducive to the welfare of these persons and in the best interest of the public [Iowa Code §252.1]. The Iowa Supreme Court has occasionally found people with some property to still fall within the definition of poor when their property is unavailable or insufficient to provide support for them [Jasper County v. Osborn, 59

Iowa 208, 13 N.W. 104; In re Estate of Frentress, 249 Iowa 783, 89 N.W. 2d 367].

In administering relief to the poor of the county, the supervisors must establish a set of general rules to be followed so that the county's general relief practices are consistent and not arbitrary [Iowa Code §252.25].

General Assistance Director

A general assistance director shall be appointed by the board of supervisors. The director's powers and duties encompass all those granted by Iowa Code chapter 252. The board is authorized to determine the director's salary, and to pay it from the general fund [Iowa Code §§252.26; 331.321(1)(h)].

Application for Relief

Persons eligible for relief under the provisions of Iowa Code §252.1 may make application to a member of the board of supervisors, or to the general assistance director. The general assistance director may afford temporary relief to an applicant as the necessities of the applicant require and subject to the approval of the supervisors [Iowa Code §252.33]. In the event the general assistance director does not grant the requested relief, the applicant may appeal to the board of supervisors, which is authorized to direct the general assistance director to provide relief or to prescribe the relief to be given [Iowa Code §252.37].

Form of Relief

The board of supervisors shall determine the form of relief; for example food, rent, clothing, utilities, medical care, etc. If a county wishes to provide legal aid the legal aid program must be approved by the board. The amount of assistance granted must be in accord with standards established by the board of supervisors [252.27; Collins v. Hoke, 705 F.2d 959 (1983)].

As a condition to the granting of relief, and in payment therefore, the board may require any able-bodied recipient to work on public programs or projects at the prevailing local hourly wage [Iowa Code §252.27]. The board also is authorized to join with the United States government, or with cities and towns in the county, or with both the federal government and cities and towns in the county, in sponsoring work projects. However, the county may not use money for such projects in excess of what would be the cost per month of direct relief to those poor people working on the projects [Iowa Code §252.42].

Allowance of Claims

Claims for support of the poor, including claims for medical care, after having been allowed and certified by the general relief director, are subject to further examination by the board of supervisors. If the board should find that the claim is for an unreasonable sum or that it is for goods or services other than the necessities of life, it may reduce the claim to an amount it deems reasonable or reject the claim entirely [Iowa Code §252.35]. However, claims that provide relief in accordance with the county's written relief policy should not be rejected.

Legal Settlement and Persons from Outside the County

A legal settlement may be acquired in any of the ways designated by Iowa Code §252.16. Generally, any person continuously residing in any county in the state for a period of one year acquires a settlement in that county. Any person having acquired a settlement in any county of the state shall not acquire a settlement in any other county until such person has continuously resided in that county for one year [Iowa Code §252.16(1)-(2)]. You cannot deny assistance or relief to a person because that person does not have a legal settlement in your county. The county of residence must provide assistance or relief to the individual. The county of residence providing relief or assistance can charge the county of legal settlement for any assistance or relief provided [Iowa Code §§252.22, .24].

When relief is granted to a poor person who has a settlement in another county, the auditor must notify the auditor of the county of the person's settlement of the fact. That county then must state whether it plans to dispute the claim. If not disputed, the person may be maintained at the request of the auditor or the board of supervisors of the county of his/her settlement at the expense of the county of his/her settlement, without affecting his/her legal settlement [Iowa Code §252.22].

If the alleged settlement is disputed, the issue is tried in district court. The county of settlement, when that has been determined, is liable for all reasonable charges and expenses incurred in the relief and care of the poor person [Iowa Code §§252.23 - .24]. As of July 1, 2013, if assistance or maintenance is provided by a county through the county's mental health and disability services system implemented under Iowa Code chapter 331, liability for the assistance and maintenance is the responsibility of the person's county of residence.

However, any person who has moved into a county from another state or from another county in Iowa and who is or apparently will become a public charge may be transported back to his/her original residence upon the county's petition and the district court's approval [Iowa Code §252.18].

Commission of Veteran Affairs

The board of supervisors shall appoint, at its discretion, either a three-member or five-member commission of veteran affairs to administer the relief functions of Iowa Code chapter 35B [Iowa Code §331.321(1)(g)]. If the board increases the commission membership to five members, the initial terms of the two new members shall be two and three years respectively [Iowa Code §358.4]. Members of the commission must be citizens of the United States who are veterans as defined under Iowa Code §35.1(2) [Iowa Code §35B.3]. Appointments are made at the regular June meeting of the board and are for terms of three years. If any appointee is guilty of neglect of duty or misadministration, the board may remove him/her from office [Iowa Code §35B.4]. Members of the commission receive \$25 per month when engaged in the work of the commission. They also receive the same mileage allowance as that granted to the board of supervisors. The per diem and mileage is paid as provided in Iowa Code §§35B.5 and 35B.14.

This commission, with the boards' approval, may employ administrative and clerical assistants whose compensation is fixed by the board of supervisors. One of the deputies of the county auditor is appointed by the commission to serve as its administrative assistant, but this appointment must be approved by the supervisors [Iowa Code §35B.6]. The board has limited control over employees of the commission [1998 WL 541518 (Iowa A.G.)].

Veteran Affairs Program

The commission prepares and certifies its own budget to the board of supervisors; the board has power to approve the budget or to reduce it for valid reasons which must be entered in the records. The decision of the board on this matter is final [Iowa Code §35B.7].

The board of supervisors reviews all the veteran affairs' claims that have been certified during the past month [Iowa Code §35B.10]. In addition, following every regular meeting of the commission, the board receives a certified list of those persons to whom assistance has been authorized, with the amounts awarded to each recipient [Iowa Code §35B.9].

Burial Expense

The commission is responsible to procure decent interment in a suitable cemetery for persons entitled to relief under Iowa Code chapter 35B, their spouses, or minor children who die without leaving sufficient funds to defray funeral expenses. The commission pays these expenses but can spend no more than the amount set by the board of supervisors [Iowa Code §§35B.13-.14].

The county in which the person dies has the duty of paying for the burial expenses, but the county of which the deceased was a resident must reimburse the former county. The board of supervisors of any county expending funds for such burial has a duty to audit the account of those people providing the burial and to pay the account in the same manner as other claims are paid [Iowa Code §35B.15].

Care and maintenance of the lots in which people are buried pursuant to Iowa Code chapter 35B is provided by the county board of supervisors' payment to those having control of those cemeteries. However, the care and maintenance rates assessed to the county may not exceed the costs for care and maintenance of similar lots in the same cemetery [Iowa Code §§35B.17 -.18].

County Care Facilities

County care facilities may be established by order of the board of supervisors [Iowa Code

§331.382(1)(g)]. The supervisors are authorized to make contracts and to establish a county home, but when the expenditure proposed is in excess of \$15,000, approval by the voters of the county is required [Iowa Code §347B.1].

The county care facility must receive a license to operate issued by the state of Iowa. To be a licensed health care facility, the institution must meet the requirements enumerated in Iowa Code chapter 135C. [Iowa Code §135C.1]. Different licenses may be obtained for separate parts of the facility if they may be operated as distinct parts [Iowa Code §135C.6(2)]. Health department regulations have also been established to further define how the facilities are to be operated and the physical standards necessary for a licensed institution.

When a county establishes a mental health center, the county must abide by the standards set forth by the state division of mental health and disability services of the department of human services [Iowa Code §2250.6].

A financial report of the county care facility or farm is required to be published by the board of supervisors in the official county newspaper(s) prior to September 1 of each year. The report must include: (1) a statement of the receipts and their sources, (2) total expenditures, (3) value of the property as of July 1, and (4) a comparison with the inventory of the preceding year [Iowa Code §347B.3]. Revenue obtained from the labor of residents the care facility must be appropriated to the use of the county care facility as the board of supervisors may direct [Iowa Code §347B.5].

Admission and Discharge

No person shall be admitted into a county care facility as a resident without an order of the board of supervisors, which shall be issued only after a pre-admission physical examination by a physician. If the need for admission is immediate and no physician is readily available, the board may order admission pending examination. The examination by a physician must take place within three days after admission if the person is admitted pending the preadmission examination [Iowa Code §347B.6].

Visitation and Inspection

Once each month some member of the board must visit the county care facility. The purpose of this visit is to examine carefully the condition of the residents, their food, clothes, general treatment, and the labor they are required to perform, and to inspect the administrator's books and accounts. The visiting supervisor has power to look into any other matters pertaining to the county care facility or its residents and is required to report the findings to the full board [Iowa Code §347B.8].

Juvenile Homes

County boards of supervisors may either singly or in conjunction with one or more counties provide and maintain juvenile detention and juvenile shelter care homes [Iowa Code §§232.142(1); 331.304(1)]. General obligation bonds may be issued, consistent with the provisions of Iowa Code §§331.441-331.449, for the purpose of providing and maintaining a county or multi-county juvenile home. Expenses for providing and maintaining a home will be paid by the county or counties participating in a manner to be determined by the board of supervisors of participating counties [Iowa Code §232.142(2)].

Juvenile homes are to be approved annually by the director of the state department of human services [Iowa Code §232.142(5)]. Those county or multi-county homes which are approved by the state are eligible to receive financial aid from the state ranging from 10 to 50% of the total cost of the establishment, improvements, operation, and maintenance of the home [Iowa Code §232.142(3)].

Commitments

Except as otherwise provided, the procedure for the commitment of children to the state training school or the state juvenile home is governed by Iowa Code chapter 232 on Juvenile Justice.

The county may be charged with various expenses in the operation of the juvenile justice system within that county. Among these expenses are the following:

1. The fees and mileage of witnesses and the expenses and mileage of officers serving notices and subpoenas.
2. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian.

The share of costs paid by the county is figured by the formula set forth in Iowa Code §232.141(3) [Iowa Code §§232.141(1)-(3)].

Public Housing

Counties are authorized to participate in programs to provide low rent housing for low income persons. This includes the power to lease, construct, purchase, or acquire real and personal property [Iowa Code §§403A.3(1)-(2); 403A.4].

A county may not proceed with a housing project until a study or a report on available housing within the county has been made public. This report must contain recommendations for a housing project, and these recommendations must contain receive the majority approval of the board of supervisors [Iowa Code §403A.5]. Furthermore, a public hearing on the proposed project must be held. Notice of the hearing has to be published at least once in a newspaper of general circulation within the county not later than fifteen days prior to the date set for the hearing. At this hearing the public must be informed of the name of the proposed project, its location, the number of living units proposed, and the approximate cost [Iowa Code §403A.28].

If a county decides to proceed with the proposed project, the board of supervisors itself may exercise the duties indicated by Iowa Code chapter 403A or, at its discretion, may delegate them to a board or commission, or a county officer of the board's choosing [Iowa Code §403A.5]. These duties include a wide range of activities in planning, administering, and financing the housing projects.

The board of supervisors may borrow money or accept contributions, grants, or other financial assistance from the federal government for the project [Iowa Code §403A.4]. Bonds may be issued to carry out the purposes of the program, and refunding bonds may be issued for the purposes of paying or retiring bonds previously issued [Iowa Code §403A.12].

Although the operation of the housing project must be non-profitable (and rents must be so set), at least 10% of all rents and supplemental rental aid are required to be paid annually as taxes to the office of the county treasurer. However, this provision on taxes does not apply to the use of existing structures that are leased from private owners [Iowa Code §§403A.6, .27].

Any two or more counties or cities may join or cooperate with one another for the purposes of financing, planning, undertaking, constructing, or operating a housing project [Iowa Code §403A.9].

Chapter 8

Health

Counties have historically been responsible for meeting the needs of county residents who are elderly, poor, sick and disabled. Services provided to meet those needs are known as human services. During the 1960s and 1970s, the federal government assumed responsibility for providing many human services. During those years, the federal government expanded the scope of human services and the class of persons eligible to receive those services. This expansion was accomplished through the direct provision and funding of some services and through the allocation of federal dollars to state and county governments for other programs.

During the 1980s, however, the federal government retreated from its activist role in financing human services but maintained requirements that programs be provided (more often known as mandated and/or entitlement programs). During the '80s the federal government eliminated numerous categorical programs and combined the funding to create "block grants." The Social Services Block Grant and the Alcohol, Drug Abuse, and Mental Health Services Block Grant are examples of grants created in the human services area. The federal regulatory requirements on the new block grants were reduced and more interpretation of regulations and flexibility in how block grant funds were used was left up to the states.

Services required to be provided by counties are outlined in the Iowa Code. These requirements are referred to as state mandates. Iowa law also gives counties the option of providing certain services and specifies the manner in which those services are to be provided.

County Board of Health

The board of supervisors must appoint a county board of health [Iowa Code §331.321(1)(c)]. The health board consists of five members, one of whom must be a licensed physician under Iowa Code chapter 148. [Iowa Code §137.105(1)(d)]. Members serve without compensation, but may be reimbursed for necessary expenses in accordance with rules established by the state board or the applicable jurisdiction [Iowa Code §137.105].

The board of supervisors appoints members of the local board of health care for a three-year term. The local board of health has jurisdiction over public health matters in the county. Often this includes sanitation, ambulance service, homemaker health aides and public health nurses. [Iowa Code §137.104]

Aside from funds the local board of health receives from the state or federal government for specific programs, funding for the local board of health is a responsibility of the board of supervisors. The board of supervisors may appropriate from the county general fund moneys for the purpose of providing local health services [Iowa Code §331.427(3)(e)].

A significant program operated by the local board of health is the public health nursing service. The Legislature appropriates funds to the Department of Public Health (DPH) for public health nursing. The DPH allocates these funds to each local board of health according to a formula. This appropriation helps the county fund the public health nursing program and helps reduce county and state hospitalization costs.

Homemaker Health Aide and Chore Services are services counties provide to help keep people in their own homes and avoid institutionalization. These services are provided to persons who are elderly, disabled and or otherwise at risk of institutionalization. The Legislature appropriates funds to the DPH for provision of homemaker health aide/chore services. These funds are then allocated to each county board of supervisors based on a formula. The county board of supervisors decides how the services will be provided in its county. Eligibility and program standards are developed by the DPH in administrative rules.

Involved county boards of health are disbanded upon approval of a district board of health [Iowa Code §137.115]. District health boards are established upon approval of a request from the counties accepted by the state board of health [Iowa Code §137.107].

County Public Hospitals

The General Assembly has made provisions for counties to establish public hospitals. These are not in any sense hospitals exclusively for indigent patients, but are authorized in realization of the need to provide adequate facilities for all persons regardless of their economic status [Iowa Code §347.16]. The board's power to establish a county hospital is subject to the licensing requirements of Iowa Code chapter 135B [Iowa Code §331.382(4)].

The board pursuant to Iowa Code §331.361(5)(c) must, upon petition of eligible electors, proceed to establish a county public hospital. This authorization coupled with Iowa Code §331.382(1) and Iowa Code §331.301 would permit the board to abandon an existing hospital and establish a new one. The petition would require the signatures of 10% of the votes cast by eligible electors in the county for the office of president of the United States or governor at the preceding election [Iowa Code §331.306].

The board may use general obligation bonds to fund site acquisition, the construction, equipping, and maintenance of a county public hospital (or an addition thereto). The use of general obligation bonds is subject to the levy limits of Iowa Code §347.7 [Iowa Code §331.441(2)(c)(8)]. Since these bonds are classified as general county purpose bonds, the board must call for a special election to vote on the question of issuing the bonds [Iowa Code §§331.441(2)(c); 331.442(1)-(2)]. (See Iowa Code §331.442(5) for circumstances in which the need for an election may be dispensed with). The proposition must be approved by 60% of the total vote cast in the election and if approved the board may proceed with the issuance of the bonds not to exceed the amount specified in the proposition [Iowa Code §331.442(2);(4)].

The form of general obligation bonds is governed by Iowa Code §331.446 but must under Iowa Code §76.1 be payable within 20 years from the date of issuance. The bond may be designated on its face as to the purpose for which it was issued.

Board of Trustees

The first board of trustees to manage the county hospital must be appointed by the board of supervisors. Not more than four of the seven trustees may live in the city in which the hospital is located. The provision applies only to original appointments. Filling of vacancies in the membership is performed by the remaining members of the board of trustees; but, if fewer than four trustees remain on the board, the vacancies are filled by the board of supervisors [Iowa Code §§347.9-10]. A new board of trustees is elected at the next general election after appointment of the original board of trustees [Iowa Code §347.9]. Iowa Code §347.9A contains the provisions on impermissible conflicts of interest for trustees. The nomination of prospective trustees is to be made by petition in accordance with Iowa Code chapter 45. Petition forms are to be furnished by the commissioner of elections, must be signed by at least 50 qualified electors of the county, and filed with the commissioner of elections [Iowa Code §347.25].

Additions to County Hospitals

As an alternative to the issuance of general county purpose bonds to fund expansion of county hospitals organized under Iowa Code chapter 347, the board of supervisors may issue revenue bonds payable solely from the revenues derived from the operation of the hospital. Upon recommendation of the board of hospital trustees, the board of supervisors may adopt a resolution authorizing the issuance of the bonds. Notice of the resolution must be published at least once each week for two consecutive weeks in a newspaper of general circulation. Unless petitioned by electors equal in number to 20% of the total number of votes cast for the president of the United States or the governor in the last general election within thirty days of the first publication, the board may issue the bonds. If so petitioned, the board must either repeal the bond resolution or submit the proposition to the voters. 60% of the voters must approve the proposition before the bonds may be issued. Bonds issued under this statutory authority must mature within 30 years from the date of issuance [Iowa Code §§331.442(2)-(4),.461(1)(d),.462 et seq.].

Municipal Hospitals Becoming County Hospitals

A hospital organized and existing as a city hospital may become a county hospital if approved by the electors of both the city and the county. The proposition of whether a city hospital should become a county hospital must be placed on the election ballot for voter approval when the board of supervisors receives a petition signed by qualified voters of the county equal in number to 5% of the votes cast for the president of the United States or for governor at the last general election. In determining whether the proposition has carried, the votes of the residents of the city in which the hospital is located must be

analyzed twice: once to see if the proposition carried in the city, and once to ascertain if the proposition carried on a county-wide basis [Iowa Code §§. 331.381(12); 347.23].

Memorial Hospital or County Hospital Payable from Revenue Bonds Changed to County Hospital

A memorial hospital established pursuant to Iowa Code chapter 37 or a county hospital supported by revenue bonds established pursuant to Iowa Code chapter 347A may become a county hospital [Iowa Code §347.23A]. The board of supervisors may submit the proposition to the voters at any general or special election called by the board for this purpose. It shall be placed on the ballot by the board if requested by the hospital's board of trustees or governing commission and endorsed by a petition signed by qualified electors of the county equal to 5% of the votes cast for president of the United States or governor at the last election. Upon approval of the proposition by a majority of the electorate, the hospital and all of its assets and liabilities shall become the property of the county. In the case of a memorial hospital established by a city of the county, the votes of the residents of that city shall be counted both for the purpose of ascertaining whether or not the proposition carried within the city and also for ascertaining whether or not the proposition carried within the county [Iowa Code §347.23A].

Health Care Facilities

Any health care facility as defined by Iowa Code chapter 135C may be operated in conjunction with a county hospital. This may be erected and maintained by proceedings authorized in Iowa Code chapter 347 for hospital buildings and additions [Iowa Code §347.26].

County Hospitals Financed from Revenues

In addition to the above method of acquiring a county public hospital, counties having populations of less than 150,000 may establish public hospitals supported solely from revenue obtained from operation of the hospital. Administration and management of such a hospital is vested in a five-member or seven-member board of hospital trustees. The original hospital board is appointed by the board of supervisors for a term of office to last until the vacancies can be filled at the next succeeding election. Not more than two members of the board of trustees may be residents of the same township. The trustees serve without compensation although they may be reimbursed for expenses incurred in the performance of their duties [Iowa Code §347A.1].

To establish a hospital of this nature, the board of supervisors must pass a resolution providing for the issuance of negotiable interest-bearing revenue bonds with maturing dates not exceeding 30 years from the date of issuance [Iowa Code §§331.464(1); 331.461(1)(e)]. The bonds may bear interest at rates not exceeding that permitted by Iowa Code chapter 74A [Iowa Code §331.464(3)]. Notice of the resolution authorizing such revenue bonds must be published in at least one newspaper of general circulation at least once each week for two consecutive weeks. If, within 30 days of the first publication of the notice, a petition is filed with the county auditor containing signatures equal in number to at least 20% of the number of persons voting for governor in the last election, the proposition to issue the bonds is subject to the election requirements for county general-purpose bonds. An affirmative vote of 60% of those voting is required to carry the proposition. If no petition is filed, the board of supervisors may proceed with establishing the hospital and issuing bonds [Iowa Code §§331.461(1)(d)-(e)].

The bonds are sold in the manner and upon the terms provided in the resolution of the board of supervisors authorizing the bonds. It should be noted that this same resolution may contain provisions deemed desirable by the board regarding the use and application of the bond proceeds, the operation of the hospital, and the custody and use of the hospital's revenues [Iowa Code §331.464(2)-(3)].

Each revenue bond should show upon its face that it does not represent an indebtedness of the county and that it is payable solely from the hospital's revenues [Iowa Code §331.467(2)].

Enlargement and Improvement

General obligation bonds can be issued to pay for the cost of enlarging and improving hospitals established under Iowa Code chapter 347A as an essential county purpose. The principal amount of these bonds must not be more than 2% of the assessed value of the taxable property in the county shown by the latest state and county tax lists. If under Iowa Code §331.441(2)(b)(7) an election is required to approve the issuance of the bonds, an affirmative vote of 60% of those voting is required to carry the proposition [Iowa Code §331.442(4)]. Notice of the proposed bond issue must be published in at least one newspaper of general circulation at least once each week for two

consecutive weeks. If, within 20 days of the first publication of the notice, a petition is filed with the county auditor containing signatures equal in number to at least 20% of the number of persons voting in the preceding election for governor, the proposition to issue the bonds must be submitted to the county's electorate [Iowa Code §331.441(2)(b)(7)].

If no petition is filed during the 20-day period or when voter approval is received, the board may proceed with the enlargement and improvement of the hospital and the issuance of the bonds [Iowa Code §§331.441(2) (b) (7); 331.442(4)]. The board may only issue general obligation bonds pursuant to a resolution, adopted at a regular or special meeting, by a majority of the total number of supervisors [Iowa Code §331.445]. Iowa Code §331.446 governs the form of the bonds. The final maturity date of the bonds is governed by Iowa Code §76.1 and may not exceed 20 years from the date of issuance.

Memorial Hospitals

A county may erect a hospital as a memorial building. If a memorial building is erected under the provisions of Iowa Code chapter 37, which is to be used as a hospital, additions and health care facilities may be erected in conjunction with the hospital under the procedure outlined in Iowa Code chapter 347. The commissioners in charge of erection and management of the memorial perform the same functions as the hospital trustees under Iowa Code chapter 347 [Iowa Code §37.27].

Community Health Centers

In accordance with the provisions of Iowa Code chapter 346A, boards of supervisors in counties are empowered to operate, control, maintain, and manage health centers [Iowa Code §331.427].

Ambulance Service

Counties may provide ambulance service, but are not required to do so. [1997 WL 459815 (Iowa A.G., June 20, 1997)].

If ambulance service is not otherwise provided, the board of trustees of a county hospital may arrange for ambulance service [Iowa Code §347.14(8)].

Miscellaneous Health Duties

Public Health Nurses

Any local board of health, area education agency board, or the school board of any school district may employ public health nurses at periods each year and in numbers as deemed advisable. The compensation and expenses shall be paid out of the general fund of the political subdivision employing nurses. The county's share of the cost comes from the county's general fund. Duties of the public health nurse must relate, in general, to the promotion and conservation of public health; a more detailed definition of their duties is made by the employing authority [Iowa Code §§143.1-.3; 331.427(3)(e)].

The state department of health is given the power to administer healthy aging and essential public health services by approving grants of state funds to the local boards of health for the purposes of promoting healthy aging throughout the lifespan and enhancing health promotion and disease prevention services, and by providing guidelines for the approval of the grants and allocation of the state funds. Guidelines, evaluation requirements and formula allocation procedures for the services shall be established by the department by rule [Iowa Code §135.11(13)].

Contagious and Infectious Diseases

While the main responsibility for administering Iowa Code chapter 139A (Communicable and Infectious Diseases and Poisonings) rests with the local board of health, the supervisors are called upon to approve and pay claims for supplies and services. The board of supervisors, however, is not bound by the bill certified by the board of health, but is required to allow only claims in those amounts deemed reasonable by the board. Therefore, the board has power to reduce any claim to what it considers a reasonable sum for the supplies or services rendered Iowa Code §139A.17. If a person receives support and supplies from a county and it is later discovered that he/she is a legal resident of another county, the board of supervisors of his/her county must reimburse the county which originally paid for his/her support and supplies [Iowa Code §139A.18].

Mental Health

Mental Health/Disability Services Statutory Responsibility

Persons with Intellectual Disability: "Persons with intellectual disability" means persons who meet the following three conditions:

- Significantly sub-average intellectual functioning: an intelligence quotient (IQ) of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly sub-average intellectual functioning) as defined by the Diagnostic and Statistical Manual of Mental Disorders.
- Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for the person's age by the person's cultural group) in at least two of the following areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.
- The onset is before the age of 18.

The county must pay for the "treatment, training, instruction, care habilitation, support, and transportation of persons with intellectual disability, as provided for in the county management plan provisions implemented pursuant to Iowa Code §331.439(1), in a state hospital school, or in a special unit, or any public or private facility approved by the director of the Department of Human Services." (Iowa Code §222.60) (Note: SF 2336, HHS appropriations bill, makes changes to Iowa Code §249A, Medical Assistance, to implement the transfer of responsibility for funding certain Medicaid services from the counties to the state.)

Persons with Mental Illness: The county must pay for the cost of hospitalization in a state mental health institute and the "necessary and legal" costs and expenses for "taking into custody, care, investigation, admission, commitment, and support" of mentally ill persons in the mental health institutes (Iowa Code §§230.1). The county responsible for the cost of a patient at a mental health institute is required to remove the patient to a county care facility if instructed to do so by the institute and a county without a county care facility may pay for the care in any "convenient and proper" county or private institution (Iowa Code §§227.11, 227.14). Certain provisions of the Iowa Code refer to persons with chronic mental illness. "Persons with chronic mental illness" means persons 18 and over, with a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements or employment.

Persons with chronic mental illness typically meet at least one of the following criteria:

- Have undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).
- Have experienced at least one episode of continuous, structured supportive residential care other than hospitalization.

In addition, these persons typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

- Are unemployed, employed in a sheltered setting or have markedly limited skills and a poor work history.
- Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.
- Show severe inability to establish or maintain a personal social support system.
- Require help in basic living skills.
- Exhibit inappropriate social behavior which results in demand for intervention by the mental health or judicial system. In atypical instances, a person may vary from the above criteria and could still be considered to be a person with chronic mental illness (441 IAC Chapter 22).

Persons with Developmental Disabilities: "Persons with a developmental disability" means a person with a severe, chronic disability which:

- Is attributable to mental or physical impairment or a combination of mental and physical impairments.
- Is manifested before the person attains the age of 22.
- Is likely to continue indefinitely.

- Results in substantial functional limitations in three or more of the following areas of life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.
- Reflects the person's need for a combination and sequence of services which are of lifelong or extended duration. There is no requirement for either the state or county to pay for services for persons with developmental disabilities other than intellectual disability.

The county is generally not required to fund services for person with a developmental disability other than intellectual disability, but may do so at the county's discretion if included in the county's management plan.

Persons with Brain Injury

"Persons with a Brain Injury" means a person with clinically evident brain damage or spinal cord injury resulting from trauma or anoxia which temporarily or permanently impairs the individual's physical or cognitive functions. The county is generally not required to fund services for persons with a brain injury, but may do so at the county's discretion if included in the county's management plan.

County Management Plan

Beginning in the 1994 legislative session, a number of laws were enacted whose purpose was to significantly increase state funding of MH/DS services and provide the parameters under which the counties must manage the system. One of the primary purposes of this legislation was to provide property tax relief, and to improve the county's management of the system through requiring counties to hire qualified staff, develop a system of accountability and control by funders, improve the planning process by increasing stakeholder involvement, and to improve the coordination of services and assure the appropriateness of services that are authorized for public funding. The legislation created a State County Management Committee to further a partnership between the state and the county in the development and management of the system.

In 2002, the Legislature merged the State County Management Committee and the MH/DS Commission and expanded the duties of the newly recreated Commission to include many of those of the State County Management Committee. Counties are required to submit a county management plan for approval by the director of the DHS, following review by the MH/DS Commission. The plans must identify how the county plans to implement the following elements: 1) planning, 2) identifying a provider network and contracting for services, 3) determination of eligibility, 4) funding authorization, 5) service monitoring and coordination, 6) service and cost tracking and evaluation, and 7) quality assurance. Each county is required to establish a central point of coordination (CPC) process, and employ a qualified CPC administrator.

Mental Health and Disability Services (MH/DS) Redesign

Over the past two sessions, the Legislature has passed bills that seek to transform the management structure for mental health and disability services from a county-based system to a regional system. The bill passed in 2012 transitions the basis for funding responsibility from legal settlement to residency; and establishes core services that will be available throughout the entire state. This bill specifies that the county based regional service system will be responsible for MH/DS services for adults that are not covered under the medical assistance program. The bill establishes the mental health and disability regional services fund, which will distribute future state appropriations to the MH/DS regions to pay for services the financing of each regional service system is limited to a fixed budget amount, plus an allowed growth adjustment recommended to the Governor by the MH/DS Commission by July 15 of each year.

The bill creates a transition fund, to which counties could apply by October 15, 2012 for funding for FY 2013. Any funding for transition must be appropriate by the first session of the first session of the 85th General Assembly pursuant to recommendations made by the Department of Human Services. The bill specifies the requirements for counties to form MH/DS regions and allows a county an exemption from the regional requirement if they provide clear evidence that they can meet the requirements of a region. The bill creates Iowa Code §331.438B, which sets out the minimum criteria for the formation of a MH/DS region:

- The counties in the region must be contiguous;
- There must be a minimum of three counties in a region;
- There must be a capacity to provide the core services and perform the required functions of the region;
- There must be a CMHC or a federally qualified health center with the capacity to provide

- mental health services located with the region;
- There must be a hospital with a psychiatric unit either in the region or close to the region; and
- There must be a regional administrator structure with clear lines of accountability.

The full implementation date for regions was June 30, 2014.

The bill sets out the per capita funding for FY 2014 and FY 2015. The per capita target is the property tax equivalent of \$47.28 per capita. Future growth will be added to this amount. For those counties with levies that generate less than the target, the state will fund the difference. For those counties with levies that generate more than the target, the levies will have to be reduced to the amount equaling \$47.28 per capita.

Mental Health and Intellectual Disability Funding Streams

County Funds

The county property tax has been the major funding source for services to adults with disabilities. Services to these persons, along with other human service expenditures, constitute anywhere from 1/4 to 1/2 of county budgets. Beginning with legislation passed in 1994, the state began a process to fund a larger amount from state funds, including 50% of the base and all of the growth in the system. Beginning in FY96/97, the county levy for disability services was "fixed" at either the FY93/94 (actual) or FY95/96 (budgeted) level of expenditure, minus the amount of property tax relief dollars the county receives. Beginning in FY96/97, the Legislature created the county mental health disabilities services fund. All revenues from property taxes, state and federal government funds, state payments, property tax relief funds and other sources designated for disability services are to be credited to this fund. All expenditures for disability services were paid from this fund. Some of the mandated services that were paid from this fund were reimbursement to the state for 80% of the capped per diem for care provided to adults in state mental health institutes, and all of the non-federal share of the capped per diem for services provided in the Medicaid funded state hospital schools, community facilities licensed as ICF/MR, and the home and community based waiver program for persons with intellectual disability.

State Funds: Mental Health Developmental Disabilities Community Services Fund

In the past the fund was distributed to counties on a two-part formula: 50% based on the proportion of the poverty population and 50% based on the percentage of the total state general population. This fund could be spent on MH/MR or other disability services, but no more than 50% could be spent on any one of the population groups. At least 50% of the funds had been spent on "contemporary" services that included: case management, supported employment, community based housing, ICF/MRs of 10 beds or less, individual support services, and day programming. In 2002 the Legislature began using the Community Services Fund to supplement cuts in allowable growth. The distribution was based on a methodology that took into account what the county was levying compared to what was allowed and the percentage of MH/DS budget held in reserve.

Property Tax Relief Payment

This payment began in FY95/96 to reduce the county levies for disability services. The funds are distributed to counties by a three part formula: 1) the county's share of the population; 2) the county's share of the state's total taxable property valuation; and 3) the county's share of the base year disability expenditures (counties had the option of choosing either FY94 or FY96 as their base year). The county is required to reduce the MH/DS levy by the amount received in state property tax relief payments.

County MH/DS Allowed Growth Factor Adjustment

The purpose of this fund is to provide state funding to counties to increase the pool of funds available for providing services to persons with disabilities. Counties must have an approved county management plan in order to be eligible to receive these funds. Beginning in FY 2000, the fund was allocated into three separate pools: 1) allowable growth, 2) per capita expenditure target pool, and 3) county risk pool. The growth and per capita expenditure funds are allocated to counties using formula methodologies. In 2002, the state cut \$18M, including \$2M in Risk Pool Funds, from the allowed growth funding to help address a state revenue shortfall. Allowable growth was cut again in FY10 and FY11 by another \$13M. In addition, the Community Services Fund was cut by \$2.5M and property tax relief was cut by \$8.8M.

Risk Pool Funds

The purpose of the mental health risk pool is to assist counties whose expenditures in the MH/DS fund exceed budgeted costs due to unanticipated expenses for new individuals or other unexpected factors. The mental health risk pool is not intended for multiyear usage or as a source of planned revenue. County eligibility is based in part on whether the county has levied the maximum allowed and has no more than a 25% balance in reserve. There has been minimal funding allocated to the Risk Pool Fund since FY 2003.

Other Funds

Other state funds include the Family Support Subsidy, Special Needs Grants, MH/DS State Cases, and State Supplementary Assistance (SSA). SSA is primarily available to persons residing in residential care facilities.

Federal Funds: Supplemental Security Income (SSI): Most disabled persons, because of their disability, are eligible for the federal entitlement program serving aged, blind or disabled persons. SSI eligibility automatically entitles the client to Medicaid (Title XIX), which covers medical expenses. In addition, the state's Medicaid plan has been amended to fund some special services for the ID/DD/CMI population groups.

Medicaid (Title XIX): In addition to the regular medical and Iowa Plan benefits, the Medicaid program funds several special programs for the MH/DS populations. These services include: 1) ICF/MR; 2) Home and Community Based Waiver, which allows the state to redirect Medicaid funding from institutional setting to support a flexible array of community services on behalf of persons who are elderly or disabled; 3) Enhanced Services; and 4) habilitation services for persons with chronic mental illness.

Medicaid Enhanced Services: An enhanced service is used to identify three services that were added by DHS to the Medicaid Plan in 1988. These services require counties to pay 50% of the non-federal share when services are provided to persons with intellectual disability, a developmental disability or chronic mental illness. In addition to these services, the state requires counties to pay 100% of the non-federal share for ICF/MR services and the home and community-based waiver for persons who would otherwise be in an ICF/MR. The candidate services are:

- Case management for persons with intellectual disability, developmental disabilities and chronic mental illness
- Partial hospitalization
- Day treatment

Medicaid Managed Care (The Iowa Plan): Beginning in 1993, DHS contracted with a managed care company to manage the mental health services funded by Medicaid. All Medicaid enrollees except those who qualified under the Medically Needy program with a spend-down and persons over the age of 65 were covered by this contract, which is called the Iowa Plan. Services for Iowa Plan eligible consumers must be pre-authorized by the managed care company (MBC of Iowa) before payment will be approved. In 1998, DHS expanded the program and contracted again with MBC of Iowa to manage the program.

Medicaid (Targeted) Case Management for Persons with Intellectual Disabilities, Developmental Disabilities or Chronic Mental Illness

Case Management is a process of assessing service needs. "Individual case management services" refers to activities provided to ensure that the client has received a comprehensive evaluation and diagnosis, to give assistance to the client in obtaining appropriate services and living arrangements, to coordinate the delivery of services and to provide monitoring to ensure the continued appropriate provision of services and the appropriateness of the living arrangement. Case management is a critical component in the management of the mental health system.

DHS Field Services/Service Area Advisory Boards

DHS maintains an office in each county, though they are not all staffed on a full-time basis. DHS determines in which community the office will be located. The board of supervisors shall determine the location of the office space for DHS in that community. The board of supervisors is mandated to "make reasonable efforts" to attempt to co-locate the DHS office with other state, local or private sector offices "in order to maintain the offices in a cost-effective location that is convenient to the public," (Iowa Code §217.43).

DHS must use the case-weight system to assure service provision. The county is to be contacted by DHS prior to modification of office hours. The county may subsidize with staff or funding positions in the county office. The 28E shall cover the entire fiscal year and can only be amended by mutual consent.

DHS divides the state up into five service areas. DHS is mandated to establish a service area advisory board in each service area. The purpose of the advisory board is to improve communication and coordination between DHS and the counties. Each county board of supervisors in the service area appoints two members. In making the appointment, the county has to take into account gender and political affiliation. Only one of the two appointees can be a county supervisor.

Substance Abuse

Iowa Code chapter 125 governs the provision of substance abuse services. Counties are responsible for paying 25% of the cost of substance abuse treatment at state mental health institutes. The state pays 100% of the cost of substance abuse treatment at community-based facilities. Because detoxification is not considered part of treatment, counties often pay all detoxification costs.

In cases of substance abuse commitments, counties pay 100% of the costs of court-appointed attorneys for indigent persons and the cost of a physician's examination of an indigent person being committed.

Substance abuse services are funded out of the general fund. Some "dual diagnosis services" – mental health and substance abuse - are funded proportionately out of the general fund and the MH/DD Services fund.

Waste Disposal Projects Generally

A county 1) may establish a county enterprise for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner [Iowa Code §331.461]; (2) shall provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under Iowa Code §455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents; (3) may construct, operate, and maintain the project on lands under the control or jurisdiction of the county dedicated to county use, or furnish financial and other assistance in connection with flood, soil erosion control, and watershed improvement projects [Iowa Code chapter 161E]; and (4) may establish water districts [Iowa Code chapters 357 and 357A].

Solid Waste Disposal Projects

Every county is required, singly or jointly with other units of government, to provide for the establishment and operation of a solid waste disposal project. The facilities for the final disposal of solid waste may be owned and operated by the county, or leases and contracts may be executed with public and private agencies. Any such agreement with a private agency must provide for the posting of a sufficient surety bond by the agency for the faithful performance of the agreement [Iowa Code §455B.302].

The solid waste disposal project must comply with the rules and regulations established by the state. Permits are issued to existing disposal projects which comply and to planned projects whose plans comply [Iowa Code §455B.305].

A city, county, or private agency operating, or planning to operate, a municipal solid waste sanitary disposal project shall file with the director one of two types of comprehensive plans detailing the method by which the city, county, or private agency will comply with Iowa Code §455B.306 and similar updates and renewal applications must be filed.

State grants are available to assist in the planning and implementation processes [Iowa Code §455B.311]. The board of supervisors is authorized to issue general obligation bonds to finance the acquisition, improvement, or repair of solid waste disposal projects [Iowa Code §331.441(2)(b)(4)].

Sewage and Waste Disposal Projects Financed by Revenues

Counties are empowered to acquire, construct, maintain, and operate facilities for the disposal of sewage and waste products. These facilities may be located either within or without the boundaries of the county [Iowa Code §331.461(2)(b)]. Any construction, installation, or modification of a waste disposal project which is or may discharge wastes into the waters of the state requires a written permit from the

director of the state department of natural resources before the project may be undertaken [Iowa Code §455B.183].

The financing of the sanitation facilities may be accomplished through the issuance of revenue bonds. However, before the bonds are issued, the board of supervisors must adopt a resolution pledging the net earnings of the project to the payment of the principal and interest. The bonds may not bear an interest rate exceeding that permitted by Iowa Code chapter 74A. The net earnings must be set aside in a sinking fund for the repayment of the bonds [Iowa Code §§331.464,.466,.467].

Every property owner who uses or is served by the facilities is required to pay a fee. Such fees, if not paid, constitute a lien on the property and are collected in the same manner as taxes. These fees must be set by the board of supervisors at a rate sufficient to pay the operating expenses, maintenance, and the principal and interest on the bonds [Iowa Code §331.465].

A county may purchase and acquire an interest in any sanitation facilities which are owned by a city or a sanitation district and are to be used jointly [Iowa Code §331.461(2)(b)].

Air Pollution Control

The board of supervisors of any county may, singly or jointly with any other governmental unit, establish an air pollution control program [Iowa Code §331.382(9)]. However, before the program may become operational, a certificate of acceptance must be obtained from the state department of natural resources. The jurisdiction of the county may include incorporated areas within the county until such time as an approved program is adopted by those units [Iowa Code §§455B.144,.145]. If, however, the program set up by the board fails at any time to meet the standards established by the department of natural resources, the department may administer the regulatory provisions of the county program until such time as the deficiencies are corrected [Iowa Code §455B.145].

Chapter 9

Agriculture and Conservation

CAFOs

The most important court decision regarding county authority over large livestock confinements was *Goodell v. Humboldt County*, 575 N.W.2d 486 (1998). In that case, the Court reviewed a series of ordinances passed by Humboldt County. There were three key findings:

Zoning Exemption

The ordinances enacted by Humboldt County were found not to be an exercise of the county's zoning power. The ordinances apply to the activity of large livestock confinement feeding operations wherever such operations are located within the county. Therefore, the ordinances lack the essential feature of a zoning ordinance the regulation of use by district. Because the ordinances are not zoning regulations, the agricultural exemption of Iowa Code chapter 335 does not apply.

Implied Preemption of the Field of Animal Feeding Operations

Although the legislature has extensively regulated livestock feeding operations, it has not expressed a desire to prohibit local regulation that does not conflict with state statutes or rules. Therefore, the Court found no preemption of local authority in the area of animal feeding operations. Furthermore, the Court rejected the parties' suggestion that the court decide whether the state has a pervasive interest in the area to be regulated and whether local regulation would have unreasonable adverse effects on the state as a whole. The Court said that consideration of these factors would be contrary to established principles of preemption in Iowa, as mandated by Iowa Code chapter 331. The Court said there was no preemption of an entire area since the legislature had not expressed its desire for statewide uniformity or had otherwise expressed an intention to preclude local regulation of a complete field.

Conflict with State Laws

The Court held that Ordinance 22 (permit requirement) conflicted with Iowa Code §455B.110 and state laws and rules establishing permit requirements for animal feeding operations. Ordinance 23 (financial assurance) also conflicted with the state's permitting requirements for the operation of livestock confinement facilities. Ordinance 24 (groundwater protection) conflicted with Iowa Code §455B.172(5), which grants exclusive jurisdiction to the DNR to regulate the disposal of animal wastes from confinement facilities. Finally, Ordinance 25 (toxic air emissions) conflicted with Iowa Code §657.11, which places strict and comprehensive limitations on nuisance suits against animal feeding operations. Consequently, the Court held that Humboldt County's ordinances were invalid and unenforceable.

The Court reversed the district court's ruling and remanded these consolidated cases to the district court for the entry of summary judgment in favor of the plaintiffs.

Soon after *Goodell* was decided, the Iowa Legislature passed Iowa Code §331.304A: Limitations on county legislation.

1. As used in this section:
 - a. "Aerobic structure", "animal", "animal feeding operation", "animal feeding operation structure", and "manure" mean the same as defined in Iowa Code §455B.161.
 - b. "County legislation" means any ordinance, motion, resolution, or amendment adopted by a county pursuant to Iowa Code §331.302.
2. A county shall not adopt or enforce county legislation regulating a condition or activity occurring on land used for the production, care, feeding, or housing of animals unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law. County legislation adopted in violation of this section is void and unenforceable and any enforcement activity conducted in violation of this section is void. A condition or activity occurring on land used for the production, care, feeding, or housing of animals includes but is not limited to the construction, operation, or management of an animal feeding

operation, an animal feeding operation structure, or aerobic structure, and to the storage, handling, or application of manure or egg wash water.

There are no reported cases yet interpreting this statute. The obvious intention of the statute is to preempt counties from passing ordinances similar to those in Humboldt County.

Starting in 2003 and developed by a 10-member statewide technical committee, the master matrix is a scoring system that can be used to evaluate the siting of permitted confinement feeding operations. Counties that have adopted a construction evaluation resolution can use the master matrix. [See Iowa Code §§459.304, 305].

Aids to Agriculture

County Limestone Quarries

In counties in which there are no privately owned limestone quarries or in which private quarries cannot furnish the needed limestone to farmers in an amount and at the same price and terms as the county would be able to do so, the board of supervisors has the power to establish or lease county limestone quarries for agricultural purposes [Iowa Code §331.382(1)(d)]. Before the acquisition of a county quarry, however, the board must determine by investigation that through county ownership lime can be obtained at a lower cost than by any other means [Iowa Code §353.1A]. Iowa Code chapter 353 outlines the procedures for county involvement in providing agricultural lime for farmers.

Weed Eradication

Although a county weed commissioner may be appointed, the board of supervisors is ultimately responsible for the enforcement of the county weed laws [see above in this manual for the weed eradication duties of the weed commissioner and the board and Iowa Code chapter 317 for more detailed information on the weed eradication law].

Participation in Flood and Erosion Control and Watershed Improvements

A board of supervisors may decide to have its county take part in any flood or soil erosion project, or watershed improvement, within its county in cooperation with other governmental agencies. The board may construct, operate, and maintain the project on lands under its jurisdiction if the project is dedicated to county use. The board also is authorized to furnish financial and other assistance in connection with the project or improvement [Iowa Code §161E]. The county may assume such proportion of the cost of the project as deemed appropriate, and may assume the cost of maintenance on lands under its control that is not covered by federal aid or grant [Iowa Code §161E]. In all cases it is assumed that the soil conservation district or the federal government will direct the work and that the county will meet only those obligations necessary to obtain federal aid and will make commitments for the care and maintenance of the project or improvement after its completion [Iowa Code §161E].

If the structure of levee needed for the project or improvement is built on a county road, the cost, in whole or in part, must be considered as part of the cost of road construction and charged to the road funds of the county [Iowa Code §161E]. 25% of the payments from the federal government must be deposited in the secondary road fund. The board determines which roads are principally affected and the amounts to be expended from the federal payments on such roads [Iowa Code §161E].

If a project or improvement has been completed on private lands under an easement granted to the county, only the cost of maintenance may be assumed by the board. Such a project or improvement, built on private lands with federal aid but dedicated to the use of the county, must be maintained the same as county-owned property [Iowa Code §161E].

Soil Conservation in Mining Areas

The board of supervisors may establish districts for soil conservation and flood control within the county. The board is authorized to require anyone removing surface soil for the purpose of obtaining coal to replace the surface soil as nearly as practicable to its original position. This authority, however, applies only to soil removed after July 7, 1949 [Iowa Code §161F]. All districts so established are subject to approval by the commission of any soil conservation district established under Iowa Code chapter 161F and the state department of natural resources [Iowa Code §161F].

County and District Fairs

A fair means an organization which is incorporated under the laws of this state, including as a county or district fair or as an agricultural society, for the purpose of conducting a fair event, if all of the following apply:

- a. The organization owns or leases at least 10 acres of fairgrounds. An organization may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under Iowa Code chapter 28E.
- b. The organization owns buildings and other improvements situated on the fairgrounds which have been specially constructed for purposes of conducting a fair event.
- c. The market value of the fairgrounds and buildings and other improvements located on the fairgrounds is at least \$25,000. [Iowa Code §174.1(2)]

The board of supervisors is given power to levy and expend a tax under Iowa Code §331.427(3)(f) for fairgrounds for purposes set forth in Iowa Code chapter 174. [Iowa Code §§174.1,.13,.14].

Title to land purchased or received for fairground purposes must be taken in the name of the county or the fair. The land is, however, to be placed under the control and management of the fair. [Iowa Code §174.15].

The fair may then act as agent for the county in the erection of buildings or improvements constructed on the grounds. Title to new buildings or improvements must be taken in the name of the county or fair, but the county is not liable for the improvements or expenditures for them [Iowa Code §174.15].

The board may acquire or receive land for fairground purposes under its general home rule authority [Iowa Code §331.301]. However, the disposition of any interest in real property by sale, exchange, gift, or lease of a term of three or more years is governed by Iowa Code §331.361.

However, this right of the society to control the real estate may be ended by the board of supervisors whenever well-conducted agricultural fairs are not held annually on the grounds by the fair society [Iowa Code §174.16].

Miscellaneous Agricultural Aids

An annual appropriation by the board of supervisors not in excess of \$200 is authorized for the purpose of eradicating bee diseases. This appropriation is used to pay all the expenses except salaries of the state apiarist and his/her assistants for the performance of their work in the county. The work of eradicating diseases among bees is done under the supervision of the state apiarist [Sec. 160.15].

A county may also be required to levy a tax for the state brucellosis and tuberculosis eradication fund. The state secretary of agriculture is required to make this levy request, if needed, by January 20 [Iowa Code §165.18].

County Conservation Board

All 99 counties have conservation boards. The board of supervisors is required to appoint five bona fide residents of the county to serve as the members of the conservation board [Iowa Code §331.321(1)(b)]. The members are appointed to five year terms of office. The board of supervisors must select the members of the conservation board from residents of the county who have a demonstrated interest in conservation matters. The members are not entitled to compensation except for actual and necessary expenses incurred in performance of their official duties [Iowa Code §350.2].

The board of supervisors may remove members of the conservation board for cause (causes specified in Iowa Code §350.2), but each removal must be by written order [Iowa Code §§331.321(3); 350.2]:

- It is the duty of the board of supervisors to provide a suitable office for the conservation board's meetings and for safekeeping its records [Iowa Code §§350.3; 331.322(4)].
- The conservation board must submit an annual report to the board of supervisors concerning its transactions and operations for the preceding year [Iowa Code §350.3].
- Authority is vested in the board of supervisors to give to the conservation board any county land or building not devoted to another inconsistent use if the conservation board requests the land or building for use as parks, recreation facilities, wildlife refuges, or other similar uses

[Iowa Code §350.4(2)]. Also, the board of supervisors, at its discretion, may make available to the conservation board county-owned equipment, county-employed operators, and county-owned materials. The board may also be reimbursed to the credit of the proper fund from county conservation funds for the actual expense of operation, such operators, etc. made available for the use of the county conservation board [Iowa Code §350.7].

- Upon request of the board of supervisors, the state executive council may deed lands under its jurisdiction to the county for park purposes. A majority recommendation of the state department of natural resources is required for approval of this action [Iowa Code §461A.32].
- In order to pay for the expenses incurred by the conservation board in the performance of its duties and the exercise of its powers, the board of supervisors may appropriate money from the county general fund. When the conservation board requests, the board of supervisors must establish a reserve for land acquisition and capital improvements only (see above in this manual for details of the conservation reserve). Once money is put in this reserve, it can be used only for land acquisition and capital improvements [Iowa Code §§331.427(2)(d); 350.6].

Swimming Pools and Golf Courses

Counties are permitted to acquire, construct, maintain, and operate swimming pools and golf courses. The financing of the facilities may be accomplished through the issuance of revenue bonds [Iowa Code §331.461(2)(c)]. However, before the bonds are issued, the board of supervisors must adopt a resolution pledging the net earnings of the facilities to the payment of the principal and interest. The bonds may not bear an interest rate exceeding that permitted by Iowa Code chapter 74A [Iowa Code §331.464].

The board of supervisors is authorized to establish reasonable fees for the use of the swimming and golfing facilities [Iowa Code §331.465].

Chapter 10

Planning, Zoning and Public Safety

Metropolitan or Regional Planning Commission

A county may cooperate with other governmental bodies in the creation of a metropolitan or regional planning commission. The commission may be designated as a regional or metropolitan planning commission. Once created, the commission is separate and apart from any of the governmental units which created it [Iowa Code §281.1].

Although the commission is an entity, its members are appointed by the governing bodies of the area served. The commission must consist of at least five members; a majority of the members may be citizens who hold no other public office or position. Citizen members are appointed for overlapping terms of not less than three nor more than five years. Salaries of the commissioners, if any are paid, are determined by the participating units of government [Iowa Code §281.2].

The board of supervisors may appropriate funds to the commission to pay the county's share of the expenses. Furthermore, the board may furnish staff, services, and property to assist the planning commission [Iowa Code §281.3].

Agricultural Areas

Note: Although the agricultural area statute is still on the books, the Iowa Supreme Court held in 1998 that the agricultural area statute providing that landowners in agricultural areas were immune from nuisance suits [Iowa Code §352.11] violated the Iowa and federal constitutions because the immunity created an easement over neighboring lands without providing just compensation. [Bormann v. Board of Supervisors, 584 N.W.2d 309 (1998)]

Creation or Expansion

An owner of farmland may submit a proposal to the board of supervisors for the creation or expansion of an agricultural area within the county. An agricultural area, at its creation, shall include at least 300 acres of farmland; however, a smaller area may be created if the farmland is adjacent to farmland subject to an agricultural land preservation ordinance pursuant to Iowa Code §335.27 or adjacent to land located within an existing agricultural area. The proposal shall include a description of the proposed area to be created or expanded, including its boundaries. The territory shall be as compact and as nearly adjacent as feasible. Land shall not be included in an agricultural area without the consent of the owner nor shall it exist within the corporate limits of a city. Agricultural areas may be created in a county which has adopted zoning ordinances. Except as provided in this section, the use of the land in agricultural areas is limited to farm operations [Iowa Code §352.6].

1. The following shall be permitted in an agricultural area:
 - a. Residences constructed for occupation by a person engaged in farming or in a family farm operation. Nonconforming preexisting residences may be continued in residential use.
 - b. Property of a telephone company, city utility as defined in Iowa Code §390.1, public utility as defined in Iowa Code §476.1, or pipeline company as defined in Iowa Code §479.2.
2. The board of supervisors may permit any use not listed in subsection (1) in an agricultural area only if it finds all of the following:
 - a. The use is not inconsistent with the purposes set forth in Iowa Code §352.1.
 - b. The use does not interfere seriously with farm operations within the area.
 - c. The use does not materially alter the stability of the overall land use pattern in the area [Iowa Code §352.6].

Duties of the County Board

1. Within 30 days of receipt of a proposal to create or expand an agricultural area that meets the statutory requirements, the supervisors shall provide notice of the proposal by publication of same in a newspaper of general circulation in the county. Within 45 days after receipt of the proposal, the board shall hold a public hearing on the proposal.
2. Within 60 days after receipt, the supervisors shall adopt the proposal or any modification of the proposal it deems appropriate, unless to do so would be inconsistent with the purposes of Iowa Code chapter 352 [Iowa Code §352.7].

Recording Description

Upon the creation or expansion of an agricultural area, its description shall be filed by the board of supervisors with the county auditor and placed on record with the recording officer in the county [Iowa Code §352.8].

Withdrawal

At any time after three years from the date of its creation, an owner may withdraw from an agricultural area by filing with the board of supervisors a request for withdrawal containing a legal description of the land to be withdrawn and a statement of the reasons for the withdrawal. The board shall, within thirty days of receipt of the request, approve or deny the request for withdrawal. After six years, an owner may withdraw from an agricultural area by filing with the supervisors a notice of withdrawal containing a legal description of the land to be withdrawn [Iowa Code §352.9].

The board shall cause the original description of the agricultural area on file to be modified to reflect the withdrawal.

Withdrawal shall be effective on the date of recording. The agricultural area from which the land is withdrawn shall continue in existence even if smaller than three hundred acres after withdrawal [Iowa Code §352.9].

County Zoning

Iowa Code §331.304(6) gives counties the power to adopt county zoning regulation in accordance with Iowa Code chapter 335.

Scope of the Zoning Authority

Any county in Iowa may adopt zoning regulations at the choice of the county board of supervisors [Iowa Code §335.1]. However, no zoning regulation may be applied to any area lying within the corporate limits of any city [Iowa Code §335.3], nor may such a regulation be applied to any land or building that is used for agricultural purposes as a primary means of obtaining a livelihood [Iowa Code §335.2].

Iowa Code chapter 335, titled County Zoning, was originally enacted in 1947. It applies to any county at the option of its board of supervisors. Iowa Code §335.1. Among other things, a county must design its zoning regulations to preserve the availability of agricultural land and protect the health and the general welfare of its residents, with a "reasonable consideration [of] the character of the area of the district and the peculiar sustainability of such area for particular uses" and with a "view to encouraging the most appropriate use of land throughout [the] county." [Iowa Code §335.5].

Iowa Code §335.3 identifies the subjects of county zoning: subject to Iowa Code §335.2, the board of supervisors may by ordinance regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Iowa Code §335.2, colloquially known as the "Freedom to Farm Act," provides in part: "Except to the extent required to implement Iowa Code §335.27 [which permits enactment of agricultural land preservation ordinances], no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used." Iowa Code §331.304(3)(b) reads much the same: "A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so used".

The agricultural purposes exemption to county zoning authority has been held to apply to hog confinement facilities because the structures that were proposed to have been erected were primarily adapted for agricultural use by reason of the nature of the structures. [Kuehl v. Cass County, 555 N.W.2d 686 (1996)] On the other hand, an egg-breaking facility was recently held not entitled to the exemption.

The Attorney General determined:

[A] county may subject the proposed egg-breaking operation to zoning regulations, because, as a matter of law, that particular operation does not constitute agriculture. "Agriculture" in this context means the art or science of cultivating the ground, including the harvesting of crops and the rearing and managing of livestock. Whether the county may classify the proposed egg-breaking operation as industry for property tax purposes is a question of fact initially for the county assessor's determination and ultimately a court's. "Industry" in this context includes any process of manufacturing, refining, and purifying and excludes any process that does not change the character of an agricultural commodity.
[2001 WL 334138 (Iowa A.G. February 1, 2001)]

Counties, by ordinance, may create agricultural land preservation areas though [Iowa Code §335.27]. These areas, along with agricultural areas [Iowa Code §352.6], may be established in addition to the county's other zoning ordinances [Iowa Code §§335.27; 352.6].

The zoning power vested in the board of supervisors includes the power to regulate and restrict the dimensions, the number of, of structures as well as, the percentage of a lot that may be occupied by structures, the size of yards and other open spaces, and the density of population in an area [Iowa Code §335.3].

The board may prescribe and charge a reasonable building permit fee. Upon receipt of an application containing all required information that the building will comply with all applicable regulations and upon payment of the required permit fee, the board must issue a permit within a reasonable period of time as set by the zoning ordinance [Iowa Code §§331.301; 331.302].

Further, the board may regulate the use of land by requiring that certain areas be confined to residential, trade, or industrial uses [Iowa Code §335.3].

Exercise of the Zoning Authority

The county, or any portion thereof, may be divided into such districts as the board may deem best suited for effective regulation and within each district different regulations regarding the use of property and structural requirements may be applied, but all regulations within any particular district must be uniform for each kind of building [Iowa Code §335.4].

It is requisite, however, that each regulation be made in accordance with a comprehensive zoning plan adopted by the board of supervisors after a public hearing, as explained below. A comprehensive plan has been defined as a "general regulation or ordinance stating the policy to obtain a uniform result according to the present and potential uses of property within a district considering the individual parcel's relationship to the community as a whole" [1972 WL 262393 (Iowa A.G., July 14, 1972)]. The purpose of the regulations must be: to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements [Iowa Code §335.5].

Upon deciding to adopt county zoning regulations, the board must appoint a county zoning commission, a majority of whose members must reside within the county, but outside the corporate limits of any city [Iowa Code §§335.8; 331.321(1)(r)]. The duty of this body is to recommend boundaries and appropriate regulations for the districts. The zoning commission must prepare a preliminary report and hold public hearings before submitting its final report to the board of supervisors [Iowa Code §335.8]. Upon receipt of the final report, the board prepares regulations and proposed boundaries for the districts. These regulations cannot become effective until public hearings concerning them have been completed pursuant to Iowa Code §331.305 [Iowa Code §335.6].

The regulations, restrictions, and boundaries may be amended, modified, or repealed. The zoning commission must act on any change before the board considers it. However, if a protest against any such change is filed by the owners of twenty percent or more of the area included in the proposed change or of the immediately adjacent area within 500 feet of the boundaries, the change will not be effective unless approved by the vote of at least 60% of the members of the board of supervisors. The provisions for notice and public hearings apply to any alteration or repeal of the district boundaries or regulations [Iowa Code §335.7].

Hearing Required

The legislature has given a county board of supervisors the authority over county zoning matters [Iowa Code §335.3,.6]. This authority includes the power to designate areas of the county into districts and to regulate the use of property within those districts[Iowa Code §335.3, .4]. Iowa Code §335.6 provides:

The board of supervisors shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, the regulation, restriction, or boundary shall not become effective until after a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in Iowa Code §331.305. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible. The regulation, restriction, or boundary shall be adopted in compliance with Iowa Code §331.302.

Pursuant to Iowa Code §335.6, a county board of supervisors cannot exercise powers granted to it by the legislature over zoning matters until the specified statutory procedural requirements are satisfied. Specifically, the board must publish notice of such action at least once, not less than four and not more than twenty days before the date of the hearing, in one or more newspapers which meet the requirements of Iowa Code §618.14. [See id. Iowa Code §331.305]. These public notice and hearing requirements apply equally to all zoning changes or amendments. [Osage Conservation Club v. Board of Supervisors, 611 N.W.2d 294 (2000)]

The county zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commission, the Iowa department of economic development, or the federal government, for local planning assistance [Iowa Code §335.8].

In order to enforce the adopted regulations, the board of supervisors must appoint an administrative officer who may be a public officer in the county, city, or other lesser unit of government in the county. The administrative officer's salary is left to the board's discretion [Iowa Code §335.9]. It should be noted, however, that the county auditor may not serve as the administrative officer and receive additional compensation for these duties [1967 WL 167176 (Iowa A.G., September 15, 1967)].

The board of supervisors also must appoint a board of adjustment [Iowa Code §331.321(1)(r)] consisting of five members, a majority of whom shall reside within the county but outside the corporate limits of any city, and whose initial terms shall range from one to five years. Thereafter, as the terms of the initial members expire, a new member shall be appointed each year by the board of supervisors for a five-year term. These members can be removed for cause by the board of supervisors if written charges are filed and a public hearing is held [Iowa Code §§335.10-.11]. The board of supervisors, at the time the board of adjustment is created, should adopt an ordinance or regulations permitting the board of adjustment, acting at the request of aggrieved property owners, to make special exceptions to regulations in individual hardship cases. The board of adjustment may grant variances and special exceptions to the zoning regulations and may interpret the ordinance. The board is a quasi-judicial body, and its decision is final unless taken to court [Iowa Code §§335.10, .15].

Building Codes

The board of supervisors may adopt a building code [Iowa Code §331.304(3)]. However, before such a code is enforceable, the board is required to arrange for a public hearing. Notice of the hearing must be published in a paper of general circulation not less than four nor more than 20 days prior to the date the hearing is to be held [Iowa Code §§331.302,.305].

A building code adopted by the board of supervisors has limited jurisdiction. The code is not applicable to any structures located within the limits of any city. Furthermore, all farm houses and buildings which are primarily adapted for agricultural use are exempt from the provisions of the code [Iowa Code §331.304(3)].

Jails

The board of supervisors is required to furnish a place for the confinement of prisoners [Iowa Code §331.381(16)]. However, the development of minimum standards for the regulation of jails and alternative jails is the responsibility of the department of corrections. The department is to consult with, among other entities, the Iowa board of supervisors' association in the development of these standards [Iowa Code §356.36]. These standards are then adopted as administrative rules pursuant to Iowa Code chapter 17A.

The responsibility for compliance with the state standards lies, ultimately, with the county. The department may order boards of supervisors to comply with the standards within a designated period of time, or may even prohibit prisoners from being confined in a substandard jail. If the board of supervisors should fail to comply, the department may schedule a hearing on the violation. Upon written notice to the department, the board is entitled to appear at the hearing and present evidence. If the board should still fail to comply with the decision of the hearing, the state attorney general may institute proceedings to keep the county from housing prisoners in the jail [Iowa Code §356.43]. The cost of confining prisoners in jails not belonging to the county must still be paid by the county [Iowa Code §356.43].

The board may adopt rules relating to the labor of prisoners in the county jail in accordance with Iowa Code §§356.16-.19, and may establish the cost of board and provide transportation of certain prisoners in accordance with Iowa Code §356.30 [Iowa Code §331.303(6)]. The sheriff, however, has authority to formulate rules for conduct and behavior of county jail prisoners [Iowa Code §356.44].

Ultimately the sheriff, and not the board of supervisors, is entitled to determine the nature of any restrictions against smoking in county jails. [995 WL 583918 (Iowa A.G., August 2, 1995)]

Minimum Security Facilities

In lieu of or in addition to providing for a county jail as required by law, the board of supervisors may, by majority vote, establish and maintain a county detention facility. The facility, or services of a facility, may be acquired either by purchase, lease, or contract. If the board contracts with a nonprofit agency for the establishment and maintenance of such a facility, the contract must state the charge per person to be paid by the county as well as a number of other provisions relating to the operation of the facility. A contract may not be entered into for a period exceeding two years. A copy of the contract must be filed with each judicial officer of the district which includes that county [Iowa Code §§356A.1-.2].

All rules and regulations for the operation of the facility are established by the board of supervisors, and the board and the agency with which they have contracted with have jurisdiction over such facility and its inmates. The sheriff does not have charge or custody of them [Iowa Code §356A.1].

Police Radio System

The state commissioner of public safety is authorized to establish a special radio broadcasting system to assist peace officers of the state in law enforcement [Iowa Code §693.1]. After he or she has established radio broadcasting facilities in a county, he or she must notify the board of supervisors; it is their duty to install in the sheriff's office a radio receiving set as prescribed by the commissioner [Iowa Code §§693.3-.4; 331.322(12)]. The board of supervisors has the discretionary authority to obtain any additional radio, electronic, and telecommunications systems it deems necessary for the efficient operation of law enforcement agencies. Counties may obtain and operate this equipment jointly with a city, town, or other county if that would be more economical or efficient [Iowa Code §§331.301, .304(1)].

Disaster Services - Public Disorders

Iowa Code chapter 29C creates a comprehensive plan relating to disaster services and public disorders. It specifies the powers and duties of the governor, creates an office of disaster services, and establishes joint county-municipal emergency management commissions.

The county board of supervisors and city councils are required to form a joint county-municipal emergency management commission composed of a member of the board of supervisors, the mayor from each of the cities in the county, and the sheriff of the county. The emergency management commission appoints a coordinator who is responsible for the administration and coordination of all disaster services and emergency planning matters throughout the county. A local emergency management fund is created in the office of the county treasurer. Revenues provided and collected shall be deposited in the fund. An unencumbered balance in the fund shall not revert to county general revenues. Any reimbursement, matching funds, moneys received from sale of property, or moneys obtained from any source in connection with the local emergency management program shall be deposited in the local emergency management fund. [Iowa Code §§29C.9.10,.17; 331.381(2)].

By February 28 of each year the emergency management commission must prepare a budget for the ensuing fiscal year [Iowa Code §29C.17(6)].

Chapter 11

Elections

The board of supervisors has little to do with the actual conduct of elections, but does have important duties relating to canvassing election returns, determining precinct boundaries, and setting up election boards.

Primary Election Canvass

On the Monday or Tuesday following a primary election, the board of supervisors must meet and canvass the returns from each voting precinct of the county. The results of the canvass must be compiled into abstracts showing the number of ballots cast by each political party for each office, the name of each person receiving votes, and the number of votes cast for each candidate for each office in each precinct. [Iowa Code §43.49]. Each member of the board must sign the abstracts and certify to their correctness; the abstracts are filed with the commissioner of elections [Iowa Code §43.50]. For all candidates for elective offices (or offices of a subdivision of the county) these abstracts are the final determination of the candidates for office in the general election [Iowa Code §43.51]. A certified list of the candidates nominated by each party is to be prepared and the party central committee is entitled to a certified list showing the candidates nominated by its own party as well as a list of those offices for which the party has no nominee. In addition, the names of the candidates for each office must be listed with the number of votes received by each candidate for each office [Iowa Code §43.55].

The county board of canvassers shall order a recount of the votes cast for a particular office or nomination in one or more specified election precincts in that county if a written request therefore is made not later than five o'clock p.m. on the third day following the county board's canvass of the election in question. The request shall be filed with the county commissioner of elections of that county and shall be signed by either a candidate for that office or nomination whose name was printed on the ballot in the precinct or precincts in question or any qualified elector who received votes for that particular office or nomination in the precinct or precincts where the recount is requested [Iowa Code §43.56; 50.48(1)].

If the recount board reports to the commissioner that the original abstracts prepared by the board of supervisors were incorrect as to the number of votes for the candidates for the office or nomination in question, the commissioner shall immediately inform the board and the board shall reconvene within three days of the notice and correct the previous proceedings [Iowa Code §50.48(5)].

A separate abstract of the canvass must be prepared for the following offices: United States senator, all state offices, United States representative, and senators and representatives in the Iowa General Assembly. These abstracts must be certified by the board and forwarded to the Iowa state commissioner of elections [Iowa Code §43.60].

Upon completion of the canvass, the original returns are delivered to the county commissioner of elections [Iowa Code §43.61]. The proceedings of the board in conducting the canvass are published showing the names of the nominees, the office for which each is a candidate, and the offices for which no nomination was made by one or more of the political parties participating in the primary [Iowa Code §43.62].

General Election Canvass

The board of supervisors, on the Monday or Tuesday following the general election, must canvass the vote and prepare abstracts showing the number of ballots cast in the county, for each office, the name of each person receiving votes, the number of votes cast for each candidate for each office, and the number of votes for or against each question. The board shall also prepare a certificate showing the total number of people who cast ballots in the election [Iowa Code §50.24]. Each abstract for the vote of such officers who are elected solely by the county's voters (except: (1) district judges, (2) senators and representatives in the general assembly, and (3) offices of political subdivisions whose elections are conducted by the commissioner) must contain a declaration of whom the canvassers has found to be elected. Also, each abstract of votes for and against each

public question submitted to the voters must contain a declaration of the result as determined by the canvassers [Iowa Code §50.27].

A separate abstract must be prepared by the board for each of the following offices: president and vice-president of the United States, Senator in the Congress of the United States, Representative in the Congress of the United States, Governor and lieutenant governor, a state officer not otherwise provided for, and senator or representative in the general assembly by districts. [Iowa Code §50.25].

If, at the expiration of the length of time specified in Iowa Code §50.12, a contest is not pending, the commissioner, without opening the package in which they have been enclosed, shall destroy the ballots. If the ballots are to be shredded, the package may be opened, if necessary, but the ballots shall not be examined before shredding. Shredded ballots may be recycled. The commissioner shall invite the chairperson of each of the political parties to designate a person to witness the destruction of the ballots. [Iowa Code §50.13].

Determination of Voting Precincts

The Code states that election precincts shall be drawn by the county board of supervisors in all unincorporated portions of each county. Election precincts are to be drawn so that: (1) no precinct has a total population in excess of 3,500, as shown by the most recent federal decennial census; (2) each precinct is contained wholly within an existing legislative district, except: (a) when adherence to this requirement would force creation of a precinct which includes the places of residence of fewer than fifty qualified electors, or (b) when the general assembly by resolution designates a period after the federal decennial census is taken and before the next succeeding reapportionment of legislative districts, during which precincts may be drawn without regard to the boundaries of existing legislative districts [Iowa Code §49.3].

Precincts thus established will be used for all elections, except where temporary merger of established precincts is specifically permitted by law for certain elections, and no political subdivision is permitted to maintain different sets of precincts for use in different elections [Iowa Code §49.3].

In the absence of contrary action by the board of supervisors, each civil township that does not include any part of a city of over 2,000 populations; and the portion of each civil township containing any such city which lies outside the corporate limits of that city or cities constitutes an election precinct. Where a civil township, as described above, is divided into two or more election precincts, the precincts must be drawn so that their total populations are reasonably equal on the basis of the most recent federal decennial census. Counties using alternative supervisor representation plan two or three, as described in Iowa Code §331.206 of the Code, shall be apportioned into single-member supervisor districts on the basis of population. In counties using representative plan three, the boundaries of supervisor districts follow the boundaries of election precincts [Iowa Code §49.4].

Election districts composed partially of unincorporated territory and partially of all or any part of a city may be established within a single county in any manner which is not contrary to Iowa Code §49.3 and is mutually satisfactory to the board of supervisors and the city council of the city involved [Iowa Code §49.6].

After the establishment of precincts the board of supervisors must number or name the precincts and cause the boundaries of each to be recorded in the records of the board of supervisors. Once each week for three consecutive weeks, notice of the boundaries and numbers or names of the precincts must be published in a newspaper of general circulation in the county, with the last notice published at least thirty days before the next general election. The precincts established shall not change except for in the manner provided by law. However, for any election other than primary, general, or any special election held under Iowa Code §69.14, the county commissioner of elections may make changes as provided by Iowa Code §49.11.

Changes in Precincts

Each board of supervisors must make changes in precinct boundaries necessary to comply with Iowa Code §§49.3 and 49.4 between July 1 and November 15 of the year immediately following each year in which the federal decennial census is taken, unless the general assembly by joint resolution establishes different dates for compliance with these sections. Any or all of the publications required by Iowa Code §49.11 may be made after November 15 if necessary. Each county board shall notify the state

commissioner and the commissioner whenever the boundaries of election precincts are changed and provide a map delineating the new boundary lines. If the board of supervisors fails to do so, the state commissioner shall make the necessary changes and assess the county for expenses incurred in doing so [Iowa Code §49.7].

After the required changes in precinct boundaries have been made following each federal decennial census, the board of supervisors may not make any further changes until after the next federal decennial census except as provided [Iowa Code §49.8].

Voting Machines and Electronic Voting Systems

The board of supervisors may purchase voting systems and equipment from the general fund. Notwithstanding any provision to the contrary, for elections held on or after November 4, 2008, a county shall use an optical scan voting system only. The requirements of the federal Help America Vote Act relating to disabled voters shall be met by a county through the use of electronic ballot marking devices that are compatible with an optical scan voting system. [Iowa Code §§52.2; 331.427(3)(c)].

Board Approval of Registration Deputies and Clerks

The county commissioner of elections is designated the commissioner of registration for the county, and may appoint deputies and assistants, subject to the approval of the county board of supervisors, necessary to carry out the commissioner's responsibilities under this chapter and under rules of the state voter registration commission and the state registrar of voters [Iowa Code §48A.3].

Data Processing Bids for Election Purposes

The commissioner of elections must get approval of the board of supervisors to reject bids in cases where the commissioner has received bids for data processing services in connection with administration of elections and decides to reject all bids in favor of obtaining the services through the state registrar [Iowa Code § 47.5(3)]. Or, the commissioner may recommend, and the board may approve, purchasing the needed services from the lowest responsible bidder. However, if the needed services could be obtained through the registrar at a lower cost, the board shall publish notice twice in a newspaper of general circulation in the county of its intent to accept such bid as well as the difference in the two bids [Iowa Code §47.5(3)]. The contract shall be no more than one year's duration. Each county choosing services other than those of the registrar's is required at the county's expense to provide the registrar with original and updated voter registration lists in a form and at times prescribed by rules promulgated by the registration commission [Iowa Code §47.5(3)].

Chapter 12

Court System

County Expenses and Facilities Provided

Even though most of the responsibilities for the court system have been assumed by the state, there are still many things that the county must continue to provide for the courts. These items are as follows:

1. The county must provide (or pay costs thereof if sharing costs with a contiguous county) courtrooms, offices, and other physical facilities for the district court, judicial officers of the district court, the clerk of the district court, juvenile court officers, and other court employees [Iowa Code §§602.1303(1)(a), .1303(9)].
2. The board of supervisors shall appoint three electors to the magistrate appointing commission for six-year terms [Iowa Code §§331.321(1)(w); 602.6503] and the county shall pay the expenses of these electors [Iowa Code §§602.1303(2), .6501(3)].
3. The county must pay the compensation and expenses of jury commission and assistants [Iowa Code §602.1303(3)].
4. The county must provide the district court bailiff and other law enforcement services upon request of a judicial officer of the district court [Iowa Code §602.1303(4)].
5. The county must pay the costs incurred in connection with the administration of juvenile justice [Iowa Code §602.1303(5)].
6. The county must pay the costs of its depositions and transcripts and the court fees and costs provided by law in criminal actions prosecuted by the county. The county must pay witness fees and mileage in trials of criminal actions prosecuted by the county [Iowa Code §602.1303(7)].
7. The county must pay a portion (based on population) of costs for offices and physical facilities for the district court administrator and staff [Iowa Code §602.1303(1)(b)].
8. The county shall pay fees and mileage of witnesses subpoenaed to county attorney investigations [Iowa Code §§602.1303(8); 815.3].
9. The county must pay the costs and expenses incurred in connection with grant juries [Iowa Code §§602.1303(6), .1303(8); 815.2].

The clerk of the district court is required to deliver to the county auditor, by the 15th of each month, a statement which must indicate the amount in fees and expenses which is chargeable to the county for services provided by the clerk and the district court system. The statement will also notify the county of any amounts which have been collected by the clerk that are payable to the county as reimbursement for costs it has incurred in connection with a civil or criminal action [Iowa Code §602.8109].

If the amount owed by the county is greater than the amount received by the clerk for services chargeable to the county, then the county must pay this difference to the clerk by the end of the month. If the amount owed by the county is less than the amount received by the clerk, the clerk must pay the difference to the county by the end of the month [Iowa Code §602.8109].

Chapter 13

Special Districts – Drainage Districts

Creation of a Drainage District

Two or more landowners can petition the board of supervisors to establish a drainage district [Iowa Code §468.7]. Accompanying the petition, (as defined in Iowa Code §468.8) the petitioners must file a bond sufficiently large to cover all the preliminary costs of establishing the district [Iowa Code §468.9].

After examination of the petition, the board must appoint a civil engineer to draw up a tentative plan. At the first meeting following the filing of the engineer's report, the board either adopts the tentative plan or calls for another plan to be submitted [Iowa Code §§468.10-.13]. At least 40 days after the date of acceptance of a plan, the board must set a date for a hearing on the proposed district. Persons affected by the proposed project must be notified of the hearing [Iowa Code §§468.14-.15].

If the board determines from the hearing that the proposed plan for the district is beneficial to the public health, convenience, or welfare and the costs are not prohibitive, further proceedings are adjourned to another meeting. The auditor then appoints three appraisers to assess all damages that will result from the construction of the proposed project. Each claim for damages may be affirmed, increased, or decreased by the board of supervisors. Once all the claims have been filed, the board must consider the costs of the proposed improvement as shown by the engineer's report along with the amount of the damages to be awarded. If the total cost of the project is justifiable in relation to the benefits bestowed on the property, the board may locate and permanently establish the district [Iowa Code §§468.21-.27].

If the owners of land within a proposed district mutually agree that a drainage district should be established, the board must establish the district. Such a district is presumed to be beneficial to the public health, welfare, and convenience. The agreement among the landowners must provide a description of the lands, the location and extent of the proposed improvements, the assessment of damages and benefits, and any other provisions deemed necessary by the board. The powers and duties of the board are the same over such a district as any other district created in another manner [Iowa Code §§468.142-.145].

Mutual drains may be converted into drainage districts upon adoption of a resolution by the board of supervisors. Although this may be done when desired by the board, two specific instances are set forth: failure to pay the costs or damages levied against any landowner and failure to undertake within a reasonable time a repair or reconstruction as ordered by the board [Iowa Code §468.630].

If the proposed district is a highway drainage district, the board may proceed to establish the district without a petition or bond. Such a district could include land adjacent to any public highway under the jurisdiction of the board [Iowa Code §468.335]. The determination of which lands are placed in the district is based upon the benefits accruing to the land as surveyed and reported by a competent engineer [Iowa Code §§468.338-.339].

If the proposed drainage district comprises land in more than one county, each affected county board of supervisors shall select a commissioner and the boards shall jointly appoint a competent engineer who shall also serve as a commissioner. This commission shall conduct the preliminary action pursuant to the establishment of the district. Upon report of the commissioners and engineer, and upon proper notice of hearing, the boards of the several counties will meet in joint session to consider the petition and carry out the process the same as if the project were wholly within one county [Iowa Code §§468.270-.283].

A sub district within an established district can be created by following the same procedure as for creating the original district. However, only one owner needs to file a petition to initiate action [Iowa Code §§468.6, .63].

Forms of Government

Once a district is permanently established, the board of supervisors may govern the affairs of the district itself or appoint a board of county drainage administrators. The administrators are appointed for three-year staggered terms. Two of the three administrators must be agricultural landowners. They are chosen from districts that are of approximately equal territory. Compensation and expenses of the administrators are paid from the drainage fund of the district whose business they are conducting [Iowa Code §§468.230-.233].

If a drainage or levee district has completed and paid for the original construction undertaken, the responsibility for the operation of the district may be placed in a three-member board of trustees [Iowa Code §468.500]. The board of supervisors must first be petitioned by a majority of the persons, including corporations, who own land within the district [Iowa Code §468.501]. At the next meeting following the filing of the petition, the supervisors are required to call an election for the purpose of selecting three trustees. The election must be held within 60 days, but not less than 40 days, from the date of that meeting [Iowa Code §468.502].

If the district contains 3,000 or more acres, the board must divide the district into three election districts with substantially equal voting power and acreage. One trustee is to be elected from each of the districts; however, the qualified voters may vote for all three officers [Iowa Code §468.504].

Notice of the election must be published for two consecutive weeks in an official newspaper of the county. The last publication may not be less than 10 days preceding the election [Iowa Code §468.507]. Three judges and two clerks of the election are to be appointed by the board of supervisors from among the property owners who reside in the county [Iowa Code §468.502].

The returns from the election are canvassed by the supervisors who must then inform the auditor of the results. This canvass is to be accomplished on the Monday following the election [Iowa Code §468.517].

Upon election, the trustees assume all the powers previously conferred on the board of supervisors in relation to that drainage district [Iowa Code §468.526]. The only duty remaining for the supervisors is to levy the assessments that the trustees certify [Iowa Code §468.527].

However, any district which is governed by a board of trustees may, by choice of the district, be placed back under the management of the supervisors [Iowa Code §468.532].

Inter-county drainage districts may be governed in the same manner as districts located wholly within one county. If the district is under the boards of supervisors, actions are subject to joint approval of the boards [Iowa Code §468.144]. Until such time as the original construction has been completed, funds are collected and disbursed within the respective counties [Iowa Code §468.285]. The county having the largest acreage then becomes the depository of the drainage fund [Iowa Code §468.299].

Sub districts or districts with pumping stations which are later divided are governed to the same extent and in every way as the original district [Iowa Code §§468.64, .362].

Construction and Repair

The board may proceed with construction of the improvement in accordance with the plan approved by the board at the public hearing. However, if the board feels it is necessary, an engineer may be appointed to make a permanent survey of the district [Iowa Code §468.30]. Modifications of the survey may be made at any time prior to the completion of the improvement, but in the event the modified or amended plan increases or decreases the estimated cost of the project by more than 25%, public hearings must be held [Iowa Code §468.62]. The board may also modify an accepted plan in order to cooperate with any agency of the federal government, but the 25% variance in estimated cost is still applicable [Iowa Code §468.201].

A district may be divided into sections for the purpose of facilitating construction. Contracts may be let for work in the different sections; differing periods of time within which the work must be completed may be set [Iowa Code §468.32].

All work that is estimated to cost in excess of the amounts set out in Iowa Code chapter 26, must be awarded through bids [Iowa Code §468.34].]

The board shall publish notice once each week for two consecutive weeks in a newspaper published in the county where the improvement is located, and publish additional advertisement and publication elsewhere as the board may direct. All notices shall fix the date to which bids will be received and upon which the work will be let, consistent with Iowa Code §26.3. The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders consistent with Iowa Code chapter 26. A bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor. The bid shall be accompanied with a bid security. The bid security shall be in the form of a deposit of cash, a certified check on and certified by a bank in Iowa, a certified share draft drawn on a credit union in Iowa, or a bid bond with a corporate surety satisfactory to the board as provided in Iowa Code §73A.20 [Iowa Code §§468.9, 26.8]. The bid security must be payable to the auditor or the auditor's order at the auditor's office in a sum equal to five percent of the amount of the bid. However, if the maximum limit on a bid security would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The cash, check, or share draft of an unsuccessful bidder shall be returned, and the bid bond of an unsuccessful bidder shall be canceled. The bid security of a successful bidder shall be maintained as a guarantee that the bidder will enter into contract in accordance with the bids [Iowa Code §73.18].

All contracts or agreements entered into must be in writing and signed by the chairman of the board of supervisors and the contractor. The contract must specify the work to be done, the beginning and completion dates, the amount to be paid, and the times of payment, and whatever other provisions deemed appropriate [Iowa Code §468.37].

The board must appoint a competent engineer to supervise the work of construction. A bond is required of the engineer; the amount is set by the board [Iowa Code §468.33].

If the estimated cost of a subsequent improvement (improvement is defined in Iowa Code §468.126(4)) does not exceed "\$50,000 but less than the competitive bid threshold in Iowa Code §26.3, the board shall conduct a hearing on the matter of making the proposed repair" [Iowa Code §468.126(1)].

The board is empowered to acquire additional land and right-of-way within or without the district to make necessary improvements and repairs. Any acquisition of additional right-of-way requires a hearing and notice of hearing in the same manner as an original acquisition [Iowa Code §468.126].

The board of supervisors has the duty of keeping any improvement in a drainage district in good repair. On its own motion, the board may order any repair work done; however, if the cost of the repair work exceeds the amounts as described in Iowa Code chapter 26, a hearing must be conducted. In the event the estimated cost of the repairs is less than \$20,000, the board may use county labor and weed or road equipment. The cost incurred by the county must be refunded by the drainage district [Iowa Code §468.126 (1)-(2)].

In districts where it is necessary to secure a proper outlet, the board may establish and maintain pumping stations. At least one-third of the owners of land to be benefited must initiate the action by petitioning the board [Iowa Code §§468.355-.356].

If the board deems it necessary, additional pumping stations may be established, but such a resolution must be adopted prior to the completion of the improvement. The board is required to direct the engineer to study the advisability of establishing additional pumping stations if one-third of the landowners petition the board [Iowa Code §468.357].

Assessment of Property

The board of supervisors must appoint three commissioners to classify land and assess benefits to the tracts of land affected by the drainage improvement. One of the commissioners must be a competent civil engineer and the other two are required to be resident freeholders of the county. Neither may a resident of the district, have an interest in the district, nor have relatives living in the district [Iowa Code §468.38].

Compensation for the commissioners, as well as for appraisers, is set by the board [Iowa Code §468.156].

The commissioners have the duty of assessing all the land in the district including highways and public lands. All the land is classified in tracts of 40 acres or less according to the legal or recognized subdivisions. Once the classification is completed, the commissioners are required to file their report with the county auditor [Iowa Code §§468.43-.44].

Although the commissioners' report is filed, the board of supervisors has the power to affirm or change the assessments at a hearing called for that purpose [Iowa Code §§468.45-.46]. In case the assessment is increased, the board must notify the affected landowner [Iowa Code §468.48]. The classification of the land, as adopted at the hearing, is the basis for all future assessments [Iowa Code §468.49]. However, a reclassification of land is permitted if the same procedure is followed as for the original classification [Iowa Code §468.67]. A reclassification of any kind can be prevented if a majority of the landowners owning 70% or more of the land in a levee district file their objections [Iowa Code §468.184(3)].

In lieu of reclassifying the land according to benefits received, assessments may be based on the assessed valuation of all the property. This may be accomplished through either a hearing or an election called by the board. (Note: this method of assessment cannot be used if objected to by landowners representing 60% or more of the total assessed value of the land in the district). If petitioned by the landowners, the board is required to call an election on the question. A majority of 60% of those voting is necessary for the proposition to carry [Iowa Code §§468.184(3),(6)]. Either through an election or hearing, a third classification alternative is available. The assessment may be uniform as to all land in the district; each acre of land is assessed the same. This is determined by dividing the total amount to be assessed by the total acres in the district [Iowa Code §468.184(7)].

Neither assessed valuation nor the uniform assessment alternatives may be applied to new improvements in a drainage district. These methods may be used, though, to assess all lands drained by mains and laterals for the maintenance, repair, and operation of drainage districts [Iowa Code §468.184(8)].

A drainage district established in connection with a United States levee is somewhat of an exception. Lands in such a district are assessed on the basis of the assessed valuation of the property unless the board chooses to classify and assess according to benefits [Iowa Code §468.393]. For the purposes of maintaining the levy, the amount collected in any one year may not exceed \$3.37½ per \$1,000 of assessed valuation [Iowa Code §468.394].

Collection and Disbursement of Funds

Once the assessments have been completed, the levies should be made as a tax upon the property. The assessments are due and payable at the same time as other taxes. Penalties and enforcement procedures relating to the collection of assessments are similar to those for taxes [Iowa Code §§468.50,.51,.55]. Assessments against all secondary roads and other county-owned lands under the jurisdiction of the board may be collected from the county road funds [Iowa Code §468.43].

If the amount of the assessment against a landowner exceeds \$500, he/she may choose one of two installment plans for paying the assessment. However, before such an option may be exercised, the landowner must waive any future action against the legality of the assessment. One option provides for a one-third payment at the time of filing the waiver agreement, one-third payment within 20 days of the completion of one-half of the project, and one-third within 20 days of the completion of the project. Assessments can, also, be made in 10 to 20 equal installments. If paid in equal installments, the board determines the number of installments and fixes the rate of interest notwithstanding Iowa Code chapter 74A. Interest is not charged under the first option unless the payments are delinquent [Iowa Code §468.57].

All assessments levied in the drainage district are kept in a separate account known as the drainage fund. [Iowa Code §468.54].

Moneys can be expended from the drainage fund only upon order of the board of supervisors [Iowa Code §468.129]. All claims must be itemized statements; the board must allow the payments if such amounts are verified as just and correct. Warrants may then be drawn on the treasurer by the auditor [Iowa Code §468.157]. As with other local units of government, the drainage district cannot permit expenditures which exceed its anticipated revenues [Iowa Code §468.54].

Expenditures incurred prior to the establishment of a proposed district may be paid by the county. If the proposed district is in more than one county, each county may expend a proportion equal to the proportion of expenditures in that county as to the total expenditures. As soon as the district is created, the district must reimburse the county. In case the proposed district is not created, the county general fund is reimbursed from the bonds of the petitioners [Iowa Code §468.153].

Until such time as the first assessments are collected from special assessments levied against property in the highway drainage district, the board of supervisors may advance that portion to be collected by special assessment. The road fund must later be reimbursed. In lieu of this method, the board may issue drainage warrants with an interest rate not to exceed that permitted by Iowa Code chapter 74A. These warrants are payable out of the special assessment levied and collected [Iowa Code §468.341].

Once the work on an improvement project is completed to the satisfaction of the supervising engineer, he/she is required to report to the board. The board must fix a date for consideration of the engineer's report and publish notice of the hearing once in a newspaper of general circulation. The publication must appear at least 10 days previous to the hearing [Iowa Code §468.101].

All objections to the report and any claims outstanding are to be filed at this hearing. The board must not only judge the validity of the claims, but, also, whether the claims were caused by negligence on the part of the contractor. If the claims were caused by negligence, they are to be paid out of the remaining funds owed to the contractor. Other valid claims are paid from the drainage fund. If the work is acceptable and all the liens and claims are settled, the board may direct payment of the balance due to the contractor [Iowa Code §§468.102, .103].

When all the work has been completed, all costs paid, and all assessments collect, the board may choose to refund to each owner his/her proportionate share of any surplus in the drainage fund that is not needed as a sinking fund. If over one-half of all the assessments have been collected and it is evident to the board that a surplus will exist, the board may refund to each owner an amount not to exceed 50% of his/her proportionate share of the anticipated surplus [Iowa Code §468.61].

Indebtedness

The board may provide by resolution for the payment of assessments in not more than 20 annual installments with interest at a rate determined by the board, notwithstanding Iowa Code chapter 74A. Warrants may be issued bearing interest at the same rate. The warrants must be numbered and state a maturity date. They may be sold for cash, but they must not be sold for less than face value and accrued interest [Iowa Code §468.70].

The board, by resolution, may provide for the issuance of improvement certificates to be used in payment for work done for the district [Iowa Code §468.70]. Each certificate designates a tract of land and its owner as liable for payment of the assessments necessary to redeem the certificates. Interest on the certificates shall be determined by the board [Iowa Code §§468.71,.72].

Drainage district bonds may be issued if it is determined that the cost of proposed improvements will create assessments greater than should be levied in a single year. The aggregate amount of the bonds that may be issued is equal to all of the assessments except those under \$100 [Iowa Code §468.74].

Before any bonds may be issued, the board must fix the amount of assessments to be levied each year sufficient to redeem the bonds within a 20 year period [Iowa Code §§468.74,.76]. A district court's confirmation of legality must be endorsed on the bonds [Iowa Code §468.74]. Notice of the issuance of

the bonds is required to be published in an official newspaper of the county. Property owners may pay the total amount of the assessment against their property at that time if they so choose [Iowa Code §468.82].

Each bond issued must have written upon it "Drainage Bond" and the name of the county and number of the district issuing the bond. The date the bond becomes mature must appear, also. In addition, the bond must state that the issuance is pursuant to a resolution of the board, and that the bonds are payable only from moneys collected on lands assessed for benefits within the district [Iowa Code §468.75]. The rate of interest on the bonds is determined by the board, notwithstanding Iowa Code chapter 74A, payable semi-annually [Iowa Code §468.76].

If the amount of assessments in any year is insufficient to pay the principal and interest on maturing bonds, additional assessments may be made based on the same classification [Iowa Code §468.79]. The board may fund or refund its legal indebtedness in sums of \$1,000 or more [Iowa Code §468.80].

Relationships Outside the Drainage District

If the board of supervisors becomes convinced that lands located outside the district are receiving benefits, the board may adopt a resolution of necessity for the annexation of the lands. Further proceedings are in accordance with the provisions for establishing an original district. If it is determined that the annexed lands should have been originally included in the district, the assessments levied on the annexed lands must be sufficient to equal the original assessments of similarly classified land plus assessments on additional improvements. The assessments levied, if the lands have only been benefited by subsequent improvements, are equal to the proportionate share of the cost of those improvements that bestowed the benefits [Iowa Code §§468.119-.121].

A drainage district with pumping stations can only annex land upon approval. One-third of the owners of land in the proposed annexation area either must petition the board or give their written consent to be annexed [Iowa Code §468.356].

The owners of land served by a mutual drain established pursuant to Iowa Code chapter 468 may petition the board for incorporation into an established drainage district. Upon filing of the petition, the board must hold a hearing and notify all the owners of affected land. If the board approves by resolution, the lands are annexed. Upon approval, the mutual drain is automatically dissolved [Iowa Code §468.634].

A new drainage district may be created which includes an old drainage district and any additional lands deemed necessary to properly drain the lands. The procedure which the board must follow is similar to the establishment of an original district. All outstanding indebtedness of the old district, though, is payable only from assessments against land in the original district [Iowa Code §468.124].

Outlets of a drainage district may be located in another county, another state, or mutually with another district [Iowa Code §§468.132,.146]. Improvements or repairs contemplated on a mutual outlet must first be subjected to a hearing [Iowa Code §468.132]. If one or more districts in different counties have common outlets, the boards of supervisors, acting jointly, may initiate proceedings for the establishment of an inter-county drainage district. Only those lands which will receive special benefits from improvements in the proposed new inter-county district are to be included. Proceedings are similar to establishing an original district [Iowa Code §§468.305-306].

The board of supervisors may enter into written agreements with landowners, municipalities, or other drainage districts lying outside the drainage districts. However, the board must be assured that the facilities will not be overburdened nor will the service cause an additional cost to the district [Iowa Code §468.187].

Relationships With Other Units of Government

The board of supervisors is permitted to enter into agreements with the federal government for the construction, repair, and maintenance of improvement projects in a drainage district. A portion of all the costs incurred may be paid from the funds of the district. Before such an agreement is valid, though, the board must follow procedures similar to those for undertaking a project alone [Iowa Code §§468.201-.216].

Any activities of a drainage district which affect flood plain encroachment limits, regulations, or zoning ordinances must be submitted to the Department of Natural Resources (DNR) for review and prior approval. However, if the activity conforms to a general plan previously approved by the DNR, approval is not necessary.

If the drainage of surface water constitutes the pollution of the waters of the state as defined by Iowa Code §§455B.172-.176, the board of supervisors needs to secure a permit from the DNR before undertaking any new improvements [Iowa Code §§455B.183, .184].

A drainage district may cooperate with other districts, such as soil and water conservation districts [Iowa Code §161A.7]. Subdistricts of a soil and water conservation district may be formed as provided in this chapter for the purposes of carrying out watershed protection and flood prevention programs within the subdistrict but shall not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district. [Iowa Code §161A.13].

A drainage district may include the whole or any part of an incorporated city [Iowa Code §468.315]. In all cases in which notification of landowners is required, the notice must be given to the city clerk on behalf of the municipality [Iowa Code §468.316].

If, at any time, 25% or more of the total drainage district acreage is located within a city, the board may, by resolution, transfer jurisdiction of the entire district to the city or town [Iowa Code §468.322]. Upon receiving certification of the resolution, the city must assume control of the district on the date specified in the resolution. The date shall be between 30 days and 90 days following the adoption of the resolution [Iowa Code §§468.322-.324].

A drainage district may gain an easement to occupy and use state-owned land for lawful drainage purposes. However, the district must first obtain the permission from the state or the state agency controlling the land [Iowa Code §468.220].

A project may be undertaken jointly with another state if the engineer responsible for drawing up a plan for a proposed district so recommends. The agreement must provide a statement of the separate amounts that the property owners of each state are required to pay. No construction on the project can be undertaken until both states have approved the project and all the claims are settled and the benefits are assessed. Unless the construction in this state is independent of the construction of the other state, no bids are acceptable until the authorities in both states have jointly agreed to the acceptance of a bid for the construction of the whole project. All the work done in this state must be done under a separate and distinct contract, but the amount of the contract cannot exceed the amount of the benefits assessed in this state. Once the original construction has been completed, the board may enter into an agreement for the joint management, repair, and maintenance [Iowa Code §§468.400-.405].

Legal Advice

The board is permitted to employ legal counsel for advice and representation in any matter in which they are represented. All fees and expenses may be paid from the drainage fund, but claims must be itemized and verified. If two or more districts are represented by the attorneys, the fees and expenses shall be apportioned among the districts benefiting from the service [Iowa Code §468.155].

Association Membership

Drainage districts may become members of the National Drainage Association and other associations for the protection and benefit of the district. Membership fees may be paid from the drainage fund, subject to the totals in Iowa Code §468.174. The annual dues for any district cannot exceed one-twentieth of 1% of the outstanding indebtedness of the district [Iowa Code §§468.174-.176].

Dissolution of Drainage Districts

A majority of the landowners owning 60% of all land in a drainage district may initiate action to dissolve the district. However, in all cases, the district must be free from indebtedness before it may be dissolved [Iowa Code §§468.29, .250].

If the district has once functioned as a drainage district, the board must fix the date for a hearing on the petition. The hearing is required to be held within 40 days of the date the petition was filed. Each property owner in the district must be notified of the hearing [Iowa Code §468.251].

Should the board of supervisors determine from the hearing that the necessity for maintaining the district no longer exists or that the benefits derived are not worthy of the cost, the board may order the district dissolved [Iowa Code §468.252]. All costs incurred are to be paid from the drainage fund; additional assessments are to be made if the fund is insufficient. Any excess remaining in the fund is to be prorated among the property owners according to the classification of land for the last assessment. If the district is not dissolved, the cost of the proceedings is paid by the petitioners [Iowa Code §468.254].

If no contract has been let nor works done in the district within two years of the date of the establishment of the district or the end of any litigation, the board is not required to hold a hearing. The district is dissolved upon resolution of the board and payment of all bills outstanding [Iowa Code §468.29].

Private Mutual Drains

An alternative method of providing for drainage is the establishment of private mutual drains. Upon petition, notification, and a hearing, the board may locate a levee, ditch, or drain if it is found to be beneficial for sanitary, agricultural, or mining purposes. The board must, in writing, set forth the extent of the improvement, provisions for repair, the amount of damages, and any other rules which may be needed. The record is filed with the county auditor [Iowa Code §§468.600-.607].

Any disputes arising among the participants in a private mutual drain may be resolved by the board of supervisors upon application. The application procedure is substantially the same as for originally establishing a mutual drain [Iowa Code §§468.617, .619, .620, .630, .633]. All costs of establishing the private mutual drain and resolving any conflicts are the liability of the applicants [Iowa Code §468.612].

Other Special Districts

Although the board of supervisors has few duties and responsibilities for the operation of most special districts, a number of special districts are created through actions of the board. Since the procedures required for creating the special districts vary only slightly, the discussion will be general rather than specific for each type of district.

Action to create a district is initiated by a certain number, or percentage, of property owners in the proposed district through a petition to the board of supervisors. Usually, the petition must contain some pertinent facts relating to the purpose, need, and extent of the proposed district. The board, at its discretion, may require a bond of the petitioners.

Within a specified period of time, the board must hold a hearing to determine the merits of the proposed district. If the petition is allowed, the board, by resolution, creates the district.

A competent engineer must be appointed to examine the proposed improvements and draw up a tentative design. The design usually contains estimates of the total cost. Within the required time, the engineer's report must be filed with the board.

Another hearing is required to approve the engineer's design. The board may, however, make any modifications in the design that appear to be advisable. Once approved, the board must set a date for an election.

The greatest variance in procedure among the various types of special districts exists at the election stage. Some districts require voter approval of the improvement only; others require the approval of a tax. If approval of a tax is necessary, a 60% majority is usually required for the proposition to carry; otherwise, a bare majority is deemed adequate. Often, trustees are nominated at the same election. From among the five nominees receiving the highest number of votes, the board appoints three to serve on the board of trustees.

In most cases, the operation of the district is immediately turned over to the board of trustees. The board of supervisors' role is reduced to levying the taxes certified to it. However, in certain types of districts, the board may continue to govern until the original improvements have been completed.

Districts formed by this procedure, or a very similar procedure include benefited water districts [Iowa Code chapter 357], benefited street lighting districts [Iowa Code chapter 357C], benefited law enforcement districts [Iowa Code chapter 357D], and sanitary districts [Iowa Code chapter 358]. Rural water districts deviate slightly in that no election is necessary the board may establish the district by resolution [Iowa Code chapter 357A].

Service Districts

A service district may be established if the governing body of a benefited water district, rural water district, benefited fire district, sanitary district, or drainage and levy district has insufficient membership to perform the powers and duties of a governing body. The power to make public improvements may also be established upon petition of the number of property owners within a proposed district. Powers granted cities in Iowa Code chapter 384 are also granted to these districts. Included but not restricted to are such undertakings as the installation of sidewalks, lighting, sewer, gas mains, and parking facilities.

If petitioned by 50% of the property owners within a proposed service district, the board of supervisors may establish such a district and exercise the powers granted to the districts listed above [Iowa Code §331.382(8)].

Chapter 14

Libraries

The board of supervisors has certain duties to provide library services for residents in the county.

Library services can be provided by the county by contract with a city library, or a library district can be formed. A member of a board of supervisors also needs to be aware of the functions of the regional library system and the board's responsibility for a law library in the court house.

Contract for Library Services

Several methods of providing library service in counties have been authorized by the General Assembly [Iowa Code §331.381(14)]. First, the board of supervisors, of its own volition, may enter into a contract with a city maintaining a library to provide for the library's use by residents of the county who reside outside cities [Iowa Code §336.18(1)]. Alternatively, the question of providing library services to rural residents must be submitted to the voters who reside outside cities if a petition is presented to the board requesting such an election. The petition must contain the signatures of 25% of total vote cast by those qualified electors who reside outside cities, for the president of the United States or governor at the last general election. In addition the petition must be filed with the board at least 40 days prior to the date of the election, whether primary or general, at which the question is to be submitted to the voters. If approved by a majority of those voting on the proposition, the board is required to, within thirty days, appoint a board of library trustees, from the residents of the petitioning area, who will contract with libraries to provide the required services [Iowa Code §331.321(1)(s)]. Vacancies on the board of trustees are filled in the same manner as the original appointments [Iowa Code §336.5].

The financial obligations of the contract, whether entered into by the board of supervisors or the board of library trustees, are paid from the county rural services fund [Iowa Code §331.428].

Contracts may be terminated by mutual consent of the contracting parties. If petitioned in writing by at least 5% of the qualified voters who voted in the area for president or governor at the last general election, the proposition to terminate the contract must be submitted to the area residents [Iowa Code §336.18(2)(a)]. The termination proposition may be submitted to the voters of the area seeking to terminate the contract at any election which covers this area. However, the petition calling for the termination election must be submitted to the board less than 10 days before the last day candidates may file nomination petitions for the election at which the question is to be submitted [Iowa Code §336.18(2)(b)].

County Library District

A third alternative for the provision of library services is the establishment of a county library district. Such a district may be composed of one county or two or more adjacent counties and may include any city partly within one of the counties [Iowa Code §336.2].

The board(s) of supervisors must submit the county library district proposition to the qualified electors within the county at any primary or general election upon receiving a petition from voters of the proposed library district. (If the proposed district is currently receiving services under a contract with a city library, the petition must be signed by the governing body of the area served in addition to the prescribed number of residents signatures [Iowa Code §336.14]). The petition shall clearly designate the area to be included in the district, the total number of board members, and how representation on the board shall be divided among the jurisdictions. [Iowa Code §336.2].

If a majority of the voters, residing outside cities which maintain their own free libraries, approve the proposition, a library district is established. The votes cast by residents of each city operating its own free public library are counted separately. Only those cities approving by majority the proposition are included in the county library district. Thus, the boundaries of the established district may not include all of the proposed territory. Once a district has been established, other areas may be incorporated by mutual agreement of the board of trustees and the governing body of the areas seeking admission [Iowa Code §336.2].

Upon approval of the proposition, the board of supervisors must appoint a five, seven, or nine member board of library trustees. Each member must be a qualified voter in the library district, and the membership should be apportioned among rural and urban areas of the district according to the population of these areas [Iowa Code §336.4]. Initial appointments are made at the same time for varying terms so that every two years thereafter approximately one-third of the board is replaced by subsequent appointments for six-year terms [Iowa Code §336.5]. The trustees serve without compensation [Iowa Code §336.7].

The county, the same as the participating cities, is required to contribute to the maintenance of the county library an amount equal to the same proportion as the number of rural people is to the population of the whole county library district. Each year, the board of library trustees must estimate how much it will cost to maintain the county library and the amount that should be contributed by each participating unit in the library. A public hearing must be held on the estimate, following which, (on or before January 10 of each year) each participating unit will receive a copy of the estimate and will be expected to make appropriations necessary to cover its share of the library expenses. The county's appropriations shall come from the county rural services fund [Iowa Code §§331.428; 336.13].

Libraries - Trustees' Report

The library trustees are required to make a report to the board of supervisors within 90 days of the close of each fiscal year. The report must contain statements of the condition of the library, the number of books and other resources added, the number of books and other resources circulated, the number of books and other resources not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance of said library [Iowa Code §336.11].

Libraries - County Law Library

If the board of supervisors deems it advisable, it may provide a suitable law library in the county courthouse for the use of the judges, county attorney, county officers and their deputies, and practicing attorneys. The library once established is to be supervised and controlled by the district court judge [Iowa Code §331.382(7)].