There is no surer way of curing one’s self of an avocation, than by requiring it to be done as work. When I was asked to write an article on the History of the County Attorney in Iowa, I thought, “why not, I like history…” little envisioning the fact that this short article would end up being the greatest excuse to avoid real work in the meantime – which simply meant that I put in longer hours at work, to get everything else done.

The History of the County Attorney in Iowa begins with Iowa as a territory, the government organized under the United States territorial regulations, transitioning to a state of the Union.[[1]](#footnote-1) Significant events at the time helped shape everything. Iowa was first part of the Michigan Territory, provided by act of the US congress in 1834. The first “Iowa” delegate to Congress, Gen. George W. Jones[[2]](#footnote-2) achieved passage of a bill separating Iowa into the Territory of Wisconsin in 1836, with Iowa becoming a separate territory by passage of law in 1838, taking effect July 4.

Pursuant to that act of congress, a Territorial Legislative Assembly was formed, which enacted laws. The Territorial law provided the first reference to a “county attorney”. The business of the appointed “district prosecutor” for “each county” was to prosecute criminal law”.[[3]](#footnote-3) The “District Prosecutor” however, had further duties to ensure that the taxes collected in the counties were properly turned over to the Territory.[[4]](#footnote-4) The territorial provision also established a system of periodic court dates still in existence today in many of our counties.[[5]](#footnote-5) Well, the original system had a judge coming to a county twice in a year, while the current system of regular judicial appearances in many counties is more frequent than twice a year, there are counties where specified “Court service days” are infrequent yet today.

Although Iowa sought to be a state as early as 1844, Congress was embroiled in a balancing act between slave and free states when considering new states from territories. By some accounts, the formation of Iowa as a “free” state “balanced” the admission of Florida as a “slave” state. Then, the size of Iowa was perhaps gerrymandered in an attempt to create more “free states” of smaller size out of the territories. In 1846 the citizens of Iowa approved, by a majority of 456 votes, the 1846 Constitution of Iowa, establishing boundaries of the state as approved by congress and the President – admitting Iowa as a State of the Union. The 1846 Constitution provided for a County “Prosecuting Attorney” to be elected for a two year term.[[6]](#footnote-6) The form of the county prosecutor to proceed “in the name of the State of Iowa” was set, as well, in that document, and continues in the same manner today.[[7]](#footnote-7)

Eleven years later, in 1857, the citizens of Iowa approved a new constitution which is the foundation of the Constitution of Iowa in use today. The 1857 Constitution provided for a “District attorney” to be elected, rather than appointed.[[8]](#footnote-8) That section was repealed in 1887, replacing the “District Attorney” with a “county Attorney”.[[9]](#footnote-9) Then, in 1970, the constitutional provision for County Attorney was repealed.[[10]](#footnote-10) The provisions for the County Attorney had long been codified in the Iowa Statutes, modified by County Home Rule Implementation, under which the County Attorney operates today.

So what were the duties of the “District Attorney” in the beginnings of the state? The 1850 Legislature provided for a County attorney to bring actions in the name of the county or of the state.[[11]](#footnote-11) One of the duties of the county prosecutor was to fill in for, what would now be a member of the board of supervisors, then called, “County Judge” when the “judge” was disqualified.[[12]](#footnote-12) The duties of the county prosecuting attorney then were similar to the duties today, prosecute crimes, and advise county officers.[[13]](#footnote-13) The compensation of the County attorney was tied to that of the “County Judge.”[[14]](#footnote-14) The compensation for a County Judge, Clerk of District Court and County Recorder, all payable quarterly, were set at no less than $50 annually in the smallest counties, to a maximum of $800 in the most populous of counties, those exceeding 16,000 inhabitants[[15]](#footnote-15), which effectively was Lee County, in 1850.[[16]](#footnote-16)

County Attorneys had to be admitted to practice before the courts, but the requirement was merely that the person to be admitted was an “inhabitant of this state and who satisfies any district court … that he possesses the requisite learning and that he is of good moral character.[[17]](#footnote-17)

The business of the County attorney included attending to the Grand Jury, whose duty it was to inquire into all indictable offenses committed or triable in the county, and present them to the court by indictment.[[18]](#footnote-18) The county attorney was also a jail inspector. [[19]](#footnote-19)

The 1860 Code of Iowa differed significantly due to the creation of “District Attorneys” in the 1857 Constitution, resulting in chapter 25 of 1860 code (District Attorney), and the repeal of chapter 18 of the code of 1851 (County Attorney). Although the 1860 Code still provided that the “prosecuting attorney” supply for a disqualified county supervisor, a foot note to that section suggested that perhaps the clerk of court would undertake that responsibility, given that there was no longer a “county attorney”.[[20]](#footnote-20)

The 1860 Code added, chapter 25, specifically describing the District Attorney.[[21]](#footnote-21) The District Attorney was elected by judicial district to four year terms.[[22]](#footnote-22) The office was generally considered a “state” office.[[23]](#footnote-23) The duties were to appear for the state “and several counties comprising his district in all matters” before the district court.[[24]](#footnote-24) The District Attorney appeared in cases from initial appearances to the Supreme Court.[[25]](#footnote-25) The Code, however, allowed a county judge (read this as county board of supervisors, not a District Court Judge) to separately employ an attorney to appear and prosecute or defend any case in the county “properly belonging” to the District Attorney.[[26]](#footnote-26) The District Attorney was required to give legal advice to county officers, and prepare documents for them. [[27]](#footnote-27) The District Attorney received a salary of $800 per year, and in addition received additional compensation for every conviction procured by him during his term of office, the value of which was collected from the person so convicted.[[28]](#footnote-28)

The Iowa Constitution, however was amended in 1884, changing the provision from “District Attorney” back to “County Attorney.[[29]](#footnote-29) The Iowa code attempted to adjust to the change.[[30]](#footnote-30) The County Attorney reverted to a 2 year election cycle.[[31]](#footnote-31) Once again the “County” attorney appeared for both the State and County,[[32]](#footnote-32) with the attorney general appearing for the State on criminal cases appealed from the county before the Supreme Court.[[33]](#footnote-33) The county attorney was to advise county officers.[[34]](#footnote-34) For the first time, it was clear that the County Attorney could employ deputies, who would serve without compensation unless specifically authorized by a district court judge for assisting the county attorney in a felony trial.[[35]](#footnote-35) This Code provided that the court appoint a substitute county attorney when necessary,[[36]](#footnote-36) while allowing for the Board of Supervisors to appoint a county attorney upon death or resignation of the county attorney.[[37]](#footnote-37) This Code gave rise to prohibiting a County Attorney from proceeding in a matter of conflicts of interest within the office.[[38]](#footnote-38)

The new code also changed the compensation from the $800 per annum of the “District Attorney” to a minimum of $300 as may be set by the County Board of Supervisors.[[39]](#footnote-39)

This 1888 code also contained qualifications for attorneys that were markedly different than that of the 1850 code. The gender and race discriminations had disappeared, and a “regular course of study” of law was required, as well as examination for the bar.[[40]](#footnote-40)

Almost a century later, in 1970, the constitutional provision for a county attorney was repealed.[[41]](#footnote-41) The statutory obligations of the County attorney had changed little, and were codified.

Over the years, although the duties of the County Attorney have been fundamentally the same (prosecute crime, advise county officials), the context of those duties has changed. In the early years of the State, there may have been little cause for a prosecuting attorney. In Dallas County, for example there was no candidate for prosecuting attorney until the third election, “thus far no special need for them.…”[[42]](#footnote-42) Contrast this with the Des Moines Register’s recent report that 713,280 criminal cases were filed in Iowa in 2015 (citing Iowa Court statistics), and $253 million was collected in criminal matters in 2016.

Then too, it may have been well to have little need to fill the elective offices, as the California Gold rush in 1848 to 1855 drew from Iowa’s population and office holders.[[43]](#footnote-43) The Civil war, of course drew more men from Iowa per capita than any other state, similarly impeding the progress of governmental development.[[44]](#footnote-44)

Similarly, at the outset, there was little money to build courthouses, nor was there particular need for them, so criminal court may be convened in available structures, including churches.[[45]](#footnote-45)

The office of the county attorney grew across the state, and county attorneys of Iowa have over the years been engaged in a variety of notorious cases. One such case is alleged to have advanced criminal forensic science in efforts to identify a burned body and bring the perpetrator to justice.[[46]](#footnote-46) More cases of interest are perhaps a subject of future article.

The daily work, year in and year out of course, is what the office is truly about; Constantly balancing the demands and expectations of the community within the relatively stable, yet constantly evolving duties of the office. Historically, for example, the office prosecuted crime upon the English sovereign design, that a matter was criminal because it disrupted the peace of the community, which caused a government interest; the interests of the victims being deemed a separate “civil” matter between the parties. This concept has relatively recently begun to erode, first with requirements that the criminal prosecutor seek victim restitution from the offender of the crime within the criminal prosecution, followed by more recent - and appropriate – requirements to engage the victim of crimes in the process of seeking justice.

The balancing of justice comes with balancing the needs of an office, from adequate staffing, including issues of part time county attorneys and their private practices,[[47]](#footnote-47) to assistants, stenographers.[[48]](#footnote-48) Further to provide current technology for effective operations –to telephones, to Xerox machines, to computers.[[49]](#footnote-49) With the evolution of our culture, such questions are constantly evolving.[[50]](#footnote-50)

The “History” of the County Attorney in Iowa continues to evolve, with perhaps a seemingly never ending list of “duties”[[51]](#footnote-51) now numbering in excess of 70, including the fundamental provisions to prosecute crime and advise county officers

1. A Glimpse of Iowa in 1846; or, the Emigrant's Guide and State Directory; with a description of the new purchase ... Second edition, “Territorial Directory Department” – John B. Newhall, W.D. Skillman, Publisher, 1846 [Found at Google Ebooks] “The law of Congress authorizing the Territorial Government of Iowa, took effect on the 4th day of July , 1838. From that time, Iowa assumed a separate Territorial existence from Wisconsin, to which she had hitherto been attached. (p. 63) [↑](#footnote-ref-1)
2. “The History of Iowa -- The Judiciary” From the A.T. Andreas Illustrated Historical Atlas of the State of Iowa, 1875 [↑](#footnote-ref-2)
3. “A Glimpse of Iowa in 1846…” Id at p. 64, “There is a District Prosecutor, appointed by the Governor, for each county, whose duty it is to prosecute for all offences against the laws of the territory.” [↑](#footnote-ref-3)
4. The statute laws of the Territory of Iowa, enacted at the first session of the Legislative Assembly of said Territory, held at Burlington, A.D. 1838-39 Sec. 2. It shall be the duty of the district prosecutor, in each judicial district, to prosecute all pleas, plaints, indictments, and presentments, and prosecute all suits against delinquent sheriffs and collectors of the Territory, and county revenue, and all other persons who now are or may hereafter be indebted to the Territory, or any of the counties in their respective districts, where the Territory or county may be a party, except in cases where complaint shall be made in the name of the Territory for the benefit of some third person. -SEC. 5. That the said district attorneys shall give their advice to off-advice to the civil officers of their respective districts, touching any matter in which the public have an interest; … the said district attorneys shall receive such compensation for their services, as the board of county commissioners of their respective counties shall from time to time deem proper, either as an annual salary, or by making payment on the bills for services rendered, as they shall judge best. - APPROVED, January 15, 1839 p. 178 – 179. [↑](#footnote-ref-4)
5. Id. p 65 “Time of Holding District Courts in the Different Counties…Wapello – Third Monday of March and fourth Monday of September, Kishkekosh (now Monroe) Fourth Monday of March and the First Friday after the fourth Monday of September. [↑](#footnote-ref-5)
6. Article 6, Judicial Department, paragraph 5 “The qualified voters of each county, shall at the general election, elect one Prosecuting Attorney and one Clerk of the District Court, who shall be residents therein, and who shall hold their several offices for the term of two years and until their successors are elected and qualified.” 1846 Constitution of Iowa, Documentary material relating to the history of Iowa edited by Benjamin F. Shambaugh - Iowa City Ia. The State Historical Society of Iowa [1895-1901] vol 1 – vol. 3 [↑](#footnote-ref-6)
7. “6. The style of all process shall be "the State of Iowa" and all prosecutions shall be conducted in the name arid by the authority of the same.” Id. [↑](#footnote-ref-7)
8. 1857 Constitution of Iowa, Article V. Judicial department, District Attorney Sec. 13, “The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district…and who shall hold his office for the term of 4 years.. [↑](#footnote-ref-8)
9. Amendment 4 to the Constitution of Iowa, Amendments of 1884. Section 13 County Attorney. “The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a County Attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.” [↑](#footnote-ref-9)
10. Amendment 31 to the Constitution of Iowa. [↑](#footnote-ref-10)
11. Code of Iowa 1850 – 51. “SEC. 96. Officers. Each organized county shall elect a judge of the county court, a prosecuting attorney, a clerk of the district court, a recorder, a sheriff, a surveyor, a coroner, and a supervisor of roads, each of whom may hold his office for the term of two years, except the county judge who may hold for the term of four years. SEC. 97. An action may be brought in the name of a county on any instrument heretofore given to the board of commissioners of the county, or to any officer thereof for the benefit of the county; and in the name of the state when the instrument was in part for the benefit of the state.” (in conformity with the Constitution of 1846) [↑](#footnote-ref-11)
12. SEC. 105. Powers. The county judge is hereby invested with the usual powers and jurisdiction of county commissioners and of a judge of probate, and with such other powers and jurisdiction as are conferred by this statute ; and his official style may be either "county judge" or "judge of" (such a county, naming it)… SEC. 111. Vacancy or interest. In case of a vacancy in the office of county judge, and in case of the absence, inability, or interest, of that officer, the prosecuting attorney of the county shall supply his place [↑](#footnote-ref-12)
13. [32] CHAPTER 18.

    PROSECUTING ATTORNEY.

    SECTION 163. Duties. It is the duty of the prosecuting attorney to appear for the state and county respectively in all matters in which the state or county may be a party, or interested, in the district or county courts in his county; before any judge on a writ of habeas corpus sued out by a person charged or convicted of a public offense, the prosecution being in his county ; and in the supreme court in any of the above proceedings taken thither from his county; and in like manner to appear for the state or county in any proceedings brought to his county from another by change of venue ; and he is authorized when he deems it advisable to appear before justices of the peace in the initiatory proceedings in criminal cases. SEC. 164. Duties. But when any such proceeding is sent to another county by change of venue, the attorney for the county in which it originated may follow it to the other county and attend to it there, in which case it shall not be obligatory upon the prosecuting attorney of the county to which it is changed to attend to the matter, if he receives notice of such intention from the original prosecuting attorney ten days before the sitting of the court at which it is to be heard. SEC. 165. Duties. It is also the duty of the prosecuting attorney to give legal advice to the state and county officers in matters pertaining to his own county. SEC. 166. Absence, etc., appointed. In the absence of the prosecuting attorney, and during his inability to act in any proceeding, the court before which it is pending may appoint a person to supply his place ; and the county judge may make such appointment in writing, in any county business, and also in any criminal prosecution which in his opinion requires attention before the sitting of the district court, and such appointment made before the action of the district court will be valid. SEC. 167. The person so appointed, and performing the duty, will be entitled to his compensation as if he were the prosecuting attorney. SEC. 168. Assistant counsel. The county judge may employ other counsel with the prosecuting attorney when he deems it advisable. [↑](#footnote-ref-13)
14. SEC. 169. Compensation. The attorney shall receive, for his whole compensation for services rendered to the county, an annual salary amounting to forty per cent, upon the salary of the county judge, and payable and graduated in the same manner, except as herein otherwise declared. For civil business in [33] the name of the state, and for proceedings in Quo warranto and mandamus, when not prosecuted in behalf of an individual exclusively, the state is held to compensate him. But when the prosecuting attorney acts in the place of the county judge, he will be entitled to receive two dollars a day, to be paid from the county treasury [↑](#footnote-ref-14)
15. CHAPTER 22. SALARY OF CERTAIN COUNTY OFFICERS. Code of Iowa 1850. [↑](#footnote-ref-15)
16. http://www.iowadatacenter.org/datatables/CountyAll/copopranking18502000.pdf [↑](#footnote-ref-16)
17. CHAPTER 95. ATTORNEYS AND COUNSELORS. SECTION 1609. All persons who, by the law heretofore in force, are permitted to practice as attorneys and counselors may continue to practice as such. SEC. 1610. Admitted. Any white male citizen of the United States who is actually an inhabitant of this state and who satisfies any district court of this state that he possesses the requisite learning and that he is of good moral character, may by such court be permitted to practice in all of the district courts of the state upon taking the usual oath of office. [↑](#footnote-ref-17)
18. Code of Iowa 1850, SEC. 2905. Prosecuting attorney. Whenever required by the grand jury it is the duty of the prosecuting attorney to attend before it for the purpose of examining witnesses, and of giving it legal advice. [↑](#footnote-ref-18)
19. Code of Iowa 1850,SEC. 3110. Inspectors. In each county of this state the judge of the county [430] court and prosecuting attorney are inspectors of the jails respectively, and have poAver from time to time to visit and inspect the same and inquire into all matters connected Avith the government, discipline, and police of such prisons. SEC. 3111. Their duty. It is the duty of such inspectors to visit and inspect such prisons twice each year, and at the next district court which is thereafter held in their county to present to such court on the first day of its sitting a detailed report of the condition of such prisons at the time of such inspection. [↑](#footnote-ref-19)
20. Code of Iowa 1860, footnote to section 247. “\* Since the repeal of chapter 18 of code of 1851 this duty would perhaps devolve upon the clerk of district court.” [↑](#footnote-ref-20)
21. CHAPTER 25. DISTRICT ATTORNEY. [Code—Chap. 18.] [Prosecuting attorney substituted by district attorney; see next act.] An Act providing for the Election of District Attorneys, prescribing their duties and fixing their compensation. [Passed March 22. 1858, look effect July 4, 1858. [↑](#footnote-ref-21)
22. Code of Iowa 1860, Chapter 25, section 372. “That there shall be elected by the qualified electors of each judicial district, on the second Tuesday in October, eighteen hundred and fifty-eight, and every four years thereafter, one district attorney, who shall hold his office for four years, and until his successor is elected and qualified, and shall be qualified by the governor. [↑](#footnote-ref-22)
23. Code of Iowa 1860, Sec. 373. (2.) The manner of conducting said election, … shall be the same as may be provided by law in relation to other state officers” [↑](#footnote-ref-23)
24. Code of Iowa 1860, SEC. 374. (3.) “It shall be the duty of the district attorney to appear for the state and several counties comprising his district in all matters in which the state or any such county may be a party or interested, in the district court of his district, before any judge, on a writ of habeas corpus sued out by a person charged or convicted of a public offense, the, prosecution being in his district.” [↑](#footnote-ref-24)
25. Code of Iowa 1860, SEC. 374 “He shall in any of the Furnish abstract above proceedings taken from his district to the supreme court, furnish to the attorney general a brief containing the substance of such proceeding, and the questions therein involved, on or before the day in the term of the supreme court at which such proceeding is set for hearing in that court. Ile shall also appear for the state or any county in any Further appears proceedings brought to his district from any other on change of venue, for state. and he is authorized when he deems it advisable, to appear before the justices of the peace in the initiatory proceedings in criminal cases…” [↑](#footnote-ref-25)
26. Code of Iowa 1860, SEC. 374 “… provided, that nothing herein contained shall prevent the county judge whenever he may deem it necessary from employing an attorney to appear to prosecute or defend in any case properly belonging to the duties of the district attorney. [↑](#footnote-ref-26)
27. Code of Iowa 1860, Sec. 375. (4.) “The district attorney shall, when requested, give his opinion in writing, without fee, upon all questions of law submitted to him by any county officer within his district, and which has reference to the official duty of such officer, and whenever requested by any such officer he shall prepare proper drafts for contracts, forms and other writings which may be wanted for the use of any county in his district, and he shall file in his office and preserve a copy of his opinions thus furnished.” [↑](#footnote-ref-27)
28. Code of Iowa 1860, SEC. 381. (10.) In addition to the above salary, he shall receive for every conviction procured by him during his term of service, for a misdemeanor five dollars, for a felony ten dollars, such fees to be allowed and paid by the county judge\* in each county in which the cause originated.” See also SEC 382. (11.) In case of conviction contemplated in the preceding section, the following fees shall be taxed against the defendant, to wit : in case of a misdemeanor five dollars ; in case of felony ten dollars, which shall be collected by the district clerk and paid into the county treasury. [↑](#footnote-ref-28)
29. AMENDMENTS OF 1884 to the 1857 Constitution of Iowa, Amendment 4 [10] Amendment 4. “That Section 13 of Article V of the Constitution be stricken therefrom, and the following adopted as such Section.

    County attorney. SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a County Attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.” [↑](#footnote-ref-29)
30. Code of Iowa 1888, (McClain Edition), Preface, “In the same way the general and uniform change from district to county attorney is indicated by inserting in brackets the word which should be substituted to carry out the change intended.” [↑](#footnote-ref-30)
31. Code of Iowa 1888, (McClain Edition), “267. Election, term, bond. 21 G. A., ch. 73, § 1. At the general election in 1886, and every two years thereafter, a county attorney shall be elected in each county…” [↑](#footnote-ref-31)
32. Code of Iowa 1888, (McClain Edition), 268. Duties. 21 G. A., ch. 73, § 2. The county attorney shall appear for the state and county in all cases and proceedings in the courts of his county to which the state or county is a party, and in the supreme court in all cases in which the county is a party…” [↑](#footnote-ref-32)
33. Code of Iowa 1888, (McClain Edition), 268. Duties…” In every criminal case appealed from his county to the supreme court he shall, at least thirty days prior to the ' term at which the case is to be heard, prepare and deliver to the attorney general, a properly prepared abstract of the case.” [↑](#footnote-ref-33)
34. Code of Iowa 1888, (McClain Edition), 269. Opinions. 21 G. A., ch. 73, § 3. The county attorney shall, without compensation, give opinions and advice to the board of supervisors, and other civil officers of their respective counties, when requested so to do by such board or officers, upon all matters in which the state or county is interested or relating to the duty of the board or officers, in which the state or county may have an interest, but shall not appear before the board of supervisors in the trial of any cause in which the state or county is not interested, or in applications to establish, vacate or alter highways. [↑](#footnote-ref-34)
35. Code of Iowa 1888, (McClain Edition), 270. Deputies. 21 G. A., ch. 73, § 4. The county attorney may appoint deputies, who shall act without any compensation from the county, to assist him in the discharge of his duties. With the approval of the district court he may procure such assistance in the trial of a person charged with the crime of felony as he shall deem necessary, and such assistant, upon presenting to the board of supervisors a certificate of the district judge before whom said cause was tried, certifying to the service rendered, shall be allowed a reasonable compensation therefor, to be fixed by the board of supervisors. Eut nothing in this section shall be construed to prevent the board of supervisors from employing an attorney to assist the county attorney in any cause or proceeding in which the state or county is interested. [↑](#footnote-ref-35)
36. Code of Iowa 1888, (McClain Edition), 271. Substitute. 21 G. A., ch. 73, § 5. In the absence, sickness, or disability of the county attorney and his deputies, the court before whom it is his duty to appear and in which there may be business for him to attend, may appoint an attorney to act as county attorney by order to be entered upon the minutes of the court, [↑](#footnote-ref-36)
37. Code of Iowa 1888, (McClain Edition), “In case of vacancy in the office of county attorney by death, resignation or otherwise, the board of supervisors shall appoint a county attorney, who shall give bond and take the same oath, and perform the same duties as the regular county attorney and shall bold said office until his successor is elected and qualified.” [↑](#footnote-ref-37)
38. Code of Iowa 1888, (McClain Edition), 272. No other compensation. 21 G. A., ch. 73, § 6. No county attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual, for services m any prosecution or business to which it shall be his official duty to attend, nor be concerned as an attorney or council [sic] for a party other than for the state or county, in any civil or criminal action pending or arising in his county upon the same facts upon which any criminal action or civil action wherein the state or county was a party, has been by such attorney commenced or prosecuted. [↑](#footnote-ref-38)
39. Code of Iowa 1888, (McClain Edition), 277. Compensation. 21 G. A., ch. 73, § 11. The county attorneys of the several counties in this state shall be allowed an annual salary to be fixed by the board of supervisors of their respective counties at their June meeting of each even-numbered year as follows: In counties of not more than five thousand inhabitants not to exceed five hundred dollars. In counties of over five thousand and under ten thousand, not exceeding six hundred dolllars. In counties of over ten thousand and under fifteen thousand not exceeding seven hundred and fifty dollars. In counties of over fifteen thousand and under twenty thousand, not exceeding nine hundred dollars. In counties of over twenty thousand and under thirty thousand, not exceeding one thousand dollars. In all counties of over thirty thousand not exceeding fifteen hundred dollars; said salary to be paid quarterly at the first meeting of the board of supervisors after it shall become due and in addition thereto for all fines collected (and school fund mortgages foreclosed) the same fees as are now allowed to attorneys for suits on written instruments where judgment is obtained and shall bo entitled to his necessary and actual expenses incurred attending the discharge of his duty at a place other than his place of residence and the county seat which shall be audited and allowed by the board of supervisors of the county. Population shall be determined by the last preceding national or state census. Providing that in no county shall the salary be less than three hundred [dollars] and fees as herein specified. 278 [↑](#footnote-ref-39)
40. 281. Qualification. 20 G. A., ch. 168, § 2. Every applicant for such admission must be at least twenty-one years of age, of good moral character, and an inhabitant of this state, and must have actually and in good faith pursued a regular course of study of the law for at least two full years, either in the office of a member of the bar of this state, residing therein, and in regular practice, or in some reputable law school in the United States…” See also section 282. “Examination. 20 G. A., ch. 168, § 3. Every such applicant shall also be examined by the court, or by a committee of not less than three members of the bar, appointed by the court, as to his learning and skill in the law; and the court must be satisfied, before admitting to practice, that the applicant has actually and in good faith devoted the time hereinbefore required to the study of law, and possesses the requisite learning and skill therein.” [↑](#footnote-ref-40)
41. Iowa Constitution (of 1857)AMENDMENTS OF 1970 “Amendment 3. Section thirteen (13) of Article five (V) of the Constitution of the State of Iowa as amended by Amendment 4 of the Amendments of 1884 is hereby repealed. [County Attorney]” [↑](#footnote-ref-41)
42. Dallas County, Iowa Containing A History 0f the County, its Cities, Towns, &c., Des Moines: Union Historical Company, 1879, “The second election was held on the first Monday of August, 1847, “at which time the four months term of each of the first county offices expired…. No prosecuting attorney …had yet been elected…as necessary for the complete organization of the county. There was thus far no special need for them, and when the demand for them came these offices were soon regularly filled.”

    On Monday, the Third day of April, 1848, the third election was held in Dallas County…Henry Stump was elected as the first prosecuting attorney in the county at this election…. This office had heretofore been filled by appointment of the court…. On June 4, 1849, after a lapse of nearly two years from the date of the first court session in the county, the second district court convened in Penoach. Hon. William McKay who had been appointed prosecuting attorney at the first court, had been promoted to the position of judge of the fifth judicial district, in the meantime, and presided over this second session. This was really the first one at which any cases appeared upon the docket, and there seems to have been but one case at this session, which was of minor importance and was dismissed from the docket, as the following record shows: ... The parties now come, and thereupon the said defendant files his motion for a continuance, and also a motion to dismiss the case from the docket; and thereupon, by agreement of said parties, a change of venue is granted to the court of Polk, in this Judicial District. …Henry Stump, prosecuting attorney.” [↑](#footnote-ref-42)
43. History of Dallas County, id. “While there was an increase of emigration to the county during the entire year of 1849 there was also in that fall quite a perceptible decrease in the population on account of the great excitement in these parts caused by the opening of the rich gold mines of California, taking many away from their settlements here, and vacating a number of the important offices so recently filled at the late August election…. GOLD-HUNTERS OF 1850. The California gold excitement, which was first manifested here in the fall of 1849, taking away from this county many good citizens that could ill be spared, and unsettling the minds of many more, did not die out in the least during the siege of winter, but rather increased in its intensity, spreading to a wonderful extent throughout the country, and enlisting the sympathies of multitudes, who became only too anxious to dispose of the little property or comfortable homes they might be possessing or enjoying in peace and contentment, and pushing on to the strange new land in pursuit of more gold.” [↑](#footnote-ref-43)
44. National Public Radio, Weekend Edition, Iowa in the Civil War, May 10, 200312:00 AM ET, Linda Wertheimer. [↑](#footnote-ref-44)
45. History of Madison County, Iowa and its people, Vol. 1, Herman A. Mueller, The S.J. Clarke Publishing Company, 1915. “The courts were held in the churches, mostly in the Christian and Old School Church. The writer remembers that the then famous Stone-Ballard case was tried in the Old School Church. The presiding judge was taken seriously ill during the trial and directed the writer to take his place for a part of the time. We sat in the pulpit.” [↑](#footnote-ref-45)
46. Skull in the Ashes: Murder, a Gold Rush Manhunt, and the Birth of Circumstantial Evidence in America, Peter Kaufman, University of Iowa Press 2013, as summarized in “The Annals of Iowa, Vol 73 No. 2, Spring 2014”, State Historical Society of Iowa, “On February 3, 1897, fire destroyed the general store owned by Frank Novak, an ambitious businessman in the small community of Walford, Iowa. A corpse, burned beyond recognition, was found in the smoldering ruins and assumed to be Novak, who often slept in an upstairs room. But reports quickly surfaced about Novak’s gambling habits, his ongoing financial troubles, and his recent purchases of life insurance policies. Also, another man was reported missing: Edward Murray, a hard-drinking drifter, who had been seen with Novak the night before the fire. When the few remaining features of the corpse’s “ghastly grimacing skull” (5) appeared to match Murray and not Novak, the newly elected Benton County Attorney set out to find Frank Novak and bring him to justice.” [↑](#footnote-ref-46)
47. “If the office . . . offered to the county attorney is suitable for use by the county attorney for the transaction of the county's business, this is all that is required. . . . The other things named in the statute to be furnished the officer are to be furnished him only in connection with the performance of his official duties and not in connection with his private business. 1924 Op. Att'y Gen. 140 [↑](#footnote-ref-47)
48. ***“***On the basis of the foregoing statutes and previous interpretive opinions thereof, I advise as follows: 1. The answer to your question # 1 [We can allow him part of his office rent in Jewell from County Funds. (not the County seat)]is in the negative. 2. The answer to your question # 2 [can we allow part of his stenographic expenses from County Funds] is in the affirmative. Where employment of the stenographer is approved and the amount of allowance for the services fixed by the Board of Supervisors. 3. In answer to your question # 3 I advise that telephone service at Jewell is allowed. Charges for light, heat, etc. for the office at Jewell are not properly allowed. In answer to your question # 4 I find no authority for the use of County owned furniture by a County Attorney where he operates his office at a place other than the county seat.” 1957 WL 95324 (Iowa A.G.) [↑](#footnote-ref-48)
49. “The answer to your question about county assessors using county-owned computers and part-time county attorneys allowing their private business partners or associates to use county-owned computers and office space must begin with Leonard v. State Board of Education. In that case, the court indicated its reluctance to second-guess decisions by public entities regarding the private use of their public properties and effectively held that facts and circumstances, viewed in their entirety, might indicate a mixed private-public use of that property.” Op. Att'y Gen. 161. 1995 Iowa AG LEXIS 1, \*20-21 [↑](#footnote-ref-49)
50. “Numerous opinions of the attorney general have been issued in the past to the effect that the supervisors must furnish the county attorney suitable office space in the county courthouse or make some provision to repay him for rent for an office elsewhere. 40 OAG 34, 28 OAG 342, 28 OAG 307, 24 OAG 140, 16 OAG 178, 14 OAG 161. Moreover, although not mentioned in either § 332.9 or § 332.10 it has been held that stenographic help is to be supplied to the county officers. 40 OAG 34, 38 OAG 714. Indeed, it has been found that the board of supervisors has implied authority to furnish offices for officers not mentioned in § 332.9, 44 OAG 98 (county board of social welfare). Under § 332.10 supplies and services not mentioned therein may be furnished. OAG Dec. 13, 1965 (xerox machine), 28 OAG 307 (typewriter), 40 OAG 381 (telephone). And here again county offices not enumerated are entitled to supplies. OAG January 31, 1962 (county civil defense director). Thus, it is apparent that over the years §§ 332.9 and 332.10 have been liberally construed to permit county boards of supervisors to furnish office space, secretarial help and supplies to various county offices regardless of whether or not they are specified in § 332.9.

    County boards of supervisors would be obliged to reimburse an assistant county attorney for a portion of his office expenses including secretarial help where he is not furnished a suitable adequately staffed office in the courthouse.” 1970 WL 207689 (Iowa A.G.) [↑](#footnote-ref-50)
51. Code of Iowa, 2017: 331.756 Duties of the county attorney.

    The county attorney shall:

    1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

    2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

    3. Prosecute all preliminary hearings for charges triable upon indictment.

    4. Prosecute misdemeanors under chapter 664A. The county attorney shall prosecute other misdemeanors when not otherwise engaged in the performance of other official duties.

    5. a. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures accruing to the state, the county or a road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure a designee to assist with collection efforts.

    b. If the designee is a professional collection services agency, the county attorney shall file with the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the designee incident to the collection and not paid into the office of the clerk.

    c. Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

    d. All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the county attorney’s designee. The county attorney or the county attorney’s designee may collect delinquent obligations under an installment agreement pursuant to section 321.210B.

    e. As used in this subsection, “designee” means a professional collection services agency operated by a person or organization, including a private attorney, that is generally considered to have knowledge and special abilities not generally possessed by the state, a local government, or another county official or agency, or a county attorney or a county attorney’s designee in another county where the fine, penalty, surcharge, or court cost was not imposed.

    6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer’s official capacity, or the county is interested or a party.

    7. Give advice or a written opinion, without compensation, to the board and other county officers and to township officers, when requested by an officer, upon any matters in which the state, county, or township is interested, or relating to the duty of the officer in any matters in which the state, county, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

    8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

    9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

    10. Make reports relating to the duties and the administration of the county attorney’s office to the governor when requested by the governor.

    11. Cooperate with the auditor of state to secure correction of a financial irregularity as provided in section 11.53.

    12. Submit reports as to the condition and operation of the county attorney’s office when required by the attorney general as provided in section 13.2, subsection 1, paragraph “h”.

    13. Reserved.

    14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

    15. Review the report and recommendations of the ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

    16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

    17. Institute legal proceedings against persons who violate laws administered by the division of labor services of the department of workforce development as provided in section 91.11.

    18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

    19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

    20. Assist, at the request of the director of revenue, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

    21. Prosecute nuisances as provided in section 99.24.

    22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

    23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

    24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

    25. Assist the department of public safety in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

    26. Reserved.

    27. Serve as attorney for the county health care facility administrator in matters relating to the administrator’s service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

    28. Reserved.

    29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

    30. Reserved.

    31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

    32. Assist the department of inspections and appeals in the enforcement of the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 and the Iowa hotel sanitation code, as provided in sections 137C.30 and 137F.19.

    33. Institute legal procedures on behalf of the state to prevent violations of chapter 9H or 202B.

    34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

    35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

    36. Cooperate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

    37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

    38. Cooperate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

    39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 5.

    40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy as provided in section 126.7.

    41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

    42. Reserved.

    43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a person with an intellectual disability from parents or other persons who are legally liable for the support of the person with an intellectual disability as provided in section 222.82.

    44. Reserved.

    45. Appear on behalf of the administrator of the division of mental health and disability services of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for persons with mental illness to the Iowa medical and classification center as provided in section 226.30.

    46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

    47. Carry out duties relating to the collection of the costs for the care, treatment, and support of persons with mental illness as provided in sections 230.25 and 230.27.

    48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

    49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239B.15, 249.13, and 249A.56.

    50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

    51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

    52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

    53. Reserved.

    54. Reserved.

    55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 456.12.

    56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

    57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 318.11.

    58. Reserved.

    59. Assist, upon request, the department of transportation’s general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

    60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

    61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.

    62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

    63. Present to the grand jury at its next session a copy of the report filed by the department of corrections of its inspection of the jails in the county as provided in section 356.43.

    64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

    64A. Reserved.

    64B. Make a written report to the department of inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5.

    65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

    66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue as provided in section 450.1.

    67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

    68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

    69. Reserved.

    70. Institute legal proceedings against violations of insurance laws as provided in section 511.7.

    71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

    72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

    73. Reserved.

    74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

    75. Reserved.

    76. Reserved.

    77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

    78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

    79. Notify state and local governmental agencies issuing licenses or permits, of a person’s conviction of obscenity laws relating to minors as provided in section 728.8.

    80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

    81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

    82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 820 and securing witnesses as provided in chapter 819.

    83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

    83A. Carry out the duties imposed under sections 915.12 and 915.13.

    83B. Establish a child protection assistance team in accordance with section 915.35.

    84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 1.1302.

    85. Perform other duties required by law and duties assigned pursuant to section 331.323. [↑](#footnote-ref-51)