

County Government Structure

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ISAC New County Officer School - Supervisor Presentation
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What do I do?

- ❖ I do a lot of in-house counsel work internally for the ISAC organization
- ❖ But I also work with our members to provide education and information
 - ❖ I think of my role similar to that of a reference attorney (IRS example)
 - ❖ No attorney-client privilege, as we do not do direct representation

What can I do for you?

- ▶ *Affiliate work.*
- ▶ *Where do I find it questions.*
- ▶ *Magazine article suggestions.*
- ▶ *Questions referred to me by your county attorney.*
- ▶ *ISAC Litigation Committee.*

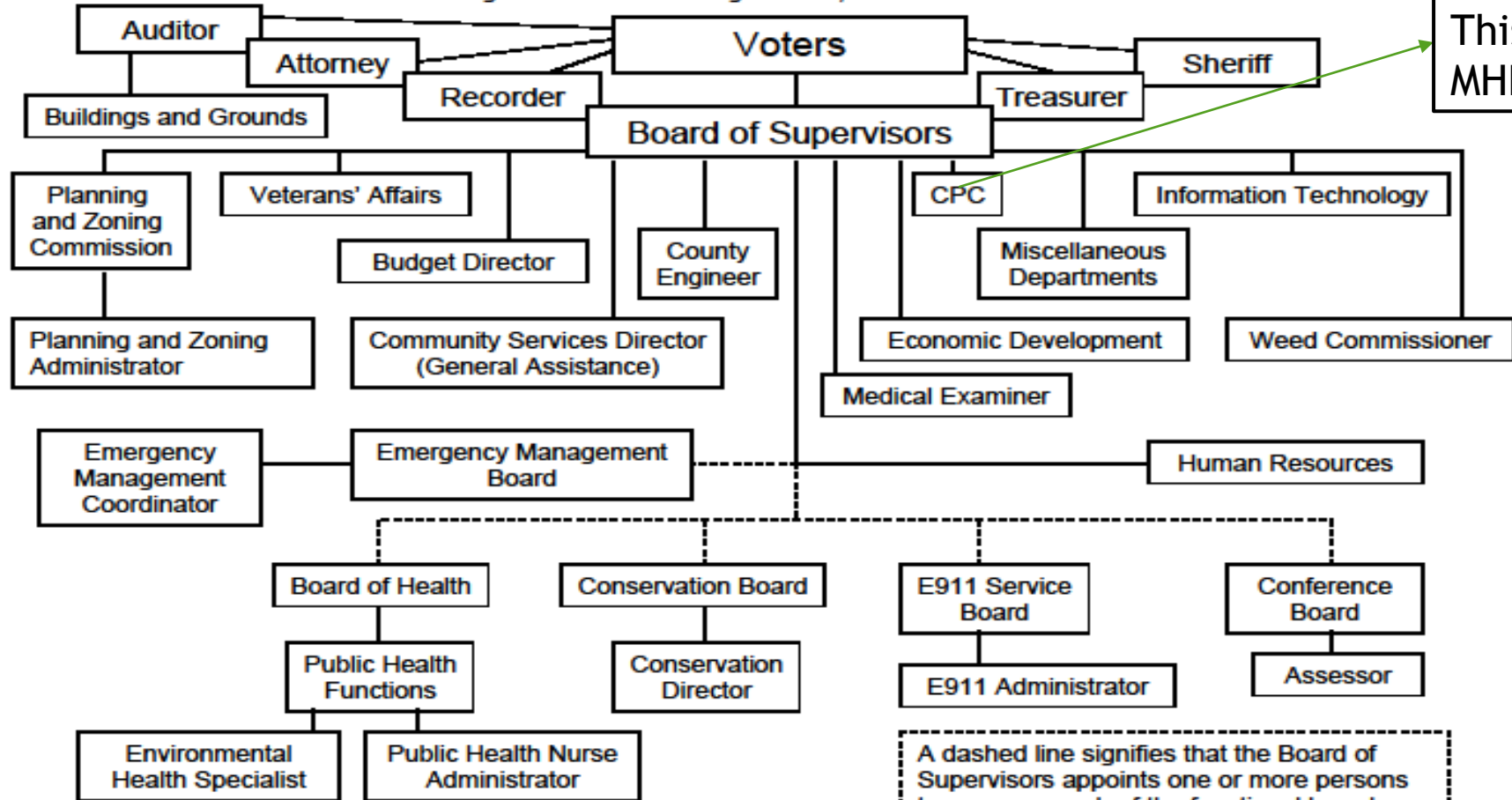
NCO Manual and Supervisors' Manual

- ▶ Updated every two years (odd years)
- ▶ NCO Manual is general to the county at large and Supervisors' Manual is more specific
- ▶ Suggestions always welcome!

Iowa County Government Organizational Chart

Organization varies among counties; this is not an exhaustive list.

This is now the MHDS Region



A dashed line signifies that the Board of Supervisors appoints one or more persons to serve on each of the functional boards, which in turn appoint the department heads. The appointee may be a supervisor.

County Home Rule

- ▶ The County Home Rule Amendment contained in Article III, section 39A of the Constitution of Iowa states as follows:
 - ▶ 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 they shall not have power to levy and 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 corporation governments.
 - ▶ If the power or authority of a county conflicts with the authority exercised by a municipal corporation, the municipal corporation shall prevail within its jurisdiction.
 - ▶ The proposition or rule 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 this state.

County Home Rule (continued)

- ▶ Senate File 130, the home rule implementation bill, became law July 1, 1981. It is now Iowa Code chapter 331.

The first section provides in part:

331.301 General powers and limitations.

1. 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. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.
2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.
3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.
4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.
5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.
6. 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.

County Home Rule - Limitations

- ▶ County home rule authority can be used only regarding local affairs and not state affairs (in the County Home Rule amendment).
- ▶ Counties have no power to levy any tax unless expressly authorized by the Iowa Code (in the County Home Rule Amendment).
- ▶ Counties cannot regulate inside city limits in ways that conflict with the city's regulations (in the County Home Rule Amendment).
- ▶ Counties cannot regulate in a manner that is “inconsistent” with state law, which means it must be “reconcilable” with state law (Iowa Code §331.301(4)).
- ▶ A county cannot set standards which are less stringent than state law (Iowa Code §331.301(6)).

County Home Rule - Express Preemption

In 2017, the Legislature added two new categories explicitly excluded from county legislative power:

- 1) standards or requirements regarding the sale or marketing of consumer merchandise; and
- 2) terms or conditions of employment related to a minimum or living wage rate, employment leave, hiring practices, employment benefits, scheduling practices or other employment matters. (Iowa Code Section § 331.301(6)).

County Home Rule - Implied Preemption

- ▶ Typically a court case to sort out if the state law on the topic was intended to be the only law on the subject matter. Or the Legislature steps in and makes it explicit.
- ▶ *Goodell v. Humboldt County*, 575 N.W.2d 486 (Iowa 1998), in which the Court ruled that county ordinances that regulated large livestock confinement feeding facilities and operation were invalid and unenforceable because they were in conflict with state law, even though they were not zoning regulations nor preempted by state law.
- ▶ Minimum wage

Chain of Command - Horizontal vs. Vertical

- ▶ County government has a horizontal leadership structure (as opposed to a typical vertical leadership structure found in most businesses).
- ▶ This means several quasi-independent offices and departments have to work together to get things done in the most efficient manner.
- ▶ A power of a county is vested in the board of supervisors, and a duty of a county shall be performed by or under the direction of the board of supervisors, except as otherwise provided by law. (Iowa Code 331.301(2)).
- ▶ BUT, see “The board appears to have proceeded as though our system of county government consisted of central management with subsidiary departments. With few exceptions, however, our statutes establish autonomous county offices, each under an elected head.” McMurry v. Lee County Board of Supervisors, 261 N.W.2d. 688 (Iowa 1978)

Horizontal Leadership- Employee Handbooks

- ▶ There is an Iowa Attorney General opinion (2000 WL 33258481 (Iowa A.G.)) and case law (see McMurry v. Lee County Board of Supervisors, 261 N.W.2d. 688 (Iowa 1978)) that limit a Board of Supervisors' ability to impose personnel policies on deputies of other elected officials and there are arguments that could be made to say the same is true of various county departments that are governed by quasi-independent county boards.
- ▶ From a practical standpoint, it makes a lot more sense for everyone to be operating under the same set of policies. It's more efficient, easier to be consistent in enforcement, overall easier from an administrative standpoint.
- ▶ But to make a county-wide handbook work, you have to achieve consensus among the departments.

Horizontal Leadership- Hiring and Firing

- ▶ “The number of deputies, assistants, and clerks for each office shall be determined by the board and the number and approval of each appointment shall be adopted by a resolution recorded in the minutes of the board.” Iowa Code 331.903.
- ▶ But, “County supervisors lack authority to require another elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve any appointments made by other elected county officers.” 2000 WL 33258481 (Iowa A.G.)
- ▶ Employees of quasi-independent boards (conservation, public health, emergency management, veterans affairs, conference board) - have to review the individual Iowa Code Sections related to that board/employee.
- ▶ Don’t forget about veterans preference law as it relates to hiring (Iowa Code 35C.1)
- ▶ *A small aside (Appointments):* Supervisors make many appointments to various boards and commissions. Don’t forget about gender balance in Iowa Code 69.16A. Some of those boards and commissions have applicable laws or their own rules on removing an appointee. As a general rule, always put a removal in writing and give the person an opportunity for a public hearing on the removal. Iowa Code 331.321(3) and *Helmick v. Louisa County BOS*.

Horizontal Leadership- Compensation

- ▶ Elected officials: Iowa Code 331.907
 - ▶ Compensation Board's recommendation can be reduced by Board of Supervisors, but must reduce by an equal percentage for all offices, except the supervisors can treat themselves worse.
- ▶ Deputies of elected officials: Iowa Code 331.904
 - ▶ Base salary is set by the applicable elected official and so long as it meets threshold requirements of 331.904, the supervisors shall approve it.
- ▶ Employees of quasi-independent boards (conservation, public health, emergency management, veterans affairs, conference board) - have to review the individual Iowa Code Sections related to that board/employee.
- ▶ Other county clerks and extra help: Iowa Code 331.904
 - ▶ Set by the Board of Supervisors.

Horizontal Leadership- Budgets and Claims

- ▶ On or before January 15, each elective or appointive officer or board, except tax-certifying boards, shall submit to the county budget official or auditor the budget estimate worksheets for each office or department. The worksheets shall contain proposed (requested) expenditures and estimated revenues, except property taxes, for the next fiscal year, itemized in the detail required by the board and in a format consistent with the auditor's accounting system (Iowa Code 331.433(1)).
- ▶ 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)].
- ▶ 1985 Iowa Op. Atty. Gen. 29, 1985 WL 68971 (June 19, 1985) -While the Board of Supervisors sets the budget and approves claims, the Board of Supervisors “may not disapprove a claim submitted by elected county officers on the ground that the claim exceeds the appropriation for a particular line item category that the claim falls within.”
- ▶ Iowa Code 331.323(2)(b) gives the board of supervisors authorization to remove from office any county officer who refuses or neglects to make any report within twenty days after being required by the board to do so.

Public Purpose

- ▶ The subject of private use of public property is covered in Article III, section 31 of the Iowa Constitution, which states: “[N]o public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two thirds of the members elected to each branch of the General Assembly.”
- ▶ Iowa Code §721.2(5) also prohibits the use of public property for private purposes.
- ▶ The line between expenditures violating this statute and those truly yielding a public benefit is not easily drawn. For instance, a 1975 Attorney General Opinion prohibited the use of public funds to pay for banquets and entertainment for government employees. Then in 1979 an Attorney General Opinion approved the use of public funds for a retirement dinner sponsored and paid for by a municipal utility.
- ▶ The test applied by the Iowa Supreme Court to determine whether the expenditure of public money is for a private purpose is whether there is “an absence of public purpose which is so clear as to be perceptible by every mind at first blush,” (*John R. Grubb, Inc. v. Iowa Housing Finance Authority*, 255 N.W.2d 89, 96 (Iowa 1977)).
- ▶ Think about employees that are part-time for the counties or have “off-hour” duties.

Appointments

- ▶ 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.
- ▶ 43
- ▶ 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.

Appointments (continued)

- ▶ Don't forget about veterans' preference law as it relates to hiring (Iowa Code 35C.1)
- ▶ Supervisors make many appointments to various boards and commissions. Don't forget about gender balance in Iowa Code 69.16A. Some of those boards and commissions have applicable laws or their own rules on removing an appointee. As a general rule, always put a removal in writing and give the person an opportunity for a public hearing on the removal. Iowa Code 331.321(3) and *Helmick v. Louisa County BOS*.
- ▶ A county supervisor is permitted by law to serve on any board or commission, unless specifically prohibited by law (Iowa Code §331.216). So, for instance, county supervisors can serve on county boards of health. An Attorney General Opinion held that Iowa Code §331.216 supersedes the common law and permits county supervisors to appoint one of their own members to serve simultaneously on the county's conservation board (Attorney General Opinion 01-4-4).

Alternative Structures of County Government

Alternative Forms Allowed - Iowa Code 331.231 to 331.238

Board of Supervisor Form - Iowa Code 331.201 to 331.216

Board-elected Executive Form - Iowa Code 331.239 to 331.240

Board-manager Form - Iowa Code 331.241 to 331.242

Charter-government Form - Iowa Code 331.246

City-county Consolidated Form - Iowa Code 331.247 to 331.252

Multicounty Consolidation Form - Iowa Code 331.253 to 331.257

Community Commonwealth Form - Iowa Code 331.260 to 331.263

- ▶ Must start with petition of eligible electors.
- ▶ Creation of a commission.
- ▶ Referendum.

Alternative Structures of County Government (continued)

Power to Combine Duties of County Offices - Iowa Code 331.323

a. A county may combine the duties of two or more of the following county officers and employees:

(1) Sheriff; (2) Treasurer; (3) Recorder; (4) Auditor; (5) Medical examiner; (6) General assistance director; (7) County care facility administrator; (8) Commission on veteran affairs*; (9) Director of social welfare; (10) County assessor; and (11) County weed commissioner.

* but see Iowa Code 35B.6(2)(c)

b. *Process*

-Proposal submitted by 25% of the votes cast for the county office receiving the greatest number of votes at the preceding general election

-Must be approved of majority of votes cast

Alternative Structures of County Government -informal options

- ▶ While a few counties have explored alternative structure options, no counties have actually successfully adopted an alternative structure (there are a few counties that have combined certain offices)
- ▶ It's much more likely to see informal options utilized - finance/budget directors, BOS assistants, human resource managers, etc.

Opportunities to work with other public or private entities

- ▶ Chapter 28E
- ▶ Written Agreement - can create a separate entity with a separate board
- ▶ File with the SOS, may need audit depending upon funds
- ▶ Certain provisions must be in the agreement and think about all your typical contract provisions
- ▶ Subject to open meetings and public records

Questions?

- ▶ Please contact me at kharshbarger@iowacounties.org. I look forward to working with you!