2025 NEW COUNTY OFFICERS MANUAL

Produced by the Iowa State Association of Counties

www.iowacounties.org

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MANUAL
ISAC

Introduction

Welcome to Iowa county government. This manual will provide newly elected county officials, as well as other interested parties, important and timely information on various aspects of county government in Iowa. County government is necessary in the everyday lives of all Iowans. County government impacts public safety, public health, planning and zoning, the road system, human services and many other aspects of how we live our lives.

But how much do you really know about county government? What are the various responsibilities of county office holders? What statutorily established laws have been created to allow county officials to carry out their duties? This manual will answer some of those questions.

The purpose of this manual is to provide basic information that will help you develop a better understanding county government. It contains information on many topics, including:

- A brief description of Iowa county government;
- Information on how the Iowa State Association of Counties can be a valuable resource;
- The respective roles and responsibilities of county officeholders;
- A general summary of county finances, including revenue sources and budgeting techniques; and
- An overview of open meeting and public records requirements.

If you want additional information on any of the topics discussed in the manual, a good place to start is ISAC's website, www.iowacounties.org. Also, feel free to contact the ISAC office with any questions you may have. Good luck!

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Organization and Services of ISAC

Organization and Services of ISAC

ISAC's Vision Statement
To be the principal, authoritative source of representation, information and services for and about county government in Iowa.

ISAC's Mission Statement
To promote effective and responsible county government for the people of Iowa.

As a new county officer, we welcome you to the Iowa State Association of Counties (ISAC); a private non-profit organization providing full-time service to county government in the state of Iowa.

ISAC was incorporated under state law on October 8, 1964. On June 30, 1971, Governor Robert D. Ray signed Senate File 37 as passed by the 64th General Assembly of Iowa, which enables county boards of supervisors to pay dues for county membership in ISAC.

The main purposes of ISAC, as stated in its articles of incorporation, are:

- To secure and maintain cooperation among the counties and the county officers;
- To promote comprehensive study of local problems and find ways of solving them;
- To provide methods of interchange of ideas among various county officials; and
- To promote and work for the enactment of legislation that is most beneficial to the citizens of Iowa.

ISAC's Organizational Structure
ISAC is structured in such a way that every county officer can be a part of the decision-making process. Each county office is organized into a composite group called an "affiliate." For example, all the county treasurers in the state have their own group, which is called the Iowa State County Treasurers Association, Inc. In total, there are 16 of these county associations that are affiliated with ISAC. They are:

- Iowa State Association of Assessors
- Iowa County Attorneys Association, Inc.
- Iowa State Association of County Auditors
- County Conservation Directors Association of Iowa
- Iowa Emergency Management Directors Association
- Iowa County Engineers Association
- Iowa Environmental Health Association
- Iowa County Recorders Association
- Iowa County Community Services Association
- Iowa State Sheriffs' and Deputies' Association
- Iowa State Association of County Supervisors
- Iowa State County Treasurers Association, Inc.
- Iowa County Public Health Association
- Iowa County Zoning Officials
- Iowa Counties Information Technology Organization
- Iowa Association of County Commissioners and Veterans Service Officers, Inc.

Each of these associations elects its own officers and have varying structures and numbers of officers. Each individual association decides how its ISAC board representative is chosen and names one person to sit on the ISAC Board of Directors. The supervisors are allowed to seat three members on the ISAC board due to their greater number throughout the state.

After the overall ISAC board is chosen, the ISAC Board of Directors elects its own executive committee, consisting of a president and 1st, 2nd, and 3rd vice president. The term for all board members is one year, but there is no prohibition on consecutive terms.

ISAC is associated and works closely with the National Association of Counties (NACo). Any ISAC member who is a director of NACo automatically becomes a member of the ISAC Board. There is currently one member of the NACo Board serving on the ISAC Board.

Member Benefit Programs
Training: New County Officers School, held every other year in January, is offered to familiarize new office holders with their county duties and current issues important to their office. In off years, a variety of refresher classes and leadership sessions are offered through ISAC University. Other informational seminars are presented throughout the year as needed.

Benefits Programs: Several member programs are offered through ISAC. ISAC endorses IPAIT, an investment pool for public agencies; Nationwide Retirement Solutions, through partnership with NACo; IMWCA, workers' compensation coverage; ICAP, self-insurance program; and Group Benefit Partners. ISAC also has a self-funded group health insurance program. Counties participating in the health insurance program have access to an Employee Assistance Program.

Education: Conferences and workshops sponsored by ISAC are held throughout the year. Two ISAC conferences (one in March and one in August) are offered for networking, education and affiliate meetings. Special workshops and seminars are offered throughout the year on timely issues affecting county officials.

Publications are the main source of information sharing for ISAC with material such as *The Iowa County* magazine (published monthly), ISAC Update (electronic newsletter emailed weekly during the legislative session), and the ISAC Legislative Priorities (created at the beginning of every legislative session).

Technical Assistance: ISAC performs fiscal research and analysis, conducts surveys and prepares information as needed on topics such as property taxes, county salaries, mental health issues and legislative issues. One full time attorney is on staff to provide an educational resource on personnel issues, board meeting rules or other legal matters. A second full time attorney is on staff to provide an educational resource related to HIPAA and security compliance matters.

Iowa Counties Technology Services (ICTS) was created as a result of HIPAA. It is a 28E entity consisting of counties as dues-paying members. The technology used by ICTS gives counties, when they are in the role of payors, the ability to accept medical claims electronically.

Organization and Services of ISAC

Lobbying: The Legislative Policy Committee (LPC) meets in late summer/early fall to formulate policy direction for ISAC through the use of policy statements and legislative objectives. LPC members are county officials appointed by their affiliate presidents.

ISAC staff then lobbies on the ISAC priorities, reacts to legislation that directly affects county government, and researches questions for legislators and county officials regarding potential and past legislation.

When the General Assembly is not in session, ISAC's legislative staff attends legislative interim study committee meetings, various state agency meetings, and hearings.

ISAC's Preferred Vendor Program

ISAC Preferred Vendor Program: This program is comprised of professional organizations wanting to provide services to county officials. Preferred vendors pay annual dues in order to have advertising discounts and listings in ISAC publications, registrations to ISAC schools, and a service description on the ISAC website. Preferred vendors contribute to ISAC in many ways. The dues these organizations pay help defray the costs of ISAC activities, thereby lowering the registration costs for workshops, the annual conferences, and other training for county officials.

ISAC Staff

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ISAC has a valuable tool right at your fingertips, just log onto www.iowacounties.org. Information on ISAC conferences, legislative action, attorney general opinions, mental health, and much more is available. To learn more about what ISAC has been up to, check out our annual report here: https://www.iowacounties.org/about/annual-reports/

Public Policy Process

Public Policy Process

The relationship between Iowa counties and the state is dynamic. Intergovernmental relations involve more than just contacting legislators. There are many facets involved in the process as counties participate in developing public policy that affects local government. The goal for counties in this effort is to produce policy that enables county officials to serve their citizens in the most flexible, efficient and cost-effective way possible.

This section describes the entire process used by ISAC in bringing the county message to our state policymakers. As the 90th General Assembly is about to begin its new session, it is a good time for new county officials to learn the process ISAC uses throughout the year. It is also a good time for the rest of us to become reacquainted with our own process.

Legislative Policy Committee and Policy Development

Our public policy process begins with the Legislative Policy Committee (LPC). Two voting committee members are appointed by each affiliate president. The committee is chaired by the Second Vice President of the ISAC Board of Directors.

The LPC meets two times in the late summer/early fall to recommend policy direction for ISAC. Policies are created in two essential ways: policy statements and legislative objectives.

Policy Statements: Policy statements express long-term or continued statements of principles important for local control, local government authority and efficient county operation. These statements are designed to guide ISAC in responding to proposed public policy issues affecting county government.

Legislative Objectives: The committee adopts and prioritizes legislative objectives. These are matters that ISAC will initiate as legislation or as amendments to legislation. They are prepared in a problem/solution format. Policy statements and legislative objectives reflect proposals raised by the ISAC affiliates, unmet objectives from the previous year and any other items brought to the LPC during the policy development process.

Next, the Voting Members of ISAC can vote on the policy statements as a package, legislative objectives individually and to recommend up to five choices for top priorities. This process is now handled via an electronic voting process during the month of October.

Once the Voting Members have completed the voting process, the ISAC Board of Directors reviews, amends and approves the proposal and identifies "top priorities" during the November board meeting. While the ISAC staff works on all of the objectives, the top priorities receive special attention during the legislative session.

ISAC publishes the final package in a booklet for the General Assembly and other interested groups. ISAC also produces a brochure highlighting the top policy priorities and has a webinar to promote the final legislative package. All of this information is available on ISAC's website (www.iowacounties.org) under 'the "Legislative" tab.'

Affiliates In The Legislative Process

Each affiliate has its own way of dealing with the legislative process. ISAC staff is available to assist the affiliates with their legislative programs, but the ultimate responsibility rests with each affiliate.

Every affiliate designates one or more county officials as their legislative liaison(s). These liaisons, along with the affiliate president and the affiliate members of the LPC, serve as the primary contact points through which ISAC staff communicates with the affiliate memberships during the session. For example, with the assistance of ISAC staff at the Capitol, the liaison coordinates legislative strategy (such as communicating with legislators or speaking to legislative subcommittees) when important issues come up.

Most affiliates have a legislative committee that reviews bills and provides direction to their liaisons and ISAC. Such committees help spread the workload among a cross-section of their own affiliate members. Individuals on these committees also become a good resource for the affiliate liaisons and ISAC staff to rely on when special expertise on an issue is needed.

ISAC Bill Review and Registration Process

Assignment of Bills to ISAC Review Staff and Affiliate: Every morning during the legislative session, the ISAC lobbying team reviews the daily bill packet and makes initial bill assignments to the appropriate ISAC legislative review staff and affiliate(s). Each assigned bill is posted on the "Legislative Tracking Tool" on the ISAC website. During the session, the Legislative Tracking Tool is updated every day.

Registration on Bills: In order to lobby on any piece of legislation, interest groups such as ISAC must register to lobby on each bill in the chamber where the legislation originated. There are three registration choices. The options are: For, Against, or Undecided. Accordingly, when it is obvious that ISAC should register, an "F", "A", or "U" will be posted next to the bill number on the Legislative Tracking Tool, along with the staff initials, affiliate assignment and a brief description of the bill.

FYI System: Often there are bills that *could* have an impact on counties, but the ISAC lobbyists may not be sure during their initial review. In such cases, we do not register on the bill, but we send it out to affiliates with a notation of "FYI." ISAC proceeds with appropriate action on these bills once the affiliate(s) analyze the bill and make their recommendations. If the affiliate wants ISAC to simply track the bill without registering on it, "Tr" will be noted with the bill posting.

Public Policy Process

ISAC Update

One of the most effective communications tools for our membership during the legislative session is the weekly ISAC Update. This electronic newsletter features the hot topics of the week. It reports important changes and developments on key issues and alerts county officials which legislators to contact, when to contact them and the appropriate message that needs to be delivered.

This grassroots newsletter is emailed to every county official that has email capabilities (that ISAC is aware of) and is posted on the ISAC website. This strategy helps crystallize the county position on important issues and brings continuity to the county message across the state. It also helps to assure timely contacts with state policymakers.

Legislative Interim Committees and Administrative Rule Making

ISAC monitors legislative interim committees. The committees are appointed by legislative leaders to study certain issue areas. Many committees look at matters that affect counties, and ISAC is often asked to provide testimony or comments to these committees.

The interim period also provides time for ISAC to track the administrative rule-making process by executive branch agencies. Many rules are promulgated to implement legislation that ISAC has worked on. Again, this sometimes involves testimony on issues and appropriate coordination with affiliates. Finally, affiliates use the interim period to study issues to propose to the LPC for the following year. ISAC staff provides assistance to affiliates during the interim if requested. Before you know it, it is time to start all over again.

History of County Government

History of County Government

History of County Government in Iowa

The first two Iowa counties, Dubuque and Demoine (later changed to Des Moines) were created in 1834. These territorial divisions were made so people did not have to travel to Des Moines to pay their taxes, file a lawsuit or to report a crime. Dubuque and Des Moines counties were divided into townships and the "township-supervisor" form of government was established with three supervisors and 15 other officials, including six justices of the peace, selected by the Governor of Michigan to govern the county. This form of government faced many hindrances. There was a lack of cooperation, conferences of the supervisors were not held as frequently as needed due to road conditions and poor mail service, prompt action was usually impossible, and the system was criticized for being expensive.

Two years later, in 1836, Iowa became part of the Wisconsin Territory and the structure of its county government was sharply revised. The "county commissioner" system, which originated in Pennsylvania nearly a century before, was adopted. Under the new system, direct administrative power was removed from the township and vested in a commission. The county commission consisted of three members that were elected and authorized to conduct the county's business. By 1851, all county officials were elected. Some legislators felt the county commission system was cumbersome, slow-moving and expensive. Others had little faith in the average citizen to govern.

In 1851, the Iowa Legislature abolished the county commissioner system and replaced it with a one man "county judge" system. In 1860, after numerous studies and much debate, the judge system was terminated in favor of the township-supervisor form, similar to the one first utilized when Iowa was part of the Michigan Territory. In 1870, the township-supervisor form of government was replaced with the "county board of supervisors" form of government. The board of supervisors was in effect a county commission, but the Legislature decided to call them supervisors in order to avoid printing new stationery and forms. Under the new plan, the number of supervisors was reduced to three, with provisions for five or seven, if desired. They were to be elected at large or from districts as each county might decide; and they were to supervise the townships rather than represent them. This basic form of government has survived until today.

The county board of supervisors form of government has gone through numerous changes since 1870, but mostly due to the addition of new functions and responsibilities. Huge changes have occurred in the American lifestyle, which have in turn affected roads and welfare in Iowa. The arrival of motor vehicles at the turn of the century brought an immediate need for updating the road system and for counties to hire a county engineer. And the Depression proved that counties needed massive aid from the federal and state governments in order to properly care for the poor. The county has become the administrative unit for many social programs and new functions and responsibilities that have been added to government.

County Government Timeline

1834 First two Iowa counties created (Dubuque and Des Moines). "Township supervisors system" adopted (three supervisors and 15 other officials selected by the Governor of Michigan). Iowa part of the Michigan territory.

1836 "County commission system" adopted (three elected officials conduct county's business). Iowa part of the Wisconsin Territory. 21 counties in Iowa.

1846 Iowa becomes a state. 44 counties in Iowa.

1851 "Judge system" adopted (county judge vested with executive, administrative, legislative and judicial authority). Subject of controversy.

1857 Present constitution adopted. 99 counties in Iowa.

1860 "Township supervisors system" reestablished.

1870 Supervisor system adopted (3, 5 or 7 supervisors elected at large or from districts in partisan elections) and still used today.

1897 General Assembly sets structure and duties of county government.

1929 All significant authority of township supervisors transferred to county supervisors.

1959 Counties allowed to combine some offices.

1966 Legislation passed allowing joint exercise of governmental power (including city-county agreements).

1971 Maximum county board of supervisors size reduced to 5.

1978 County home rule amendment to the Constitution of the State of Iowa was approved by the voters and became law.

History of County Government in the United States

The origin of the American county is from the French word "conte," meaning the domain of a count. The American county is defined by Webster as "the largest territorial division for local government within a state of the U.S." Webster's definition is based on the Anglo-Saxon county, sometimes called a shire. The head of the shire in the British Isles was the Shire Reeve, the origin for today's county sheriff. Serving a dual function, the shire acted as the administrative arm of the national government as well as the citizen's local government.

History of County Government

The county came to America with the first colonies in Virginia, Massachusetts, New York and Pennsylvania. In early American colonial times, the basic unit of local government in the New England colonies was the town. In the southern states the county developed without townships as subdivisions. As the nation expanded, new states tended to adopt either the New England approach or the southern plan.

Counties were established to carry out a variety of functions not performed by smaller towns. When our national government was formed, the Constitution did not provide for local governments, leaving the matter of local government to the states. Subsequently, early state constitutions generally conceptualized county government as an arm of the state. As the United States grew westward, county government developed as the basic unit of local government with responsibility for delivery of public services in large regions containing widely dispersed rural populations.

After World War I, population growth, suburban development and the government reform movement strengthened the role of local governments. Those developments set the stage for post World War II urbanization. Changes in structure, greater autonomy from the states, rising revenues and stronger political accountability ushered in a new era for county government. The counties began providing an ever widening range of services. These trends continue to be in place today.

County Government Today

Today, there are 99 counties in Iowa ranging in population from about 3,600 residents (Adams County) to approximately 490,000 residents (Polk County). All 99 counties operate under the board of supervisors form of government provided by state law and have supported home rule as provided for in the state constitution and legislation enacted in 1978.

Historically, the role of counties has been to serve as an administrative arm of the state - maintaining records, providing courts and law enforcement, building roads, assisting the mentally ill, immunizing children, assessing property, collecting taxes, and conducting elections. Counties still perform these functions, as well as others, through full-time elected officials including a board of county supervisors, a sheriff, recorder, treasurer, attorney and auditor.

Information taken from "Evolution of County Government in Iowa" by State of Iowa Office for Planning and Programming; "New Directions for County Government" by Iowa Advisory Commission on Intergovernmental Relations.

County Home Rule

County Home Rule

Prior to the enactment of the County Home Rule Amendment to the Iowa Constitution in 1978, the powers of Iowa counties were narrowly construed to include only those powers expressly granted or clearly implied by state law. This restrictive approach to local government is known as the Dillon Rule, named after the Iowa judge who propounded the rule in 1868 with respect to cities. The interpretation also held for counties.

Cities received home rule through the Municipal Home Rule Amendment of 1968. But counties were still held to the restrictions of the Dillon Rule until passage of the County Home Rule Amendment 10 years later.

The County Home Rule Amendment was adopted and agreed to by the 66th and the 67th General Assembly. The amendment was submitted to a vote of the people and was overwhelmingly approved by the people of Iowa on November 7, 1978. It became effective upon that date.

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.

So prior to the passage of the County Home Rule Amendment, counties could only exercise those powers which were expressly granted or clearly implied in state law. Now, counties may act in any area not specifically prohibited by state law. The County Home Rule Amendment turned the Dillon Rule on its head.

Occasionally county officials will find themselves asking: "Where in the Iowa Code does it say that counties can do that?" But that is the wrong question. Under county home rule, the proper question is: "Is there anything in the Iowa Code that prohibits counties from doing that?" In general, counties now 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).

Implementation of County Home Rule

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."

The broad, sweeping language contained in these subsections, as well as the constitutional amendment, are the basis of county home rule authority. It basically gives counties the power to act in just about every area of life, unless state law says otherwise.

Thus, 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 vested in the county board of supervisors. §331.301(2). The board of supervisors, therefore, serves as the governing body of county government.

Chapter 331 invests county supervisors with many defined duties and powers. For instance, they have authority to enter into certain leases for real property, see Iowa Code §331.301(10);

manage the county's real property, see Iowa Code §331.361(5); and arrange for the construction of new county buildings, see Iowa Code §331.361(7). County supervisors also have many duties and powers undefined by statute. See generally Iowa Code §331.301 (statutory home rule). Section 331.301(2) broadly provides that "[a] power of the county is vested in the [supervisors], and a duty of a county shall be performed by or under [their] direction except as otherwise provided by law "

There are exceptions to this rule. For instance, the legislature has carved out an exception in the area of public health. Under Iowa Code chapter 137, jurisdiction over public health matters within a county is granted to county boards of health. §§137.1-.22. These local boards have general powers to enforce state health laws, enforce rules and orders of the state department of health, make and enforce other public health rules and regulations.

Limitations

There are some limitations on county home rule authority. These fall into five basic categories:

- 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)).

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 § 331.301(6), Iowa Code § 331.304(12)). Other legislative changes in recent years have added to the list of specific prohibitions to county actions (for example, in 2020 Iowa Code § 331.301(16) was repealed so that counties no longer had authority to regulate the use of consumer fireworks for public safety purposes).

In 2020, the Legislature added an additional area in which counties are explicitly preempted from enacting – short term rental properties. (Iowa Code § 331.301(17).

Court Decisions

Counties can make any regulation they wish, unless the state specifically tells them otherwise. That is the theory, at least. In practice, the Iowa Supreme Court has limited county home rule authority in a series of decisions.

The most important decision regarding home rule as it applies to animal confinements is *Worth County Friends of Agriculture v. Worth County*, 688 N.W.2d 257 (Iowa 2004). In that case, the Iowa Supreme Court ruled that because a county ordinance regulated activities that were part of livestock confine- ment operations, the ordinance was expressly preempted by existing state law and unenforceable.

Another noteworthy county home rule decision by the Iowa Supreme Court was *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.

At least we know that the County Home Rule Amendment is constitutional. The Iowa Supreme Court rejected a supremacy clause challenge to the amendment in 1982 in *Smith v. Bd. of Supervisors of Des Moines County,* 320 N.W.2d 589 (Iowa 1982).

Since then, there have been more than a dozen Iowa Supreme Court decisions regarding home rule, including:

Miller v. Marshall County, 641 N.W.2d 742 (Iowa 2002) (under Iowa's county home rule statute, a county is not authorized to lease real property when the lease payments are to be made payable from the general fund without first giving notice of the public's right to petition for a referendum if the principal amount of the lease exceeds certain limits based on the population of the county);

City of Des Moines v. Master Builders of Iowa, 498 N.W.2d 702 (Iowa 1993) (counties now have the authority to act "unless a particular power has been denied them by statute");

Chelsea Theater Corp. v. City of Burlington, 258 N.W.2d 372 (Iowa 1977) (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).

In addition, there are almost 100 Attorney General Opinions that have interpreted the meaning of "county home rule." For instance:

- A 1998 Attorney General Opinion (97-6-2) concluded that a county, though not mandated to do so, may under its home rule authority provide ambulance service for its townships; and
- A 2002 Attorney General Opinion (02-5-1) concluded that county assessors do not have authority under county home rule to deny exemptions to taxpayers for pollution-control property when the DNR has certified their property as pollution-control property.

Ordinances

Ordinances

County boards of supervisors act as local legislative bodies. When they do want to legislate in a given area, the only way they can exercise a power or perform a duty is "through the passage of a motion, a resolution, an amendment or an ordinance," (Iowa Code §331.302(1)).

Use of Ordinances

Before the passage of the County Home Rule Amendment, counties could not adopt ordinances. There are important differences between ordinances and resolutions.

A resolution is a statement of policy that has an impact beyond the immediate circumstances and which is best preserved in written form. Resolutions are generally temporary in character and deal with matters of administrative or housekeeping nature. On some occasions the use of a resolution is required by statute.

Ordinances are county laws of a general and permanent nature. Ordinances are permanent rules of government, deal with issues of countywide concern and continue in force until repealed.

Passage of an ordinance is the most authoritative act a board of supervisors can perform. An ordinance passed in proper form (see below), which is not in conflict with state law has the same force as a state law within the county.

In some situations, the Iowa Code specifically requires that an action be taken by ordinance. One example is Iowa Code §331.307(2), which requires that county infractions must be created by ordinance.

If the Iowa Code is silent on the point, then county supervisors need to apply the following general rules to decide whether an ordinance is required:

- Only an ordinance can provide for a penalty. There can be no penalty for violating a resolution.
- If it is something affecting a large number of people for a long period of time, an ordinance should be used.
- There are more formal requirements for adopting an ordinance, so it will take more time, and it will cost more since it must be published.
- An ordinance is more difficult to amend, since amendments require the same procedures used in adopting the original ordinance.
- Due to the more formal process that must be used, an ordinance carries more weight in a legal or administrative proceeding.

Limitations

City Ordinances: County ordinances are generally applicable within cities, as well as in the unincorporated area of the county. This is not true if the city already has a regulation in place on that same subject. The way this is phrased in the Iowa Constitution is that "[i]f the power or authority of a county conflicts with the power or authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction."

State Law: "Preemption" is a legal concept. It refers to a situation where the state has decided that state law governs a particular subject, and there is to be no local regulation.

It is an established principle of law that local government may not legislate those matters the legislative branch of state government has reserved to itself (*City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983)). This legislative power to preempt local action is rooted in the county home-rule provision of the Iowa Constitution and is essentially a doctrine of necessity justified by "the need to prevent dual regulation which would result in uncertainty and confusion," (*Mo. Pac. R.R. v. Bd. of County Comm'rs*, 231 Kan. 225, 643 P.2d 188, 192 (Kan. 1982). Additional resources on this subject include the following: *Goodell*, 575 N.W.2d at 492 stating that the source of preemption is the prohibition under the home rule constitutional provision "of the exercise of a home rule power 'inconsistent with the laws of the general assembly'" (quoting Iowa Const. art. III, §39A); Sam F. Schiedler, *Implementation of Constitutional Home Rule in Iowa*, 22 Drake L. Rev. 294, 305 (1973)); *Craig v. County of Chatham*, 356 N.C. 40, 565 S.E.2d 172, 175 (N.C. 2002) stating preemption law is grounded in the need to avoid dual regulation.

The Iowa Constitution and the Iowa Code grant counties "broad authority to regulate matters of local concern." *Sioux City Police Officers' Ass'n v. City of Sioux City*, 495 N.W.2d 687, 693 (Iowa 1993). But, under both the constitutional provision and the Iowa Code, counties may not enact resolutions "inconsistent" with laws enacted by the General Assembly. Iowa Const. art. III, §39A (Iowa Code §331.301(1)).

Preemption recognizes that some matters, by their very nature, "inherently require uniform and consistent treatment at the state level" and are inappropriate "subjects for local regulation," (56 Am. Jur. 2d *Municipal Corporations* §329, at 368 (2000)).

Preemption can either be express or implied. Express preemption occurs where the legislature has told the counties in no uncertain terms that they are not to regulate in a certain area.

One example is large livestock confinement operations. In 1998, the Iowa Legislature passed Iowa Code §331.304A, which prohibits the local regulation of land used for the production, care, feeding or housing of animals. It says: "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 structure, or aerobic structure, and to the storage, handling, or application of manure or egg washwater."

Ordinances

Since 1998, counties have been expressly prohibited from adopting or enforcing any county ordinances regulating animal feeding operations, unless expressly authorized by state law (Iowa Code § 331.304A). This statute does not preclude a city from adopting or enforcing city ordinances regulating animal feeding operations.

In 2004, the Iowa Supreme Court, in the case of *Worth County Friends of Agriculture v. Worth County,* 688 N.W.2d 257 (Iowa 2004), confirmed that this broad, strongly-worded statute means what is says, and counties have no role in regulating livestock confinement facilities.

The County argued that its ordinance did not conflict with Iowa Code §331.304A, as it did not "regulate" livestock confinement structures. Instead, the County claimed that the ordinance was a public health ordinance and that any indirect effect it may have had on the production, care, feeding, or housing of animals did not create a conflict with Iowa Code §331.304A, so as to trigger the preemption doctrine.

The Court held that, while the County promoted the ordinance as a health measure, its plain effect was to regulate activities that were a part of livestock confinement operations regulated by Iowa Code §331.304A(2), and that the activity regulated by the ordinance was, in effect, the same activity reserved for state regulation under state law. The Court found that the ordinance set standards for toxic and odorous air emissions, safety for workers in confinement feeding operations, and water pollution by confinement feeding operations. The Court held that the ordinance was expressly preempted by Iowa Code §331.304A.

It said: "We conclude the Worth County ordinance is the type of ordinance expressly preempted by the state statute. Our Legislature intended livestock production in Iowa to be governed by statewide regulation, not local regulation. It has left no room for county regulation."

That's express preemption. Implied preemption occurs when the Legislature has covered a subject by statutes in such a manner as to demonstrate a legislative in- tention that the field is preempted by state law.

"The mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted," (5 *McQuillin Municipal Corporations* §15.20, at 107). Iowa law requires some legislative expression of 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 Iowa Code 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.")))

Rules of Interpretation

In the enactment of ordinances, including amendments thereto, a county exercises vested legislative powers attended by a strong presumption of validity, which means if it is facially valid, and the reasonableness of the enactment is fairly debatable, it must be allowed to stand. *Board of Supervisors v. Miller*, 170 NW2d 358 (Iowa 1969).

Courts will not substitute their judgments as to wisdom or propriety of action by a county board of supervisors acting reasonably within the scope of its authorized police power, in the enactment of ordinances. *Board of Supervisors v. Miller*, 170 NW2d 358 (Iowa 1969).

Ordinances are valid unless they are arbitrary or unreasonable. The test of whether an ordinance is arbitrary and unreasonable is whether the means employed in the attempted exercise of the police power have any real, substantial relation to the public health, comfort, safety, and welfare. *Board of Supervisors v. Miller*, 170 N.W.2d 358 (Iowa 1969).

Ordinances are generally sustained as a valid exercise of police power in the interest of public peace, order, morals, health, safety, convenience, and the general welfare of a community, the prime consideration being its general purpose, not the hardship of individual cases. *Board of Supervisors v. Miller*, 170 N.W.2d 358 (Iowa 1969).

The burden to prove the ordinance unreasonable, arbitrary, capricious or discriminatory is upon the one asserting the invalidity. The rule is well settled that when constitutional questions are raised about an ordinance, all reasonable intendments must be indulged in favor of the validity of the ordinance. *Board of Supervisors v. Miller*, 170 NW2d 358 (Iowa 1969).

When the issue as to whether it is an unreasonable or unequal exercise of power is fairly debatable, courts will not substitute their judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. *Board of Supervisors v. Miller*, 170 NW2d 358 (Iowa 1969).

It is also well settled that when the constitutionality of an ordinance is challenged all reasonable intendments must be indulged in favor of its validity. *Board of Supervisors v. Miller*, 170 NW2d 358 (Iowa 1969).

Adoption of Ordinances

The process for adopting an ordinance is laid out in Iowa Code §331.302. A proposed ordinance must be considered and voted on at three meetings, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors. If a summary of the ordinance is published prior to the first consideration, and copies are available at the auditor's office at the time of publication, the ordinance only has to be considered and voted on at two meetings, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors. Publication of a proposed ordinance must occur in one official

county newspaper, no less than four nor more than 20 days before the board meeting at which the ordinance is considered. Passage of an ordinance requires an affirmative vote of no less than a majority of the supervisors. An ordinance becomes law when a summary of the ordinance or the complete text of the ordinance is published, unless a subsequent effective date is provided within the ordinance.

There are other restrictions on ordinances contained in Iowa Code §331.302:

- At least once every five years, the board shall compile a code of ordinances containing all of the ordinances in effect.
- A county shall not provide a civil penalty in excess the maximum fine and term of imprisonment for a simple misdemeanor.

A measure voted upon is not invalid because a supervisor has a conflict of interest, unless the vote of the supervisor was decisive to passage of the measure. If a majority or unanimous vote of the board is required by statute, the majority or vote shall be computed on the basis of the number of supervisors not disqualified by reason of conflict of interest.

Legislative Immunity

In 1996, the Iowa Supreme Court decided the case of *Teague v. Mosley*, 552 N.W.2d 646. In that case, Brian Teague, a former inmate, brought suit under 42 U.S.C. § 1983 against the county supervisors in their individual and official capacities. He alleged that his civil rights were violated when he was assaulted while he was an inmate in the county jail. He alleged the county supervisors violated their duties by failing to provide a safe environment at the jail. The trial court granted summary judgment in favor of the county supervisors on the basis that they were entitled to absolute legislative immunity. In affirming on appeal, the Iowa Supreme Court held that county supervisors are acting in a legislative capacity in maintaining the county jail where Iowa Code §331.658 expressly left decisions as to the board and care of prisoners to the county supervisors and thus they were entitled to absolute legislative immunity:

"We adopt a rule of absolute immunity for actions taken in connection with their official duties. However, absolute immunity is only available to these (supervisors) if they were acting in a legislative capacity when making the decision that allegedly resulted in harm to Teague. This is the key to the resolution of this case."

Because of this *Teague* decision, county supervisors have immunity for legislative decisions that they make while on the board.

Other county officials may have applicable immunity to their roles for the county. *Venckus v. City of Iowa City* is the most recent case that ISAC has signed onto an amicus curiae brief (also known as friend of the court briefs which allow non-parties to a law suit to file arguments before the court so as to assist the court in providing information on possible impacts of its decision). This case is a follow-up case after the *Godfrey* case, in which ISAC also filed a friend of the court case in 2017. In *Godfrey*, the Court was considering if someone could make a monetary claim for a general constitutional violation without a specific statute providing for damages. The Court did not rule in favor of what ISAC advocated for and found that persons could demand monetary damages for general constitutional violations. In *Venckus*, the question was whether prosecutorial immunity applies in *Godfrey*-type claims. ISAC signed onto an amicus curiae brief with the Iowa County Attorneys Association to argue that prosecutorial immunity should apply regardless of the type of claim being made by the plaintiff, so long as type of activity falls within the judicial process. In June of 2019, the Iowa Supreme Court ruled that absolute immunity still applies even after *Godfrey* when actions in question are part of the judicial process. ISAC has signed onto an amicus curiae brief, again with the Iowa County Attorney Association, in the *White v. Karkrider* case to argue that *Godfrey* should be overturned. *Godfrey* was overturned by the Iowa Supreme Court in an opinion prior to *White* and the change was affirmed in the *White* opinion.

Duties of County Officers

Duties of County Officers

Elected Offices

County Board of Supervisors: The county board is the executive branch of county government. The supervisors serve as the policymakers for the county and administer the various county programs. Their powers include reviewing budget requests, appropriating funds, establishing county tax levies, enacting ordinances, filling employee vacancies and hearing reports from county officers. The board is also responsible for overseeing economic development in the county. Boards of Supervisors responsibilities are defined by Iowa Code chapter 331. The Board consists of either three or five members.

County Attorney: The county attorney's position is unique in that it is provided for in the state constitution. Other offices are products of legislation. The attorney's primary responsibilities are to provide legal counsel for the board of supervisors and to act as legal representative for the county in court cases. With regard to the latter responsibility, the county attorney represents the county either as a defendant or plaintiff in a civil suit. In cases where a crime has been committed in the county, he/she acts as the prosecuting attorney and presents the county's case at the trial. The county attorney is also responsible for fine collections and juvenile justice.

County Auditor: The county auditor serves in an office which is very diversified. One of the auditor's many duties is to serve as secretary to the board of supervisors. As such, the auditor has control over the records of the board. Auditor's election responsibilities include registering voters, supervising precinct election officials, publishing election notices, and acting as custodian of poll books. Auditors are commissioner of elections for school board, city, county, state and federal elections. Real estate transfers and numerous other records are handled through the county auditor's office. Lastly, the county auditor does indeed audit bills or other claims against the county. Warrants in payment are then prepared. The auditor also maintains accounting records on all appropriations for the county's various departments.

County Recorder: The primary function of the county recorder's office is to record various legal documents. Detailed records are kept for various legal instruments (deeds, mortgages, condemnations, affidavits, and powers of attorney). Other records include: birth certificates, death certificates, marriage licenses, uniform commercial code filings, military discharges, trade names, articles of incorporations, deeds of trust for railroad corporations, hunting licenses and boat and snowmobile licenses.

County Sheriff: The sheriff is the chief law enforcement officer for the county. Administration of the county jail is only one of the sheriff's many duties. The sheriff is also required to make special investigations into alleged law violations when directed by the county attorney. In unincorporated areas of the county the sheriff is responsible for law enforcement. The sheriff also provides law enforcement services for towns that contract with the office. Finally, the sheriff issues all gun permits and is in charge of the county drug task force.

County Treasurer: The treasurer's office is one of the primary offices where people come to do business. Anyone owning property or a vehicle is served by this office. Treasurers receive payment for motor vehicle registration and sales/transfers of vehicles. It is the treasurer's duty to register vehicle titles and distribute license plates. The county treasurer oversees all county funds and handles investment functions. As such he/she is required to make a semiannual settlement with board of supervisors and to report all fees collected. It is the treasurer's duty to collect all taxes certified by the county auditor. In addition, the county treasurer makes monthly reports to the state auditor of all taxes paid to the state and for soldiers' bonuses. These funds are paid to the state treasurer when they are requested.

Appointive Offices

County Assessor: The county assessor is appointed through a merit examination prepared and given by the State Tax Commission. A list of qualified persons is drawn up and a special conference board selects the assessor. The county assessor is an officer of all major taxing jurisdictions in a county.

Community Services: The community services department provides short term assistance for individuals and families in need. This includes financial assistance for rent, food and shelter. The department focuses on individuals with developmental disabilities, mental health and substance abuse. Youth shelter and detention facilities are offered. Much of this work is now conducted via the MHDS Regions and will be conducted by the State starting July 1, 2025. General assistance is still typically provided at the county level.

Conservation: The conservation office is overseen by a board appointed by the county board of supervisors and is responsible for county parks, wildlife habitat improvement and wetland preservation. The department also provides environmental education and various activities such as camping, canoeing, fishing, hiking/bike trails and horseback riding.

Emergency Management: The emergency management office is responsible for disaster planning on a county-wide basis. This includes emergency evacuation plans, airplane crashes, floods, tornadoes, industrial accidents, terrorism and civil unrest.

Engineer: The engineer's office is responsible for general supervision of construction, maintenance (including snow removal), and repair of highways and bridges of the county. An annual report on all the roads in the county, including their present condition and their needs, must be made by the engineer to the Iowa Department of Transportation.

Environmental Health: The environmental health office prevents disease by controlling community environmental health threats and providing local education on environmental health issues. The department works to ensure air quality and environmental health through inspections on septic tanks, swimming pools and restaurants.

Information Technology: The information technology office develops/maintains computer software applications that facilitate a county's business operations. The department is responsible for maintaining the county website and planning for future technology needs.

Duties of County Officers

Public Health: The public health professional investigates communicable diseases and provides health planning and education for the county. The department offers childhood immunization, international travel clinics and treatment of sexually transmitted diseases.

Veterans' Affairs: County Service Officers assist with compensation/pensions, medical care, military records, grave makers and veteran home loans for veterans. Some counties may also have dedicated funds to assist veterans with temporary shelter/utilities, food/health supplies, medical/dental, job placement, counseling and transportation.

Zoning: The zoning office is responsible for building code enforcement, utility planning and zoning enforcement. The department implements the comprehensive land use plan in unincorporated areas of the county.

Appointed Boards and Commissions

The Board of Supervisors makes appointments to many boards and commissions [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.

Your county may also participate in various 28E entities and those entities may have your county make appointments to the applicable 28E board. Gender balance requirements were abolished by the State in 2024, but you may still have local policies to consider to create diversity on boards and commissions.

Duties of County Officers

The Regional Government for Iowa

County governments are the consistent providers of essential services. Structurally, the county continues to serve as the regional government for Iowa. It performs many state administrative functions such as the issuance of licenses and permits. Also, it provides public services of a purely local nature such as the enforcement of zoning ordinances, the provision of health and indigent care, and the maintenance of county jails. These services vary in degrees for different areas. In some instances, only the rural region is served (sheriff's office), while in others the whole county is served (property tax payments). Counties also cooperate among themselves in providing other services to meet their citizens' needs.

The vast number of public services that counties provide leads to a rather complex and somewhat confusing array of offices, boards, and commissions. Citizens elect a county auditor, recorder, attorney, sheriff, treasurer and a three-, or five-member county board of supervisors. The county board of supervisors then appoints individuals to serve as directors for the other offices in the county or in some cases a commission that is overseen by the county board of supervisors appoints a director. A conservation board, for example, directly oversees a conservation director. While the county board of supervisors is the chief formulator of county policy, the administration of county government programs is guided by a variety of elective and appointive offices, and a number of semi-autonomous boards and commissions.

Common County Services and Coordinating Office

Beer and Liquor Licenses - Auditor
Birth Certificates - Recorder
Boat Registration - Recorder
Bridge Construction\Maintenance - Engineer
Budget Information - Board of Supervisors
Building Permits - Zoning
Camping Information - Conservation
Child Care Resource - Community Services
Claims and Warrants - Auditor
Community Health Programs - Public Health
County Website - Information Technology
Death Certificates - Recorder
Deeds and Contracts - Recorder
Disaster Planning - Emergency Management
Driver's Licenses - Treasurers
Economic Development - Board of Supervisors
Election Information - Auditor
Food Permits - Environmental Health
Forest Reserve - Conservation
Handgun Purchase Permits - Sheriff
Hunting and Fishing Access - Conservation
Hunting and Fishing Licenses - Recorder
Jail Administration - Sheriff
Maps (highway, drainage districts) - Engineer
Maps (plats) - Recorder
Maps (political boundaries) - Auditor
Marriage License - Recorder
Mental Health Facilities - Community Services
Passports - Recorder
Permits (tile crossings, underground work) - Engineer
Permits (building, conditional use) - Zoning
Prosecutor (state laws, local ordinances) - Attorney
Real Estate Transfer Information - Recorder
Real Estate Mapping - Assessor
Subdividing - Zoning
Tax Credit Claim - Treasurer
Tax Levy Information - Auditor
Tax Payments - Treasurer
Vehicle Titles and Registrations - Treasurer
Veteran's Assistance – Veteran Affairs

Ethics

Ethics

The public demands ethical conduct from its public officials, and rightly so. If you want to see the results of all of the investigations done by the State Auditor in the last year concerning the financial practices of specific local governments, go to https://www.auditor.iowa.gov/reports/audit-reports/ and click on "Special Interest Reports."

Many state laws outline what is legal conduct for public officials. However, given the media's scrutiny of the public and private behavior of elected officials, following those laws to the letter is not always enough. You must also consider the impression or appearance that will result from certain actions. In some cases, what you do may be perfectly legal, but may have the appearance of impropriety, which can be just as damaging to you politically and personally as an actual violation of the law.

The following review of state laws governing the conduct of public officials and employees may help you tread more carefully in your role as a public servant.

Official Misconduct: Iowa Code Chapter 721

Iowa Code chapter 721 outlines what behavior constitutes official misconduct and lists corresponding penalties. Two types of misconduct are identified: felonious and nonfelonious misconduct in office. Any public officer or employee who knowingly: 1) makes or gives any false entry, false return, false certificate, or false receipt, where those items are authorized by law; or 2) falsifies any public record or issues any document falsely purporting to be a public document commits a class "D" felony.

This statute has been on the books ever since the first Iowa Code was published in 1851. Cases interpreting this statute have held that the intentional falsification of a document is a felony, regardless of the motive of the public official. On the other hand, mere mistakes or discrepancies arising from oversight, forgetfulness or incompetence would not justify a conviction under this statute.

One example of where this statute was invoked was when a treasurer's office employee was convicted for stealing about $118,000 from the county treasurer's office over a period of two years by repeatedly issuing falsified tax-exempt titles when tax had actually been paid and then removing a corresponding amount of cash from the cash drawer. See, *State v. Davis*, 2005 Iowa App. LEXIS 1665.

The following acts, committed knowingly and under color of the person's office or employment, are defined as nonfeloni- ous misconduct and are classified as serious misdemeanors.

- Making a contract for expenditure in excess of what is authorized by law.
- Failing to report to the proper person the receipt or expenditure of public money, with the proper vouchers, when that report is required by law.
- Requesting or receiving from another person
- compensation exceeding what is authorized by law to receive for performing a legally required service or duty.
- Using the power of your office to require a person to do anything, in excess of what you are
- authorized to require, or to require someone to
- refrain from doing a lawful thing.
- Using, or allowing someone else to use, public property for a private purpose for personal gain and to the detriment of the public body.
- Failing to perform a duty required by law.
- Demanding that a public employee contribute to or pay anything of value to any person, organization or fund, except where such contributions or payments are authorized by law.
- Permitting a person to use public property to operate a political phone bank for any of the following purposes: polling voters on their preferences for candidates or ballot measures (except in the case of authorized research at an educational institution); soliciting funds for a political candidate or organization; urging voter support for a candidate or ballot measure.

Other acts also classified as serious misdemeanors prohibited by Iowa Code chapter 721 include:

- Using public vehicles for political purposes.
- Misuse of public records and files, which is defined as giving the public record or any information contained in the record to a person in exchange for any-thing of value other than fees authorized by law.
- Having a direct or indirect interest in any contract to furnish anything of value to the state or any political subdivision where such interest is prohibited by statute.

County officials in charge of public money or property have a heavy responsibility to assure its proper outlay or use (see 1990 Op. Att'y Gen. 79 (#90-7-3(L)). They are "bound to the most meticulous care" in administering their offices and handling public money or property. *State v. Canning*, 206 Iowa 1349, 221 N.W. 923, 924 (1928). This high standard remains applicable even if the amount of money or property is "inconsequential and trivial." Both state constitutional and statutory provisions, which generally forbid the private use of public money or property, seek to ensure that public officers do not cross that line.

Iowa Code §721.2(5) prohibits the use of public property for private purposes. The statutory prohibition seeks to pre- vent the use of publicly owned property for purposes wholly unrelated to the furtherance of the public interest (1980 Op. Att'y Gen. 160; 1976 Op. Att'y Gen. 339). Violation amounts to a serious misdemeanor and requires proof of intentional misconduct by the public officer or employee and resulting injury to the county (4 J. Yeager & R. Carlson, Iowa Practice §463, at 117-18 (1979); 1984 Op. Att'y Gen. 47; 1980 Op. Att'y Gen. 160; 1978 Op. Att'y Gen. 191 (violation only occurs upon actual improper use)).

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.

A county's finding that there was a public purpose would not be binding on a judge or jury in a criminal trial. The motive of the expenditure is highly relevant to criminal liability. Whether criminal charges would ever be brought would rest with the sound discretion of the county attorney (1980 Op. Att'y Gen. 102).

A 1979 Attorney General Opinion establishes that the use of county-owned automobiles by sheriff's officers on 24-hour call to travel between home and work does not constitute official misconduct.

The subject of private use of public property is also 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." The expenditure of public funds strictly for private gratification clearly violates the public purpose requirement. For instance, a 1980 Attorney General Opinion said that, because it served no public purpose, a city may not authorize the private use of city property as a fringe benefit. But a 1986 Attorney General Opinion concluded that Article III, section 31 did not prohibit cities and counties from providing loans to businesses in order to create jobs.

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)).

There are other miscellaneous statutes in the Iowa Code which prohibit misconduct by county officials. For instance, Iowa Code §12B.4 prohibits a county treasurer from loaning out, or otherwise using for private purposes, county funds. There is also a specific prohibition in Iowa Code §309.66 against county supervisors using county gravel for any purpose "other than the improvement of public streets or highways." Violation of this law is a serious misdemeanor. It is a simple misdemeanor under Iowa Code §12B.15 for any county auditor or treasurer or other county officer to neglect or refuse to perform "any act or duty specifically required of the officer."

Political Expenditures

Another statute that regulates the conduct of county officials is Iowa Code §68A.505, enacted in 1991, which states:

> Use of public moneys for political purposes. The state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue. This section shall not be construed to limit the freedom of speech of officials or employees of the state or of officials or employees of a governing body of a county, city, or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation.

In 1992, the Iowa Attorney General issued an opinion on this Iowa Code section (1992 Op. Att'y Gen. 113). The Attorney General concluded this language prohibited the expenditure of public funds for "activities expressly advocating support or opposition to" an election issue. But the opinion also concluded "merely informative" speech that does not present a "clear plea for action" does not constitute "advocacy".

The Iowa Attorney General has concluded that the expenditure of public funds to disseminate information to electors concerning reasons for proposing a ballot issue is proper. But the Attorney General has also disallowed expending funds to urge support of, or opposition to, a ballot issue because it cannot be assumed that any ballot issue will have unanimous support among the electors of a municipality. "Public funds entrusted to [the governing body of a municipality] belong equally to the proponents and opponents of [a] proposition, and the use of the funds to finance not only the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint . . ." (Attorney General Opinion 82-5-14(L) at p. 4; Attorney General Opinion 80-6-17(L) at p. 3.

The Iowa Attorney General's position is that the great principle of fairness and the appearance of fairness in the election process is of crucial importance, and that principle is violated when a governmental unit advocates a position which certain taxpayers oppose. The argument is that a county is acting outside of its governmental function when it seeks to expend public funds to tell the people how to vote on issues.

The Iowa Ethics and Campaign Disclosure Board (IECDB), the state agency that is charged with enforcing the statute has stated that this statute applies not just to the expenditure of public monies. It also applies to the use of county property, resource or equipment owned by the county and the use of staff time during regular work hours.

So, for instance, if an incumbent supervisor is running for reelection, he cannot use the county's copying machine to prepare campaign materials. He cannot use county phones to make campaign calls. Nor can he hold a campaign press conference at the courthouse, since the cost to heat the room where the meeting was held, and the electricity to run the sound system, would be political expenses incurred by the county. In that example, the only exception might be if all candidates were allowed the same access to the courthouse. County officials are also prohibited from displaying political posters in areas accessible to the public. The point is county officials need to be very circumspect in conducting their campaigns, because almost anything they do may run afoul of this statute.

The Iowa Ethics and Campaign Disclosure Board has ruled that it is not a violation of Iowa Code §56.12A for a school board member to express an opinion concerning a ballot issue during a school board meeting.

For further information, go to the IECDB website at https://ethics.iowa.gov/

Bribery and Corruption

Under Iowa Code §722.1, a public official or employee who solicits or knowingly accepts a promise or anything of value or any benefit given under an arrangement that the promise or thing of value or benefit will influence the public official's act, vote, opinion, judgment or exercise of discretion commits a class "D" felony. Also, a person convicted of accepting a bribe is disqualified from holding public office.

This is not an idle threat. Unfortunately, there have been county officials in Iowa who have violated this statute. As stated in *State v. Prybil,* 211 N.W.2d 308 (Iowa 1973), a vendor's act of supplying county supervisors with dinner and drinks, and payment of hotel expenses, in return for large purchase by the county, if proven, would constitute a violation of this statute.

But each case is going to be decided on its individual facts, as pointed out in this Attorney General Opinion interpreting Iowa Code §722.1:

> … [The question is] whether bribery occurs when a government official speaks before an annual meeting of various groups, such as a chamber of commerce, trade union, or farm organization, and consumes a free meal… [W]e doubt that a judge or jury would find the intent to influence required to support a conviction of bribery under these circumstances. Where a public official is a speaker, the fried chicken and mashed potatoes are not generally offered to influence a public official in the exercise of his or her governmental responsibilities but as a modest accommodation for taking the trouble to appear before a group. In contrast, the requisite intent to influence may well be present when an interest group that is promoting legislation offers a lavish meal to public officials who are not part of the program. But, where the value of the meal is small, is the same to nonofficial participants, and where the official is the speaker, we doubt that even a zealous prosecutor would believe that bribery occurs under the circumstances. (1979-80 Op. Att'y Gen. 500).

This bribery statute must be read alongside the Gift Law, which is discussed at the end of this chapter.

Removal From Office

By the Court: Under Iowa Code §66.1A, any appointed or elected county official may be removed from office by the district court for any of the following reasons:

- Willful and habitual neglect or refusal to perform
- the duties of the office
- Willful misconduct or maladministration in office
- Corruption
- Extortion
- Upon conviction of a felony
- For intoxication, or upon conviction of being
- intoxicated
- Upon conviction of violating the provisions of Iowa Code chapter 68A, related to campaign finance disclosure
- For failure to pay a fine imposed related to Chapter
- 39A for election commissioners.

Regrettably, this statute has been used to remove county officials during their term of office. On September 15, 2004, District Court Judge Robert Hutchinson used Iowa Code chapter 66 to remove Cass County Attorney Jim Barry and Sheriff Larry Jones from office. The basis for the removal was "willful misconduct and maladministration" in connection with the use of an unauthorized cash fund in the sheriff's office.

Citing the use and knowledge by both Barry and Jones of the fund, commonly known as the "drug fund," along with the purchase of vehicles and a sniper's rifle, the judge ruled both should be removed from office immediately. The removal action began when a group of seven citizens filed petitions seeking the removal of Barry and Jones, listing 59 instances in which they claim Jones was guilty of misconduct and 30 counts for Barry. Those charges included reducing traffic court sentences in exchange for cash payments and using the money for questionable expenditures.

In his ruling in the Jones case, Judge Hutchinson said the fund had gone from being used for law enforcement purposes to other unrelated purchases. "What is apparent from reviewing the handwritten ledger is that from 1995 to 2004 the amounts being spent out of the drug fund went increasingly for items having nothing to do with drug buys or informant fees," Hutchinson wrote in the Jones decision, "Money was spent for a wide variety of expenses, including flowers for illness and funerals, computer equipment, charitable contributions, a cell phone for the county attorney, eyeglasses, a digital camera and a mobile vision car camera. There is no question by any standard of proof that Jones created an unauthorized fund of cash and failed to deposit the money into a bank account as required by law."

The ruling also found that Jones failed to maintain records for the fund, diverted money that should have gone to the county treasurer and used money from the fund to buy a Chevrolet Tahoe and sniper rifle for the county attorney without approval of the board of supervisors. The ruling said that Jones also failed to follow Iowa law with regard to seizure and forfeiture of vehicles, weapons and ammunition and improperly mixed private and public funds.

At one point in the Jones ruling, Judge Hutchinson said that the excuse given for Jones' conduct in maintaining the drug fund, that he was unaware of the laws regarding funds in his office, was "inconceivable" for a 22-year office holder. The judge said that the evidence tended to support another explanation, that Jones and Barry "evolved, by discussion and agreement," a drug fund for "the purpose of evading the statutory and policy requirements...in order to purchase property and equipment outside of the proper budgetary process."

The ruling noted that one deputy sheriff testified that he was told that the fund would never be audited because they were sheriff's funds and could not be audited. The judge said Jones' lack of understanding of the audit process and of his responsibilities as a public official was "shocking."

In Barry's decision, Judge Hutchinson found Barry had misused the fund, including entering into plea agreements and settlements in which money that normally would have gone to the state was diverted to the fund. The judge also found that Barry's use of ammunition and weapons, some of which had never been properly forfeited, along with the previous charges, did constitute willful misconduct and maladministration.

There is also historical precedent for these removals. In *State v. Bartz,* 224 N.W.2d 632 (Iowa 1974) supervisors' conduct in loosely managing county funds, accepting gratuities from contractors with whom they were required to deal in official capacities, and claiming payment for mileage not traveled fell well below the standard of conduct expected of public officials and warranted removal from office.

In 1978, Robert D. Callaway was removed from office as sheriff of Hardin County on the ground of willful misconduct or maladministration in office under Iowa Code §66.1A(2). The removal petition, which was filed in the name of the state by the Hardin County attorney on January 21, 1977, alleged Callaway should be removed from office because of physical assaults on prisoners in five separate incidents (*State v. Callaway*, 268 N.W.2d 841 (Iowa 1978)).

In an action to remove a county official from office, the burden rests on the petitioners to sustain the allegations of the petition by evidence which is "clear, satisfactory, and convincing," *(State v. Bartz,* 224 NW2d 632 (Iowa 1974)). This requires the establishment of facts by more than a preponderance of the evidence, but something less than establishing facts beyond a reasonable doubt. In an action to remove a county official from office, the petitioner must show that the alleged misconduct was committed willfully and with an evil purpose (Id).

Automatic Removal: The previous paragraphs discussed situations under Iowa Code chapter 66 where county officials can be removed from office by a court of law. But under Iowa Code §69.2, there are certain situations which are considered so serious that no court action is required in order to remove the county official. Removal from office is automatic and the office is declared vacant, upon the following circumstances:

- The incumbent ceasing to be a resident of the county;
- The supervisor ceasing to be a resident of the district from which he was elected, if the county elects supervisors by district under Iowa Code §331.206;
- The conviction of the incumbent of a felony or any public offense involving the violation of the incumbent's oath of office;
- The incumbent simultaneously holding more than one elective office at the same level of government; or if;
- The board of supervisors declares a vacancy in an elected office upon finding that the county officer has been physically absent from the county for sixty consecutive days, except in the case of medical emergency or temporary active military duty.

One situation that sometimes arises is where county supervisors move, and no longer live in the supervisor district they were elected to represent. If a county supervisor is elected to represent a given district in a county, he will have vacated his office if he subsequently moves his residence out of that district.

Iowa Code §331.214(2), passed in 2006, for the first time provides a process for removing a county supervisor from office due to mental or medical disability. It provides that a board of supervisors can require that a supervisor be examined by two physicians. Then a hearing is held, and if the two physicians concur, the board can vote to declare the seat vacant.

If a county official is removed by the district court, or if a vacancy is declared in the office, the office is filled pursuant to Iowa Code §69.14A. In general, this means that the supervisors name the replacement unless a special election is called. If the vacancy is on the board of supervisors, a replacement is named by the treasurer, auditor and recorder, unless a special election is called.

Nepotism

Under Iowa Code chapter 71, it is unlawful for any elected or appointed county official to appoint a close relative as a "deputy, clerk, or helper," if that close relative is to be paid from public funds, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal. For purposes of this law, close relatives means "any person related by consanguinity or affinity, within the third degree."

If one county official hires another, and then they get married and continue to work together, that is not a nepotism law violation. The law only prohibits someone from hiring a relative. In this case, the new spouse was an employee when they became a relative.

Under Iowa Code §71.1, the only exceptions are: if the job pays less than $600 per year; or if the appointment is approved *in advance* by the officer, board, council or commission whose duty it is to approve the bond of the principal official.

Any appointment in violation of this law is null and void and the county official appointing such a person is liable for the salary paid to that person.

Ethics

Competitive Bidding

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 $115,000 or more for horizontal infrastructure and $206,00 for vertical infrastructure. These threshold amounts change yearly, and current thresholds can be found on the Iowa DOT's website here:

https://iowadot.gov/local_systems/Bid-and-quote-thresholds

"Public improvements" mean building or construction work which is constructed under the control of a governmental entity and for which either of the following applies: (1) Has been paid for in whole or in part with funds of the governmental entity. (2) A commitment has been made prior to construction by the governmental entity to pay for the building or construction work in whole or in part with funds of the governmental entity.

Public improvements for vertical infrastructure costing between $153,000 and $206,000 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.

Conflicts of Interest

County Contracts: Under Iowa Code §331.342, an officer or employee of a county is prohibited from having any interest, direct or indirect, in a contract with that county, other than an employment contract. A contract entered into in violation of this prohibition is void. But there are 11 exceptions in Iowa Code §331.342, including contracts made by the county upon competitive bid, contracts entered into before the county official was elected and contracts where the county official owns less than five percent of the stock in the company.

Economic Development: Chapter 15A of the Iowa Code governs the use of public funds to aid economic development. That chapter contains a conflict of interest provision that applies to county officials. Section 15A.2 provides that if a member of the board of supervisors "has an interest, either direct or indirect, in a private person for which grants, loans, guarantees, tax incentives, or other financial assistance" may be provided by the board of supervisors, the interest shall be disclosed to that board in writing. That supervisor shall not participate in the decision-making process with regard to the providing of the financial assistance to the private person.

Outside Employment: Iowa Code chapter 68B governs conflicts of interest of public officials and employees. Any person who serves or is employed by the county shall not engage in any outside employment or activity "which is in conflict with the person's official duties and responsibilities." Examples of prohibited employment under Iowa Code §68B.2A include situations where:

a. the outside employment involves the use of the county's time, facilities, equipment or supplies;
b. the outside employment involves accepting money for performing the same tasks the person is paid by the county to perform; or
c. the outside employment is subject to the official control, inspection, review, audit, or enforcement authority of the person during the performance of the person's county duties.

If the outside employment is of type a or b above, the employee must cease the outside employment immediately. If it is of type c, the employee must either quit or publicly disclose the conflict and refrain from taking any action regarding the outside employment. Violations of the provisions governing outside employment are serious misdemeanors (Iowa Code §68B.34).

Family Matters: The high standards which the public requires of its elected and appointed officials are based on moral principles and public policy. They demand complete loyalty to the public and seek to avoid subjecting a public servant to the difficult, and often impossible, task of deciding between public duty and private advantage (*Wilson v. Iowa City*, 165 N.W.2d 813, 822 (Iowa 1969)). It is not necessary that this private advantage be a financial one. Neither is it required that there be a showing the official sought or gained such a result. It is the potential for conflict of interest which the law desires to avoid.

A conflict of interest exists whenever a person serving in public office may gain any private advantage, financial or otherwise, from such service. The Attorney General Opinions have held that mere familial relationship is insufficient to create a conflict of interest. For example, one Attorney General Opinion concluded that a prohibited conflict of interest does not necessarily exist when the treasurer's child purchases property at a tax sale, but is one factor to consider.

Where a county official has a relationship with someone that comes before him or her, such as a business relationship or even a family tie, such relationships, standing alone, do not create a conflict of interest (*Bluffs Dev. Co. v. Board of Adjustment*, 499 N.W.2d 12, 17 (Iowa 1969)). Had there been any evidence that these individuals leveraged their relationships into favorable treatment that would be impermissible. Or if the county official himself had a direct interest that would be substantially enhanced depending on the outcome of the matter where the courts have held that conflicts exist, they have found either an actual financial or beneficial interest, or conduct which was outrageous or unjustly favorable to the family member awarded the contract. For instance, the Iowa Attorney General decided in 1987 that there was a conflict of interest where one spouse served as county assessor and the other served on the board of review which reviews all assessments (1987 Attorney General Opinion 87-7-2).

County Supervisors: Under Iowa Code §331.302(14), "a measure is not invalid because a supervisor has a conflict of interest, unless the vote of the supervisor was decisive to passage of the measure. If a majority or unanimous vote of the board is required by statute, the majority or vote shall be computed on the basis of the number of supervisors not disqualified by reason of a conflict of interest . . . [t]he statement of a supervisor that the supervisor declines to vote by reason of a conflict of interest is conclusive and shall be entered of record."

Incompatibility of Office

The common law doctrine of incompatibility of public offices bars a person from holding two public offices that are incompatible. The test for deciding if two public offices are incompatible consists of determining whether there is an inconsistency in the functions of the two offices, either because one office is subordinate to the other office and subject to its authority, or because the duties of the two offices are inherently inconsistent and repugnant (Attorney General Opinion 91-4-7). It has also been stated that two offices are incompatible if public policy would render it improper for one person to hold both positions, in view of the nature and duties of the two offices (*State ex rel. LeBuhn v. White*, 133 N.W.2d 903, 905 (Iowa 1965)). Review of the statutory duties of the offices at issue is required to determine whether the offices are incompatible.

The Iowa Attorney General's office has concluded, for instance, that the office of county attorney is not incompatible with the offices of city council member or city mayor (Attorney General Opinion 91-4-7); and that the office of county attorney is not incompatible with the office of city attorney (Attorney General Opinion 81-8-26). An assistant county attorney is a public employee, not a public officer, therefore the incompatibility doctrine is inapplicable and an assistant county attorney may serve on the local school board (Attorney General Opinion 7-25-91).

Regardless of this common law doctrine, 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). So enactment of Iowa Code §331.216 reverses the conclusions reached in prior opinions.

Prohibition on Accepting Gifts: The Gift Law

Iowa Code §68B.22 prohibits county officials or employees or their dependent family members from directly or indirectly accepting or receiving "any gift or series of gifts." Donors are also prohibited from directly or indirectly offering or giving gifts to public officials or employees.

But there are many things that are excluded from the definition of a "gift" that you can still accept as a public official. Specifically, the definition of "gift" in Iowa Code §68B.2(9) means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

However, 'gift' does not mean any of the following:

- Campaign contributions.
- Informational material relevant to a public servant's official functions, such as books, pamphlets, reports, documents, or periodicals.
- Anything received from a person related within
- the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.
- An inheritance.
- Anything available to or distributed to the public generally without regard to official status of the recipient.
- Items received from a bona fide charitable,
- professional or educational organization to which the recipient belongs.
- Actual expenses of a donee for food, beverages, travel and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.
- Plaques or items of negligible resale value given
- as recognition for public services.
- Food or beverage provided at a meal that is part of a bona fide event or program at which the recipient is being honored for public service.
- Items with a value of $3 or less that are received
- from any one donor during one calendar day.
- Items or services solicited or given to a state, national or regional organization in which the county or a county employee is a member.
- Items or services received as part of a regularly
- scheduled event that is part of a conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional organization in which the county or a county official is a member.
- Funeral flowers.
- Wedding, 25th, or 50th anniversary gifts.
- Payment by a person' employer of meeting expenses.
- Gifts of food, beverage, travel and lodging related
- to economic development trips.
- Gifts from foreign citizens during ceremonial events.
- Registration costs for informational meetings Gifts of food, beverage, and entertainment received by public officials or public employees at a function where every member of the general assembly has been invited to attend, when the function takes place during a regular session of the general assembly.

In addition, the gift law only prohibits the accepting of gifts given by what are known as "restricted donors," defined as anyone who:

- Is doing or seeking to do business with the county;
- Is engaged in activities which are regulated or controlled by the county;
- Will be substantially and materially affected financially by the performance or nonperformance of the donee's official duty in a manner that is greater than the effect on the public generally; or
- Is a lobbyist with respect to matters within the county official's jurisdiction.

You can accept gifts from anyone who does not fall into one of the preceding four categories.

Once again, the questions a county official always needs to ask are: 1) Who is giving the gift? Is the individual a "restricted donor?" If not, there is no gift law problem; and 2) What is the nature of the gift? For instance, if it is a food item worth $3 or less, or if the gift is given to the entire auditor's office, not any one individual, then there is no problem with accepting the gift.

So what if you make a mistake and accept a prohibited gift? No problem, as long as you catch it soon enough. A person may give, and a public official or employee may accept, a nonmonetary gift if the gift is donated within 30 days to a public body, an educational or charitable organization, or the state Department of Administrative Services.

Generally, there is no reporting obligation under the gift law. If the person who gave you the gift is a "restricted donor" under the law, and no exception applies, the gift is banned and cannot be accepted. If the person who gave you the gift is not a "restricted donor," or an exception applies, there is no "gift" to report. The only reporting exception is for gifts of food, beverage, and entertainment received by public officials or public employees at a function where every member of the general assembly has been invited to attend, when the function takes place during a regular session of the general assembly (Iowa Code §68B.22(4)(s)). In this case, the sponsor must file a pre-function registration prior to the event and a post-function report detailing the total amount expended within 28 days of the function.

The penalty provisions of the gift law for those who "know- ingly and intentionally" violate the gift law constitutes a serious misdemeanor.

Lobbying

In 1993 the General Assembly clarified that elected county officials do not generally have to register as lobbyists. In particular, Iowa Code §68B.2(13)(b)(3) states that for purposes of the lobbyist registration law, "lobbyist" does not include any locally elected officials "while performing the duties and responsibilities of office."

An Iowa Attorney General Opinion (97-6-4) confirmed that if you are an elected county official lobbying strictly on behalf of your county, you need not register as a lobbyist.

However, ISAC encourages elected county officials to register as lobbyists if they are on an affiliate's legislative committee or plan on doing significant lobbying for the affiliate. Registering avoids any appearance of impropriety. Further, the provision of the law exempting elected officials from registering has not been tested in court.

And of course, the further you are from lobbying solely for your county, the harder question it becomes. What if you are a supervisor lobbying on behalf of the county supervisors association, ISAC, or the Republican Party? Are you still "performing the duties and responsibilities of office?" Since these questions have not been tested by the courts, it is best to err on the side of caution.

There is an April 11, 2002 opinion letter posted on the Iowa Ethics & Campaign Disclosure Board website that concludes that county treasurers, when lobbying on behalf of the county treasurers association, but not acting as the "designated lobbyist" for the treasurers association, need not register as lobbyists. *See* IECDB AO 2002-7. This same logic would presumably apply to all other elected county officials. So "designated lobbyists" for an ISAC affiliate do have to register, but other elected officials do not.

So elected officials technically do not have to register as lobbyists, because they have a specific exclusion under the law. But what about non-elected county officials? Generally, under Iowa Code §68B.2(13)(a), the only people that have to register as lobbyists are those that fit into one of four categories:

- Paid lobbyists.
- "Designated representatives" of organizations that lobby.
- Someone who "represents the position" of the county and serves as the county's "designated representative" for purposes of lobbying.
- Someone who pays more than $1,000 a year for lobbying services. So it is possible that a non-elected county official, especially someone who represents the position of the county and is the county's designated lobbyist, would have to register.

Lobbyist registration entails filing an annual lobbyist registration statement prior to engaging in lobbying activities. Lobbyists have to file two sets of documents if they lobby both the General Assembly and the executive branch. For specific filing requirements consult your affiliate president or call ISAC.

The IECDB is authorized to impose a variety of sanctions and penalties for violations of the lobbying laws, including late filings and failure to file.

Iowa Ethics and Campaign Disclosure Board (IECDB)

The IECDB provides advice to counties regarding issues such as the gift law, lobbying, and conflicts of interest. One function of the IECDB is to issue advisory opinions. They are compiled at https://ethics.iowa.gov/.

Confidentiality

Confidentiality

As a county government official you may have access to confidential information about individuals who receive a variety of county-funded services. You have a duty to protect this confidential information. This means you need to exercise caution about where, with whom and in whose presence you discuss confidential information. Confidentiality also pertains to where you keep both electronic and printed copies of information about individuals receiving services and with whom you share sensitive information.

State and federal laws attempt to protect confidential information about individuals receiving county-funded services. Iowa law is based on the premise that as a county officer you are required to make any records you have available to the public unless there is a specific exception. This creates a natural tension.

Take mental health information, for instance. On the one hand, an individual seeking mental health treatment must be assured that information about them is kept confidential. If information is not kept confidential it creates a system in which the individual who needs treatment is deterred from seeking it. On the other hand, counties have a legitimate need to access treatment records.

In addition, Congress, with the passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), committed the federal government to the creation of a national confidentiality standard in an effort to respond to public concern over privacy of health care information. That law continues to be updated to respond to changes in the way the public accesses health care.

The following information is a summary of the laws that govern confidentiality in Iowa.

Open Records

Iowa Code chapter 22, the Open Records Law, directs the counties to provide examination or copies of their public records to every person. "Public records include all records, documents, tape or other information, stored or preserved in any medium, of or belonging to… any county." The Iowa Code also provides a criminal penalty for a violation of its provisions and permits enforcement of those provisions by civil action.

The presumption created by the Open Records Law is that all county records are public documents. However, in an attempt to balance the public interest in access to public records with the need of counties to keep confidential some information they retain Iowa Code §22.7 lists 75 types of documents which "shall be kept confidential." A few exceptions to the Open Records Law include: school records, peace officer investigative reports, attorney work product and trade secrets.

In addition to the 75 exceptions to the Open Records Law, the Iowa Code regulates the confidentiality of other records, including:

- Mental health information
- Veteran affairs information
- HIV-related information
- Substance abuse information
- General assistance information

Mental Health Information

Mental health information includes "oral, written or recorded information which indicates the identity of an individual receiving professional services and which relates to the diagnosis, course or treatment of the individual's mental or emotional condition," (Iowa Code §228.1(6)). The definition of mental health professional is set forth in Iowa Code Section 228.1(7).

Mental health information can only be disclosed in the following situations:

- Care Coordination
- Voluntary disclosures
- Administrative disclosures
- Compulsory disclosures
- Disclosures to family members
- Disclosures to law enforcement professionals
- Disclosures for claims administration and peer review

Care Coordination: Iowa Code §228.2 allows disclosure of mental health information for purposes of care coordination. Care coordination is defined in Iowa Code §135.154 as "the management of all aspects of a patient's care to improve health care quality."

Voluntary Disclosures: An individual who is 18 or older (or legal representative) can consent to the disclosure of his/her mental health information. A valid authorization must include:

- The nature of the mental health information to be disclosed, the persons or type of persons authorized to disclose the information, and the purpose for which the information may be used both at the time of the disclosure and in the future.
- Notice that the individual has the right to inspect the disclosed information at any time.
- A statement that the authorization is subject to revocation and state the conditions of revocation.
- The length of time for which the authorization is valid.
- Contain the date on which the authorization was signed.

In addition to those items listed in the Iowa Code, it is also important to have the following information:

- Client's full name, address, birth date
- That the patient or other duly authorized person has requested release of the records
- Portion or portions of the record to be released
- Signature of the client or duly authorized representative

A copy of the authorization must be provided to the individual authorizing the disclosure and a copy must be inserted in the individual's record. The individual authorizing the disclosure of mental health information may revoke that authorization at any time by written revocation to the person disclosing the information. The revocation is effective upon receipt of the written notification.

Confidentiality

Administrative Disclosures: Iowa Code §228.5 allows disclosure of mental health information to employees of agents of the facility in which the individual is receiving services. In addition, mental health information may be disclosed to other providers if it facilitates the provision of administrative and professional services to the client. Administrative information may be disclosed for fee collection; scientific and date research; management audits, and program evaluations.

Compulsory Disclosures: Iowa Code §228.6 allows disclosure of mental health information to meet requirements for:

- County-funded services,
- Compulsory reporting or disclosure requirements of other state or federal law relating to protecting human health and safety, or
- Initiation of civil commitment proceedings.

Claims Administration Review: Under Iowa Code §228.7, mental health facilities may disclose mental health information to counties when certain conditions are met: 1) the individual or individual's legal representative gives prior written consent; and 2) the county has filed a written statement with the state insurance commissioner.

When a county indirectly provides mental health services by functioning as a third-party payor, any health information related to the county may only be used for purposes of claims administration, peer review, quality control, review of services provided and the like (Iowa Code §228.7). Disclosure of confidential information to other county employees or county officials within the same county is permissible only to the extent necessary to facilitate the provision of professional services.

Disclosure to Family Members: Iowa Code §228.8 allows mental health information to be disclosed by employees, professionals or agents of a mental health facility to family members (spouse, parent, adult child, adult sibling) if all of the following conditions are met:

- The disclosure is necessary to assist in the provision of care or monitoring of the individual's treatment.
- The family member is directly involved in providing care to or monitoring the treatment of an individual.
- The involvement of the family member is verified by the individual's attending physician, attending mental health professional or person other than the family member responsible for providing treatment to the individual.

Disclosure to law enforcement professionals: Iowa Code §228.7A allows disclosure of mental health information to a law enforcement professional if all the following apply:

- The disclosure is made in good faith.
- The disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or to a clearly identifiable victim or victims.
- The individual has the apparent intent and ability to carry out the threat.

Iowa Code §228.2 states that if mental health information is disclosed pursuant to the above conditions the individual disclosing the information is required to make a notation on the client's record. This notation must include the date of the disclosure and the name of the recipient of the mental health information. Further, the individual disclosing the information must inform the recipient that the information cannot be re-disclosed unless they have the written authorization of the client.

Iowa law is more protective than HIPAA (see below) when it comes to using and disclosing mental health information. HIPAA does not preempt state laws that are not contrary to or more stringent than HIPAA. Iowa Code §228.7 and §228.8 set forth additional restrictions not required by HIPAA to release mental health information to third-party payers and family members. Iowa law should always be reviewed before using or disclosing mental health information.

Disclosure of Confidential Mental Health Information by the County to Third Party: There is no reason why confidential mental health information should ever be discussed in public with an unauthorized third party. Nor is there any reason that mental health information should be discussed in a board of supervisors meeting. If there is a need to discuss confidential mental health information, under Iowa Code §21.5(1)(a), a county board of supervisors can "hold a closed session upon an affirmative vote of two-thirds of the members of the body or all of the members present" in order to review or discuss records which are required or authorized by state law to be kept confidential. 1980 Attorney General Opinion 723 states the county board of supervisors can meet in closed session to evaluate claims against the county poor.

Veteran Affairs Information

Iowa Code chapter 35B requires that all applications, investigation reports and case records be kept confidential. This information can be used and inspected only by authorized individuals in connection with their official duties relating to financial audits and the administration of Iowa Code chapter 35B.

HIV Related Information

Iowa Code §141A.9 requires that "any information, including reports and records submitted and maintained pursuant to this chapter is strictly confidential medical information."

Confidentiality

Substance Abuse Information

A person who obtains records containing substance abuse information is not permitted to re-release the information unless the original client waiver authorizes such disclosure. It is also required that one of the following written statements is attached to each authorized disclosure made:

- "This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see §2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§2.12(c)(5) and 2.65," or
- "42 CFR part 2 prohibits unauthorized disclosure of these records." (42 C.F.R. §2.32).

General Assistance Information

Iowa Code chapter 22 excludes applications, investigation reports and case records of a person applying for general assistance from the Open Records Law. Iowa Code chapter 252 only allows these records to be inspected by persons authorized by law in connection with their official duties relating to the financial audit or administration of Iowa Code chapter 252.

Health Insurance Portability And Accountability Act (HIPAA)

The federal Health Insurance Portability and Accountability Act (HIPAA) was passed by Congress in 1996, presenting the single largest change in the health care business environment since the advent of Medicare and Medicaid in 1965.

Title II is the part of the law that has the greatest impact on counties and the portion county officials should be most concerned about. It deals with "administrative simplification." The "administrative simplification" aspect of the law required the United States Department of Health and Human Services (DHHS) to develop standards and requirements for maintenance and transmission of health information that identifies individual clients. There are both privacy and security aspects of the law. The privacy rule creates standards for individuals' privacy rights to understand and control how their protected health information (PHI) is used while allowing the flow of information needed to provide high quality health care. The security rule creates standards for ensuring only those who should have access to electronic PHI will have access. It focuses on administrative, technical, and physical safeguards specific to electronic PHI.

All healthcare organizations that maintain or transmit electronic health information must comply. If counties in Iowa are doing electronic transactions, they will automatically have to follow the privacy and security standards. The standardization of the data makes the sharing and release of information much easier, therefore the healthcare industry was required to make changes so individuals have more protection over who sees their PHI. Each covered entity (health plan, clearinghouse, health care provider) had to review its policies and procedures, determine with whom it's sharing information, and make sure patients are receiving proper notice of that information exchange.

More recently, HIPAA was updated via the HITECH Act contained in the American Recovery and Reinvestment Act of 2009. In a nutshell, these updates have expanded the scope of the privacy and security provisions, increased the liability for noncompliance, and provided for greater enforcement of the law.

HIPAA is an enterprise-wide issue. There are legal, regulatory, process, security and technology aspects to each rule. HIPAA is a major issue in healthcare because:

- Senior executives are clearly responsible for the security and confidentiality of patient health information.
- There are significant criminal and civil penalties for noncompliance, as well as serious liability risks for unauthorized disclosure. Entities can be fined in excess of $1.5 million for knowingly violating the privacy regulations.
- There is no quick fix or easy solution to meet HIPAA requirements.

ISAC HIPAA Program

ISAC offers its members a program to help counties and MHDS regions with HIPAA compliance. The ISAC HIPAA Program is for any county or MHDS region that would like basic consultation, assistance, and training on general HIPAA topics and issues.

The ISAC HIPAA Program runs July 1 through June 30 each year. There is a yearly fee to be a part of the ISAC HIPAA Program and returning members receive a discounted price.

Open Meetings

Open Meetings

What Governmental Bodies Are Covered?

Here are examples of bodies that are subject to Iowa's Open Meetings Law, found in Iowa Code chapter 21:

- A "governing body of a city or county" such as the board of supervisors.
- A multi-member body formally and directly created by a board of supervisors.
- Any advisory board, task force or other body "expressly created by executive order" of a county board of supervisors to develop and make recommendations on public policy issues.

Governmental bodies often use advisory committees or task forces to provide them with advice or input before they make decisions on complex matters. Government officials and members of the public alike often wonder: Is an advisory body subject to Iowa's Open Meetings Law if it has no decision-making authority? The answer is usually going to be "yes". Counties don't use "executive orders," but this law is supposed to be interpreted broadly, so you should assume advisory boards are covered. This basically means posting an agenda and allowing public access to observe the meeting.

What Is A "Meeting"?

How does Iowa law define a "meeting?" Are breakfast gatherings of a quorum of a governmental body at a local café "meetings" subject to Iowa's Open Meetings Law?

Iowa's Open Meetings Law says a governmental body "meets" when there is:

- Any gathering in person or by electronic means, whether formally noticed or informally occurring,
- Of a majority of the members, and
- At which there is any deliberation or action upon any matter within the scope of the governmental body's policy-making duties (Iowa Code §21.2).

A governmental body "meeting" does not include a purely ministerial or social gathering at which there is no discussion of policy or intent to avoid the Open Meetings Law, even if a quorum is present. For example, a quorum of a board of supervisors gathering for breakfast at the local café would be a "meeting" if members discuss or take action on county business.

Many county officials continue to believe that it is only a meeting if a vote is taken. That is not the case. As long as there is deliberation regarding county business, that is enough to constitute a meeting, so long as a quorum is present.

What about fact-finding trips, where county supervisors go to view a vacant lot so that they can decide if it is a suitable place for a jail? Is that a meeting? A good explanation is contained in a 1981 Attorney General Opinion 81-7-4: "it appears that gathering for 'purely ministerial' purposes may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body's policymaking duties. During the course of such a gathering, individual members may, by asking questions, elicit clarification about the information presented. We emphasize, however, that the nature of any such gathering may change if 'deliberation' occurs. A 'meeting' may develop, for example, if a majority of the members of a body engage in any discussion that focuses at all concretely upon matters over which they may exercise judgment or discretion."

So a majority of the supervisors can go to that vacant lot. And they could, for instance, ask the realtor questions about the lot. That would not be a "meeting." But it could turn into a "meeting," for instance, if one supervisor starts talking to the other supervisors about the merits of the lot. So county officials need to be circumspect when meeting for ministerial purposes.

A quorum of a board gathering for breakfast at the local café would not be a "meeting" if members only chat about the Hawkeyes, Cyclones or Panthers, or other matters that are not within the scope of the board's business.

Remember the basic rule: a quorum of a governmental body may gather informally, if the conversation is strictly social and discussion of business is saved for scheduled meetings.

The definition of a meeting was the subject of a 2016 Iowa Supreme Court decision *Hutchinson vs. Schull.* Margaret Johnson, Executive Director of the Iowa Public Information Board, provided this advice in the January 2017 *Iowa County* magazine:

"To determine whether a meeting occurred as defined by Iowa Code, the Iowa Supreme Court questioned whether the three-member Board of Supervisors held a statutorily defined 'meeting' when an administrator communicated information and opinions from one supervisor to another. In this case out of Warren County, the three-member board of supervisors each met separately with the same county administrator to discuss a reorganization plan for county employees. While each individual meeting did not create a quorum of the elected supervisors, the county administrator communicated with each supervisor about the other supervisors' opinions and how each would vote on this issue. The county administrator met individually with each of the supervisors several times to facilitate a compromise on how the reorganization would occur and which positions would be eliminated. When the supervisors finally met in an open meeting, little discussion was needed for the Board to approve eliminating the positions of eleven county employees.

The Court questioned the meaning of the phrase "a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body" when defining a meeting. The Court questioned whether "temporal proximity" between two of the three supervisors needed to exist in order to create a majority or quorum or whether the administrator, acting as a supervisor's agent, was the legal equivalent of the presence of a second supervisor, creating a quorum.

In answering the question of whether the administrator can legally be another supervisor's agent, the Court considered the common law of agency to resolve the ambiguity in the statue. The Court held support staff can function as an agent or proxy to a supervisor. The Court struck down the district court opinion for not including agency principles in its legal analysis and remanded for reconsideration of the question with agency principles in mind. The Court held that supervisors using agents to deliberate on their behalf is the legal equivalent of an in-person gathering of a majority of supervisors and extended the definition of a meeting for purposes of Iowa Code section 21.2(2) to include an in-person gathering attended by a majority of supervisors, including an agent or proxy for one or more supervisors.

The decision has raised numerous questions and differing opinions concerning what the impact of the ruling will be on governmental bodies, particularly on those with smaller memberships. To what extent could this decision stifle the ability of staff to meet with board or council members to discuss projects or proposals outside formal open meetings? Could the decision impact the ability of a governmental body to work efficiently and effectively?"

Krapf v. Rastetter is an open meetings case that is a follow-up to *Hutchinson v. Shull*. In *Krapf*, the question is whether a job candidate can be become an agent for the Board of Regents and thus have open meeting violations when the job candidate meets with different subsects of the Board. ISAC signed onto an amicus curiae brief with the Iowa League of Cities and the Iowa Municipal Utilities Association to argue that *Hutchinson* should be narrowly interpreted and that job candidates should not be considered agents of a board. The Court of Appeals ruled that these meetings did not violate the open meetings statute and that *Telegraph Herald* should be followed without broadening the *Hutchison* holding.

Retreats and Work Sessions

Public bodies occasionally schedule retreats or "work sessions" separate from regularly scheduled meetings in order to discuss policy issues or examine new ideas. These events can help a public body to focus its mission. But retreats and work sessions are covered by Iowa's Open Meetings Law and cannot be held in private unless grounds exist to close the session.

Discussions of policy issues - even when no votes are taken - are covered by the Open Meetings Law. A key purpose of Iowa's Open Meetings Law is to open the *deliberative process* to the public as well as votes. A meeting is covered if a quorum of the public body deliberates on matters within the scope of the body's policy-making duties.

Retreats and work sessions should be held at a location accessible to the public. All meetings, including retreats and work sessions, must be held at a place reasonably accessible to the public. The public body may select a more casual location than is generally used for regularly-scheduled meetings, as long as the public has reasonable access.

Agenda materials should be provided to members of the public, unless confidential. Copies of agenda materials should be provided to members of the public upon request - just like agenda materials for any regularly-scheduled meeting. Documents may be withheld only if confidential under a specific provision of law.

Agendas may include a social break, such as lunch or dinner, in connection with retreats or working sessions. As long as the social break is truly just social and not a continuation of deliberation on policy matters, the social break is not part of the meeting subject to the Open Meetings Law.

Electronic Meetings

Effective July 1, 2024:

Amendments to section 21.8, subsection 1: The Amendments mandate that, "A governmental body shall provide for hybrid meetings, teleconference participation, virtual meetings, remote participation, and other hybrid options for the members of the governmental body to participate in official meetings." This law change requires that governmental bodies provide for electronic meetings for members of the governmental body and establishes options to be utilized. These options are defined in the new subsection 4 of section 21.8, below.

Amendments to section 21.8, subsection 1, paragraph c: The Amendments eliminate the requirement that minutes include a statement explaining why a meeting in person was impossible or impracticable.

New subsection 4 to section 21.8: This new subsection creates definitions for the following types of meetings:

- "Hybrid meeting" means a meeting involving both remote participation and in-person participation by members.
- "Remote participation" means real-time participation by a remotely located individual in a meeting which is being held in a different physical location using integrated audio, video, and other digital tools.
- "Teleconference participation" means participation using audio conference tools involving multiple participants in at least two separate locations.
- "Virtual meeting" means a meeting involving real-time interaction using integrated audio, video, and other digital tools, in which participants do not share physical location.

Governmental bodies should carefully review these definitions and the requirements for each type of meeting. The Iowa Public Information Board has an Advisory Opinion that answers common questions about this new law. 24AO:0006 – Chapter 21 – Recent Law Changes - Electronic Meeting IPIB AO.

Agendas

Government bodies usually must give notice and provide a tentative agenda 24 hours in advance of a meeting. Iowa Code Section 21.4(2)(a). The notice must give the time, date, place and tentative agenda of each meeting. The notice must be posted on a bulletin board or other prominent place accessible to the public at the principal office of the government body, or at the building where the meeting will be held, if there is no principal office. Agendas must also be provided to news media who have filed a request for notice.

Agendas for public meetings play a vital role in the ability of citizens to watch the decision making process that affects public affairs at every level of government in Iowa. Clear and effective agendas are a matter of good policy, because they keep citizens informed and help public officials be better prepared for meetings.

Agendas must provide notice sufficient to inform the public of the specific actions to be taken and matters to be discussed at the meeting. An agenda that merely states "approve minutes, old business, new business" does not provide reasonable notice to the public. *See, e.g., KCOB/KLVN, Inc. v. Jasper County*, 473 NW 2d 171 (Iowa 1991).

The precise detail needed to communicate effectively will de- pend on the situation, including whether the public is familiar with an issue. The less

the public knows about an issue, the more detail is needed in the tentative agenda.

Officials and citizens alike should remember that meeting agen- das are the public's invitation to watch government in action. So, agendas should take care to describe the specific actions to be taken and matters to be discussed in public meetings.

Emergency Meetings

What if a government body has to conduct an emergency meeting and doesn't have time for the normal 24-hour advance public notice? The notice requirement goes right to the heart of open government. Why? Because the public has a right to know when a government body will meet, and what's on the agenda, in order to decide whether to attend and observe an open session. So, what happens in an emergency where action must be taken quickly? How does the law balance the public's need for notice and the government's need to act quickly?

The general rule is a 24-hour notice is required. Less notice may be given only if, for good cause, 24-hour notice is "impossible or impractical." Whether an emergency makes 24-hour notice impossible or impractical depends upon the facts. Officials should ask whether action can reasonably be deferred to a later time that allows for 24-hour notice. Is faster action really necessary? If faster action is necessary, you need to put in the minutes why a 24-hour notice was not possible. There are specific exemptions and guidance for less than 24-hour notice in Iowa Code § 21.4(2)-(3).

Voting at Meetings

Citizens who attend public meetings need to be able to identify which members voted, and how they voted. Here are principles that should be followed to assure accountability to the public for the vote of each member of a governmental body on each issue:

- Never use secret ballots. The vote of each member must always be cast in public. This is true even when the vote constitutes the final action on a matter considered in closed session.
- Always take a roll call vote to go into closed session. Roll call votes are required (Iowa Code §21.5(2)) to go into closed session and may be useful in other situations.
- Be careful about using voice votes - "all in favor say aye, all opposed say nay." Iowa law says that the vote of each member present has to be recorded in minutes (Iowa Code §21.3), so it is going to come out anyway. And if you use voice votes, it may be hard for observers to tell who voted or how they voted. So voice votes are discouraged, though not technically illegal.

Counting Votes

Iowa law requires a "quorum" to be present before official action can be taken by a governmental body, such as a board, commission or council. But, how many officials must be present to make up a quorum?

A "quorum" is the number of members entitled to vote who must be present in order for business to be transacted legally. The number is set by law, but different public bodies have different quorum requirements. For boards of supervisors a quorum is the majority of the entire board (Iowa Code §331.212)).

Keep in mind that a "quorum" only relates to how many voting members must be present to conduct business. Different public bodies have different rules on how many of the members present must vote for a particular action for the body to take official action. A majority vote of those present and voting (not counting, for example, those who don't vote because of a conflict of interest) will commonly, but not always, be sufficient.

Quorum and voting requirements can be confusing, but it is imperative that all public officials know what is required for their own boards or commissions before they vote at a public meeting. If there is a question about quorum requirements, public officials should ask the lawyer who represents the public body.

Closed Sessions

Government bodies often conduct open meetings that include a closed session. Closed sessions are lawful, but just who is allowed to remain when the doors close? Are only members of the government body permitted in the room? Can they meet privately with their attorney? Is it necessary to close the session at all if no members of the public are present? Can the government body just ask the public to step out of the room so the members can talk in private?

Closed sessions may include only people who are necessary to the matter under consideration. Government bodies may meet privately with legal counsel to discuss litigation that is pending or imminent, if disclosure would likely prejudice or disadvantage the body. Other individuals, including government staff, may be included in a closed session discussion as needed - for example, to present confidential investigative records to the body. A member of the board holding the closed session cannot be excluded from a closed session, "unless the member's attendance at the closed session creates a conflict of interest for the member due to the specific reason announced as justification for holding the closed session." Iowa Code § 21.5(4).

The public may not be asked to leave an open session. Iowa's Open Meetings Law does not allow public officials to simply ask members of the public to step outside during an open session. Government bodies may close meetings as provided in the law (Iowa Code §21.5), but when a body is in open session, it is never appropriate for the body to ask citizens to leave or for the body to take a break so that a quorum of the body can talk in private.

Open sessions remain open - even when no one else is in the room. Unless a government body goes through the proper steps to close a session, the meeting remains open, and the confidentiality that attaches to closed session materials does not apply (Iowa Code §21.5.) This means that materials for the closed session, such as agenda packets, minutes or tape recordings, will be open records subject to examination and copying.

Closed sessions are serious business: the public is asked to leave so that a council, board, commission or other governmental body can hold discussions behind closed doors.

Open Meetings

Iowa's Open Meetings Law, Iowa Code chapter 21, spells out very specific rules. Here are steps government bodies must take for a meeting to be closed:

- Check the statute. Open meetings only can be closed for 12 specific reasons set out in the law, such as discussion of pending litigation or certain personnel issues. If none of the law's reasons apply, the session may not be closed.
- Announce the reason. The governmental body must publicly announce the reason for closing the meeting and record the reason in the minutes.
- Take a vote. Closing requires an affirmative vote of two-thirds of the members, or if not all members are present, the affirmative vote of all members present.

Here is what that looks like:

Total on Board	Members Present	Votes Needed to Close
5	5	4
5	4	4
5	3	3
3	3	2
3	2	2

For example, a five-member body needs either four votes to close (two-thirds of all the members) or three votes (if only three are present and three is a quorum).

- Keep records. The governmental body must keep detailed minutes and must tape-record the closed session. Detailed minutes must record who is present, all discussion and any action taken. The minutes and tape are sealed and only can be opened under a court order.
- Stay focused. A closed session is authorized only to the extent necessary for the reason cited. There must not be discussion of other matters.
- Return to open session for final action. Final action only can be taken in open session. For any final decision, a motion and vote must be done in open session.

Public officials must document closed sessions and make a complete record. Government bodies must keep detailed minutes of *all* discussion, persons present, and actions occurring at a closed session, and must tape-record the entire closed session. The minutes and tape must be sealed and maintained for at least one year.

Minutes and tape of a closed session are not open for public inspection. However, the law provides situations in which minutes and tape recordings can be accessed. Members of the government body who were present at the closed session (or who were absent but lawfully could have been present) are entitled to access the tape and minutes. The board shall not exclude another supervisor from attending a closed session, unless the member's attendance at the closed session creates a conflict of interest. Iowa Code §21.4.

Publishing Minutes

Accurate minutes of public meetings are a key tool for conducting the public's business in an open and accountable fashion. Minutes are a vital organizational tool for any government body, and they are a crucial way for citizens to review or examine public action taken on their behalf.

Minutes create a permanent record - accessible upon request - of who met, when they met, what they decided, and by what votes. Iowa's Open Meetings Law spells out the basic requirements for minutes.

Minutes of an open session shall always include:

- The date, time and place of a meeting, and which members were present.
- Actions taken with sufficient information to reflect the members' votes.

Beyond that, it is up to the board and the one who takes the minutes to determine how much information to include – more is better, but also more expensive. Board of supervisor minutes need to be published. But nothing in the Open Meetings Law requires publishing minutes of the meeting of any other board (although other Code provisions may require publication – for example, Iowa Code Chapter 28E requires publication of most 28E entity board minutes). Minutes have to be taken, and available to the public, but not published. Another statute may require that they be published, like Iowa Code §349.16 for boards of supervisor minutes.

Citizen Input

Under Iowa's Open Meetings Law, citizens have the legal right to attend, observe, listen, use cameras and use recording devices at open sessions of all meetings conducted by a governmental body. On the other hand, the Open Meetings law does not give citizens a right to speak.

Although the Open Meetings Law does not entitle citizens to speak at a meeting, citizens may request the opportunity to address the body at a meeting. Public bodies can facilitate citizen participation by allocating time for public comment structured by reasonable rules of conduct, such as advance deadlines for requesting an opportunity to speak, and reasonable time limits for oral comments.

In other words, public participation at board meetings is determined solely by the board itself. Best practices would be to have a policy on public participation, so that each request is treated in the same manner.

Open Meetings

Penalties for Violations

Compliance with Iowa's Open Meetings Law is serious business. A court will assess monetary damages against county officials who violate the laws. Citizens who go to court and successfully enforce violations of the laws will recover costs and attorney fees. It is the attorney fees that can really get expensive.

Who pays the damages assessed and the costs and attorney fees awarded when violations are established in court? Where does the money go? The statutes allocate monetary costs for violating the Open Meetings Law according to the following principles:

- Monetary damages against individuals. Each member of a governmental body who is found to have participated in a violation (and has no defense) will be assessed damages between $100 and $500. This money is paid to the local government if the violation is by local officials. However, if a local official knowingly participates in a violation, damages shall be in the amount of not more than $2,500 and not less than $1,000.
- Attorney fees awarded to citizens. Citizens who bring successful enforcement actions in court will be awarded the costs of the litigation and reasonable attorney fees for the trial and any appeal. Court costs and attorney fees are paid by any officials who are assessed damages.

Upon a second violation in a single term of office where money damages were assessed, a member of a governmental body is automatically removed from office.

Defenses to lawsuits include: 1) voting against going into closed session; 2) acting on written advice from the Attorney General, Iowa Public Information Board, or county attorney; and 3) acting in good faith and having a good reason to believe that the action taken was legal.

Open Meetings Handbook: The Iowa Freedom of Information Council has prepared an *Iowa Open Meetings, Open Records Handbook,* which they sell for $2. It can be ordered by calling the FOI Council at (515) 745-0041. http://www.ifoic.org/open-meetings-open-records-handbook/.

Since July 2013, the Iowa Public Information Board has been taking complaints and questions on Iowa's Open Meetings and Open Records Laws. There are FAQ pages that address open meeting laws and public record requests, as well as their own statutory authority on their website: https://www.ipib.iowa.gov/.

Public Records

Public Records

Thomas Jefferson is said to have remarked that an in- formed citizenry is the bulwark of a democracy. Iowa Code chapter 22, Iowa's Public Records Law, is designed "to open the doors of government to public scrutiny." *Iowa Civil Rights Comm'n v. City of Des Moines*, 313 N.W.2d 491, 495 (Iowa 1981). The Public Records Law seeks "to prevent government from secreting its decision-making activi- ties from the public, on whose behalf it is its duty to act."

Subject to some limitations discussed below, under the Public Records Law, everyone has the right to examine, copy, and disseminate "public records." Iowa Code §22.2(1).

What Is A Public Record?

Iowa Code §22.1(3) says that public records include "all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, …or any branch, department, board, bureau, commission, council, or committee of any of the foregoing." So the term "public records" is very broad.

"The right of persons to view public records is to be interpreted liberally to provide broad public access to public records." *Rathmann v. Bd. of Dirs. of the Davenport Cmty. Sch. Dist.*, 580 N.W.2d 773, 777 (Iowa 1998). Exceptions to the general rules of disclosure are to be narrowly construed.

Diercks v. City of Bettendorf is an open records case that considers if records between a private law firm that has been engaged by an insurance company that provides coverage to a county should be considered open records under Iowa law. ISAC again signed onto an amicus curiae brief with the Iowa County Attorneys Association to argue that these types of records that are not seen or used by the government body should not be consider records of the government and thus not subject to Iowa's open records laws. In July 2019, the Iowa Court of Appeals ruled that the records were public and subject to disclosure.

Are Some Public Records Confidential?

Iowa Code §22.7 lists 75 categories of records "which shall be kept confidential, unless otherwise ordered by the lawful custodian." One new category added in 2022 relates to crisis intervention reports. Based on this language, no records absolutely have to be kept confidential under the Public Records Law. If the custodian chooses to release them, they can be released.

Here are some of the more frequently-used categories of confidential records:

Personnel Files: The Public Records Law includes an exemption from disclosure for "personal information in confidential personnel records of public bodies." There are at least two Iowa Supreme Court cases that tell us more about what this term means.

In *Des Moines Independent School District v. Des Moines Register*, 487 N.W.2d 666 (Iowa 1992), a public school teacher had been the subject of an internal investigation regarding her job performance. The *Des Moines Register* requested a copy of the findings. The Iowa Supreme Court said no and concluded that the records fall under this exception. So performance evaluations, job reviews and written complaints about employees are not public records. See also, *ACLU Foundation of Iowa v. Atlantic School District*, 818 N.W.2d 231 (Iowa 2012).

On the other hand, in *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999), the *Cedar Rapids Gazette* asked for all sorts of information about city employees, including their rate of pay, attendance record and home address. The Iowa Supreme Court said that all information pertaining to compensation and days worked and sick days taken were public records, but that gender, home addresses and birth dates did not have to be disclosed.

Job Applications: If and what portion of job applications need to be disclosed is a difficult determination to make and you should involve your county attorney. In *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988) the Supreme Court ruled applications from outside the county need not be disclosed. But this may not apply to applications you get from people that already work for your county. The exception to the Public Records Law that the Supreme Court relied on is labeled "communications from persons outside of government," so we don't know for sure, but the same logic probably does not apply to in-house applications. More recently, the Iowa Public Information Board has provided some guidance on this issue and implied that portions of applications may be released and you may need to ask applicants outside of county government if they would like their application to be confidential. *See* Iowa Public Information Board, Advisory Opinion 21AO:0004, https://ipib.iowa.gov/advisory-opinions/21ao0004 (last accessed January 11, 2023).

Settlements: When an insurer settles a claim against a government body, or one of its officers or employees, the government body must maintain a written summary of the settlement stating the amount of all payments and to whom they were paid. That summary is a public document (Iowa Code §22.13).

Letters to the County: Counties can keep letters from the public confidential if: 1) the communication comes from a person outside of government; 2) the communication is voluntary, and 3) the county could reasonably believe the public would be discouraged from communicating if the communications were available for public inspection and copying.

When we say a record is "confidential," it can still be disclosed, if the custodian chooses to disclose it. But remember, the Public Records Law is not about guaranteeing any given individual's right to confidentiality. It is about guaranteeing the public's access to public records. So even if you as a custodian disclose a document that should have been withheld as confidential, you cannot be sued successfully for that act. In other words, the Iowa Supreme Court has declared that the policy in this state is to have open records, so if you mistakenly make available a confidential document, you do not face liability for things like breach of confidentiality (unless another law, such as HIPAA, requires confidentiality). *Marcus v. Young*, 538 N.W.2d 285 (Iowa 1995).

Even if you disclose a confidential document to someone, the Iowa Supreme Court says that does not destroy the confidentiality as to everyone else. *Gabrilson v. Flynn*, 554 N.W.2d 267 (Iowa 1996). So the custodian can pick and choose who gets confidential records. But there should obviously be a good reason for making such distinctions.

Can I Require A Person Who Asks For A Public Record To Identify Themselves?

You cannot make the providing of a name a prerequisite to getting the public record. There may be logistical reasons that make asking for a name or contact information reasonable, so long as you give them the record even if they refuse to identify themselves.

Can I Require A Request For A Copy Of A Record To Be Submitted In Writing?

No. Iowa Code chapter 22 gives the public the right to request records in several ways. It allows a person to request a public record without coming to the county office. Counties have to respond to requests made by phone, fax or email and have to mail the records to the requestor upon request.

How Specific Must the Request Be?

A request is "reasonable" if it enables the lawful custodian who is familiar with the subject matter of the request to locate the records with a reasonable amount of effort (1982 Attorney General Opinion 538). The request must adequately identify which particular records the requestor is seeking. According to an Attorney General Opinion dated October 7, 1982, a public records request must "reasonably describe the records requested." The same opinion goes on to state that "broad, sweeping requests lacking specificity are not permissible." But the more county records are computerized, the harder it is to complain about it being unreasonable to locate particular records.

How Soon Must Documents Be Provided?

Iowa Code §22.8(4) provides:

Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following:

a. To seek an injunction under this section.

b. To determine whether the lawful custodian is entitled to seek such an injunction or should seek such an injunction.

c. To determine whether the government record in question is a public record, or confidential record.

d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.

Who In The Courthouse Can See Confidential Records?

Even if a record is "confidential," that does not mean that others in the courthouse cannot see it. For instance, if you are a county supervisor and miss a meeting where the board goes into closed session, you can listen to the tape of that closed session, even though members of the general public cannot. This comes from *Gabrilson v. Flynn*, 554 N.W.2d 267 (1996), where the Iowa Supreme Court said that access to a confidential record is accessible if you need access to a document to fulfill your statutory duties. In this case, the court held that limited disclosure does not destroy the confidentiality of the record.

Who Should Respond To Requests For Public Records?

To comply with the law, and just from a "best practices" standpoint, all county offices need to formally or informally designate someone to respond to requests for public records. That person should be someone with good people skills and knowledge of the Public Records Law. That person should be able to answer three questions: 1) What "public records" do we maintain in this office? 2) Which of those public records are confidential? (This will require visiting with the county attorney); and 3) How am I going to respond when someone comes in and requests to see a particular public record?

How Should Requests For Access Be Managed?

You should develop a form to be used for public record requests. It eliminates any confusion about what was requested, and how you responded, and it memorializes and professionalizes the transaction. Can you require that a requestor fill out such a form? No. But you can tell them that it will eliminate any confusion about the specifics of the request and if they are not going to get the record immediately, you need to know how to contact them.

If the public record that someone requests is routine, something that is clearly a public record, for instance a copy of board minutes from three months ago, you have an absolute duty to provide that record, and there should be no reason that the requestor cannot leave the office with the record today.

What Can I Charge For Public Records?

A county may only charge actual costs of providing the copies, meaning only those costs directly attributable to the making and providing of the copies; the requestor cannot be charged for things such as depreciation, maintenance, insurance or electricity. This has already been established through court cases and Attorney General Opinions, but had not been expressly stated in the Code until 2005 (Iowa Code § 22.3). A county can charge the requestor for the salary of the county employee for the time spent responding to the record request, but not for the employee's benefits. This clarifies existing law. A county can charge for: 1) providing a place to examine the records; 2) supervising the records during examination; 3) photocopying; and 4) retrieval fee – time spent recovering the document. But once again, a county cannot recover fixed costs such as depreciation, maintenance, electricity and insurance. The test is if you would have incurred the same cost regardless of whether the copy was made, you cannot charge for it. All charges should be imposed according to a written policy.

The Iowa Supreme Court has announced that you can charge a fee for the time it takes you to retrieve a public record. *Rathmann v. Board of Directors*, 580 NW2d 773 (Iowa 1998). That is determined by the time it takes and the cost to you the employer of that employee's time. So if you use a particular employee to respond to a request, you can charge his hourly salary. Now one question is, can you as an elected official do the retrieving and charge your hourly rate, instead of using a minimum wage clerk? Yes, if you actually do the work.

Public Records

In 2022, Iowa Code §22.3 was amended to say that counties "shall make every reasonable effort to provide the public record requested at no cost other than copying costs for a record which takes less than thirty minutes to produce."

What Are the Requirements Regarding Storing Records?

There is no requirement that public records be stored in any particular location. In 1997, the Iowa Supreme Court ruled that public records may be kept at a private residence, though it said it was "considerably less than enthusiastic about the practice." *Holding v. Franklin County Zoning Bd. of Adjustment*, 565 NW2d 318, 320 (Iowa 1997). The Court went on to say that storing the records in a home "does not alter the statutory mandate" to make the records available to the public. This is all about promoting public access, so the more accessible the better.

How Long Do I Have To Keep Public Records?

Evidentiary rules in Iowa Code §622.30(2) discuss retaining records of county officers for ten years. Iowa Code §331.323(2)(d) says that the board of supervisors may authorize county officials to destroy records which have been on file for more than 10 years if they are not "required to be kept as permanent records." For more information on retaining records, see the draft records retention manual on ISAC's website. This manual is in draft form because not all affiliates provided or finalized information about the records they hold, but it can still be a place to start for ideas on best practices.

What Happens To Me If I Violate The Public Records Law?

Iowa Code §22.10 provides that any person who participates in violating the Public Records Law is liable for civil damages of between $100 and $500, plus court costs and attorneys' fees. However, if a local official knowingly participates in a violation, damages shall be in the amount of not more than $2,500 and not less than $1,000.

In addition, if this is the second violation in a term of office, an elected official shall automatically be removed from office. Also, a knowing violation of the Public Records Law is a simple misdemeanor.

The Iowa Public Information Board began taking complaints and questions on Iowa's Open Meetings and Open Records Laws. There are FAQ pages that address open meeting laws and public record requests, as well as their own statutory authority on their website: https://www.ipib.iowa.gov/

Public Relations

Public Relations

As an elected public official, you were placed into office by the people of your county specifically for the purpose of serving them. You were elected because the people thought that you were the person for the job.

The fact that you are elected makes you accountable to the public. If you don't do a good job, chances are that it will show and you might have problems when the next election rolls around. However, even if you are doing a fantastic job, it will mean little to the people who elected you if they are not aware of it. This is where the entire process of public relations (relating to the public) comes into play.

Public relations is both a concept and a process. As a concept, public relations means doing three things:

- Informing people through news releases, speech- es, radio broadcasts, etc.
- Influencing people by presenting persuasive arguments supporting one or more points of view.
- Measuring attitudes and opinions to evaluate results.

As a process, public relations is a key element of administration. It consists of communicating ideas, informing others, learning from others, being sensitive to how others feel, and using information gained in this manner as a basis for proposing new programs and modifying or abandoning existing programs.

Organizing for Public Relations

Goals and objectives are just as important for public relations as for all other aspects of government. With your objectives clearly stated and understood, you, as the administrator, can do a far better job of developing a functional public relations program. Ideally, your public relations program should:

- Inform the public about county activities and programs;
- Create good will toward county government;
- Persuade the public to support county programs;
- Facilitate formal and informal communication; and
- Solicit public opinion and contact.

Public Image

The basic responsibility of any government unit is to provide service to the public. Public opinion is formulated largely on the basis of public satisfaction with the quality and quantity of services provided. The manner in which the services are provided is often more important than the actual services. If citizens feel they are given a fair shake, a good public opinion will be maintained. For example, citizens may disagree with a government policy and feel disappointed that they are not having their way. However, if this policy is adequately explained and understood, the citizen will probably at least be satisfied about the service. Much criticism of government results from a failure to understand its rules and policies. If these misunderstandings can be corrected, you have taken a big step.

The citizens must not only be well served, they must feel they are being served well. Every time a service request or a complaint is received, it is a potential public relations asset for the county. Whether it actually becomes an asset or a liability depends on the manner in which it is handled.

When a complaint is received, it should be given immediate attention and a thorough investigation. The matter may actually be minor, but if a citizen feels strongly enough to write a letter or email or make a phone call about it, it is obviously important to him or her. If the request or complaint is quickly and properly handled, the citizen will appreciate it. Complaints may also come to you indirectly. Watch the letter to the editor columns in the paper and listen to any talk show type radio or television programs. These are good examples of indirect complaint sources.

The following steps should be involved in processing complaints and requests:

- welcome the complaint or service request;
- assign the responsibility for dealing with the request or problem, or take care of it yourself;
- institute and provide for a follow-up procedure to be sure that the matter receives the attention it deserves; and
- in the case of a complaint, notify the person that action has been taken. In the case of a service request, be certain that the desired action is performed or that the person knows that it cannot be performed.

Citizen Participation

Public Hearings: One of the primary tools available in the area of citizen participation is that of public hearings. This is not only a desirable tool, but a mandatory one when it comes to some major decisions. Such decisions would include a new courthouse, a new planning and zoning proposal or the location of a soon-to-be-built county park. Public hearings give interested citizens the opportunity to state their thoughts and feelings and make them a part of the governmental decision-making process.

You may not have to take the step of holding public hearings. One simple way to maintain communication is to schedule regular board of supervisors meetings. As required by Iowa Code, notify the public of the time, date, and place of the meeting and the tentative agenda. This is to be done by advising the media, as well as posting the meeting notice in a prominent place that is accessible to the public. When the meeting is held, stick to the schedule provided.

Appointment of Committees: Another method of citizen participation is the appointment of committees or task forces to deal with specific problems. For example, your county is in need of countywide ambulance service, so the county government decides to fund such a program. Obviously, the elected officials are not going to have all the expertise that may be necessary to set up a system. There are people in the county who probably do have such expertise, however, and would be more than happy to serve in an advisory capacity. This way you get valuable advice, usually at no charge. A simple certificate and a letter of thanks complimenting "a job well done" when the project is complete will give the participating citizens a feeling of pride and accomplishment and probably leave them willing to offer further assistance. The more people in the county that take part in a decision or new government proposal, the broader the citizen base of support can be. Remember, these task forces are subject to the Open Meetings Law.

Public Relations

Written Information

Democracy creates the special need for the general public to be made aware of the government's activities. Citizens need to be aware of and understand public laws and regulations in order to take advantage of the benefits and services available to them.

Your county might want to prepare a booklet for general distribution that explains each of the county offices' functions and services (or use ISAC's "Understanding County Government" and "Why Counties Matter" brochures). Every citizen should know where to go to get specific services performed. Another method would be to publish a periodic newsletter detailing changes that are taking place in county government. A county website is a must in order to provide information to your citizens. And more importantly, the website needs to be updated frequently with current information. Have contact information available for all of the department heads in your county so if a citizen has a question they can easily call or send an email to the correct county official. Information projects such as these can be invaluable to both the county government and the citizenry. They provide an immediate benefit for citizens by giving them targeted information about county services and organization. And county departments get credit for what they are doing to serve the public interest.

Direct Contact

Direct contact with the public is probably the most effective communication. This provides a great opportunity to achieve understanding between the parties involved. If the information given is not understood, you have an immediate opportunity to correct it. In other words, you have two-way communication. When providing information directly, the quality of the contact is determined by:

- Interest shown in the citizen's problem;
- Quality (clearness, conciseness, and accuracy) of the information given;
- Manner of speech;
- Personal attitude; and
- Personal appearance.

If you use these five items to a positive advantage, you have, in one sense, become an effective public relations person.

Working with the Media

Since you are a part of the government, many of you will become major newsmakers in your own county and will be dealing with various news media frequently. It is important to remember that there is no one audience, but a number of different audiences for the events that will take place daily in your county. The media will also differ as to their various interests in the news. Newspapers, by nature, will be able to present more detailed information, while television or radio, due to time limitations, will present highlighted portions of newsworthy events. It will be your responsibility as head of your office to provide the reporters with as much background information as possible, although only the information needed will be used.

Be aware that you may receive calls or contacts from various media trying to get your reaction to important events taking place on the state or national level, particularly when the state legislature is in session. Therefore, you should make every effort to keep abreast of what is happening and to follow it closely. An "I don't know" or a "No comment" in print can reflect badly on you; however, "I don't know" is preferable to incorrect information.

There are certain guidelines you should follow in dealing with all news media:

- Make sure that all information given to reporters is accurate and complete. No detail is too small to check.
- Practice an "open door" policy for reporters. Be available for comment whenever you are asked to be.
- Encourage reporters to ask questions and to talk with major decision-makers.
- Take time to orient reporters to government operations, particularly technical and complex ones.
- Don't hesitate to compliment a reporter on a good story and to do otherwise when a story is inaccurate or unfair. Reporters are just as interested as you are in publishing the right information, and usually want to know if they have made a mistake.
- Encourage open meetings at all times, unless a closed session is justified and authorized by law. The Open Meetings Law is found in Iowa Code chapter 21. See the chapter titled Open Meetings.
- Evaluate your performance. After the interview, write down the questions you had trouble with so you can do a better job next time.
- If you've got bad news, get it out. Bad news doesn't get better with age.
- It's too late to say "That's off the record," following a statement that you make. A wise tip is to always talk to reporters as though you are on the record.
- Know local media deadlines so you get more timely coverage.

There are many ways to make the media more aware of what's going on and make their jobs (and yours) easier. If an event taking place in the near future will be suitable for on-the-spot coverage, advance notice to television and radio people is particularly important. Schedules are tight, and you probably won't get the coverage you want if the media does not have enough advance warning. If there is going to be television and radio coverage, someone in the county office must be put in charge of seeing that all necessary arrangements have been made. Such arrangements would include location of coverage and props.

Public Relations

Writing a Press Release

A press release is one of the primary ways you can communicate news about your county to the media. Reporters, editors and producers are hungry for news, and they often depend on releases to tip them off to new and unusual products, county trends, tips and hints and other developments. In fact, much of what you read in newspapers, magazines, or trade publications, hear on the radio or see on television originated in press release form. Unfortunately, the average editor receives as many as several hundred press releases each week, the vast majority of which end up getting "filed." Your challenge is to create a release that makes the journalist want to know more and discover that your story is one they must tell.

Use an active headline to grab the reporter's attention. The headline makes your release stand out. Keep it short, active, and descriptive; in other words, use something like "Doe Named Man of the Year" instead of "John Doe Gets Award."

Put the most important information at the beginning. This is a tried and true rule of journalism. The reporter should be able to tell what the release is about from the first two paragraphs. In fact, chances are that's all they may read. So, don't hide good information. Make sure your release provides answers to who, what, when, where, why and how.

Be active and to the point. Use language that will get the reader as excited about your news as you are. If your release is boring or meandering, they may assume that you will not be a good interview.

Keep your release to two pages or less. On the rare occasion, you can opt for a third page if it is necessary to provide critical details. Otherwise, if you can't state your message in two pages, you're not getting to the point.

Make sure your release has a person the journalist can contact for more information. This person should be familiar with all the news in the release, and should be ready to answer questions. And issue the release on your county letterhead - it looks professional and gives the writer another way to reach your county.

Keep jargon to the minimum. If you're in a technical field, try not to use technical terms. Many reporters are not as intimate with your county or your industry as you are. Real English, not jargon, best communicates your story.

Be specific and detailed when writing your press release. Marcia Yudkin, author of "Six Steps to Free Publicity" calls this the "Yes, but what IS it?" syndrome. The reader needs to be able to visualize a new product, or know how a new service works. If in doubt, have someone unfamiliar with your product or service read the release and ask them to describe what you trying to publicize. It's better to use too many details than too few. So, as Yudkin notes, "Instead of 'Jackson's new book contains information designed to benefit any stock market investor,' write, 'Jackson's new book contains seven principles of market analysis that enable even casual investors to choose profitable stocks.' Even better, describe two of the seven principles right in the release."

When you've finished your press release, remember to proofread it for typographical errors. If you don't have a good eye for spelling or grammar, give the release to a friend or colleague who does. If your release looks sloppy and careless, so will you.

Press Release Checklist:

- County Letterhead, Name, Address, Phone Number, Email Address, Website
- PRESS RELEASE in all caps
- Contact Person's Name, Phone Number, Email Address -
- Immediate Release or Release Date(all caps)
- HEADLINE or TITLE in BOLD/CAPS
- BODY-Date/County-who, what, when, where and why.
- Catchy Text
- Sum it up...
- Basic Font, Double Spaced, Page Numbers, and ### at the end of your press release

County Finances

Coming soon!

Collective Bargaining

Collective Bargaining

In 1974, the Iowa Legislature passed the Public Employment Relations Act (PERA), and counties were made subject to its provisions on July 1, 1975. In 2017, major changes were made to Iowa's collective bargaining law. For bargaining units where less than 30% of members are public safety employees, only base wages and other permitted and mutually agreed upon items are mandatory subjects of bargaining. These bargaining units are prohibited from negotiating insurance, leaves of absence for political activity, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reductions, and subcontracting for public services. All bargaining units are prohibited from negotiating retirement systems, dues checkoffs, and other payroll deductions for political contributions. No collective bargaining agreement shall exceed five years. These changes mean your county is likely bargaining far less union contracts than in the past.

What Is Collective Bargaining?

The obligation of public management to acknowledge the rights of employees to organize and to bargain collectively with them evokes varying feelings in county officials. There is no doubt that the existence of a union can place many constraints upon the way you want to manage your employees. But the union-management relationship can also be a constructive one for both parties.

Collective bargaining begins by employees selecting a union to represent their interests. After the employees select their representative, the representatives from union and management meet and determine matters regarding negotiable items. The meetings between labor and management are referred to as negotiating sessions. Ideally, the collective bargaining relationship will ensure that your employees are allowed input into matters that affect them and at the same time protect your management prerogatives.

Preparing For Negotiations

The degree of success you achieve in negotiations is probably more dependent on your preparation than anything else. If management is not prepared before going to the bargaining table, negotiations will be merely a series of reactions by management to union proposals. You will be much more effective in negotiations if you take a positive approach by presenting proposals of your own for consideration by the union.

By preparing yourself for negotiations, you can also avoid agreeing to proposals which may have hidden costs. Before you go to the bargaining table, you should have information regarding wage rates and fringe benefits available to employees of other public and private employers in your area. You should also have current information on the Consumer Price Index. The union will have this information and you will need to be able to respond. You should decide which issues are most important to you and take them in the order of their importance. All issues do not have equal value, and priority ranking will give you a clearer perspective of your goals at the bargaining table. After the issues are ranked, a detailed justification for each issue should be written out. You should not wait until you get to the bargaining table to work out justification for your proposals.

Establishing the Negotiating Team

The negotiating team that actually goes to the table should be limited to not more than five members. One person should be assigned to take very careful notes on the progress of negotiations. If you eventually go to arbitration, you will need to have a record of your good faith efforts to reach settlement. Your management team who administers the contract will also have a clearer idea of the intent of each particular clause.

Another person on the negotiating team should act as the chief spokesperson. If one person does all the speaking for management, much confusion will be avoided. If there is a need for discussion among the team, a caucus should be called, and talk can take place in private, away from the table.

The negotiating team may or may not include elected officials. In general, larger counties tend not to have elected officials on the negotiating team. Instead, the county will use personnel officers and budget officers. This may tend to keep the bargaining centered on issues rather than political personalities. Personnel and budget officers are good people to have on a bargaining team since they will have access to employee records and financial information that will be valuable in negotiations. Bargaining is a time-consuming process, and it requires a concentrated effort. Elected officials in larger counties usually have many other demands on their time and frequently they lack the expertise valuable at the bargaining table. Elected officials may also be pressured to repay labor for its support during the officials' political campaigns by conceding to labor demands at the bargaining table.

If elected officials are not on the bargaining team, it is extremely important that they be consulted and kept informed on the progress of negotiations. They will be able to provide background on difficulties within their operation that stem from the present contract. They also know which management prerogatives they would like to see protected. They are familiar with the causes of employee dissatisfaction within their departments, and they are the ones who must apply the contract to their specific situation. As the budgetary authority for the county, the board of supervisors will have to ratify the contract, and this is the appropriate time for them to be involved.

In small-to-medium size counties, usually one or more county supervisors do participate in the negotiating. These counties generally do not have personnel and budget officers. So most bargaining teams in these counties are comprised of the outside negotiator, the department head, and at least one supervisor. That usually works just fine.

It is a violation of the law for a public employee or any employee organization to negotiate or attempt to negotiate with a member of the board of supervisors if that individual is not the designated bargaining representative for the county.

Many counties hire a professional negotiator as their chief spokesperson at the bargaining table. You may wish to consider this option. The short-term expenses may be outweighed by the value of the professional negotiator's experience and expertise

on strategy and contract language, particularly if management is negotiating its first contract. The first contract is crucial and any mistakes that find their way into that contract can be very difficult to remove later.

Sometimes, however, the professional is not available to help enforce the contract once it is negotiated. If county officials have not been closely involved with negotiations, they may be left with a contract they do not understand. The best kind of negotiator is one who will also help you with contract administration. Each county should also consider hiring at least one full-time personnel officer or specialist to handle the variety of needs in the field of labor relations. It is very important that the negotiating team be able to bargain with the authority to settle. Guidelines should be set beforehand by the policymakers in the county on the range of wage increases, benefits, and non-economic concessions possible. After this initial agreement, the negotiators should be able to proceed independently, with periodic reports to the elected officials and consultation with them if an alteration in the settlement seems necessary.

All agreements made at the table are tentative. The union must still put the contract before a vote of its members, and management must also give its final approval before the contract is signed and binding on both parties.

Good Faith Bargaining

The obligation for both parties to negotiate in good faith is a cardinal rule of collective bargaining. Good faith bargaining is essential in establishing a climate of mutual respect and trust during negotiations. Bad faith bargaining is not only illegal, but sets a tone in the labor-management relationship that is disruptive and counter-productive. Bad faith bargaining by management will almost certainly bring a vengeful counterattack by the union, either immediately or in the future.

The obligation to bargain in good faith requires that management:

- Approach bargaining with an open mind, being accessible to persuasion.
- Follow procedures which will enhance the prospects of a negotiated settlement.
- Regard all items within the scope of bargaining as rightfully negotiable and as problems that should be solved bilaterally.
- Be willing to meet as often as necessary at reasonable hours and for reasonable periods of time in order to reach agreement.
- Discuss the demands of employees freely and fully and justify negative reaction to these demands with reason.
- Consider compromise proposals in an effort to find a mutually satisfactory basis for agreement.
- Give information to the union that it must have to bargain responsibly on behalf of the employees.

Examples of bargaining tactics that are considered in bad faith include:

- Misrepresenting the facts.
- Personally attacking union negotiators with the intention of embarrassing them or causing dissension within the union team.
- Taking any disagreements directly to the public or releasing information to the media, with the intention of undercutting the bargaining process.

The obligation to bargain in good faith does not require, however, that management make concessions on any particular issue.

Management Rights

By tradition and by law certain powers, duties and rights are reserved exclusively to management and are not included within the scope of negotiable subjects. PERA reserves for management the rights to:

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

Even though these rights are granted to you by law, you are well advised to include them in a separate clause in your collective bargaining contract. This will make clear to your employees that you know these to be your management prerogatives. This will serve to prevent both confusion and possible difficulty for you if a particular grievance ends up in arbitration. It is also well to remember that management rights that are not used are often lost.

Scope of Negotiations

Iowa Code §20.9 defines the scope of negotiations. There are three categories of bargaining topics: 1) mandatory; 2) permissive; and 3) illegal. The parties must negotiate on mandatory topics. Permissive topics include those agreed upon by the parties. PERA mandates that the public employer and the employee organization meet at reasonable times, includ- ing meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to the mandatory topics. For bargaining units where less than 30% of members are public safety employees, only base wages and other permitted and mutually agreed upon items are mandatory subjects of bargaining. These bargaining units are prohibited from negotiating insurance, leaves of absence for political

activity, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reductions, and subcontracting for public services. All bargaining units are prohibited from negotiating retirement systems, dues checkoffs, and other payroll deductions for political contributions. No collective bargaining agreement shall exceed five years.

Employee Rights

Under Iowa law, public employees have the right to:

- Organize, form, join or assist any employee organization.
- Negotiate collectively through representatives of their own choosing.
- 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 act or any other law of the state.
- 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 type.

Among the persons exempted from the provisions of PERA are elected officials, supervisory employees, confidential employees, students, those employed for 20 hours per week or less and temporary employees who are employed for four months or less.

What to Do When the Union Calls

Your office phone rings. It's your receptionist. "There's a Mr. Smith out here," she announces. "He says that he is from Local Union 66 and wants to talk to you about representing the employees. Should I send him in?"

What do you do? Do you have to see him? If you see him, what do you say? First of all, "Mr. Smith" has no right to barge in on you. Tell your receptionist to have "Mr. Smith" make an appointment. In the meantime, contact your county attorney.

Suppose, however, that "Mr. Smith" does get into your office. Suppose he says that your employees have authorized the union to be their bargaining agent, offers to show you authorization cards allegedly signed by the employees and suggest that a date be set to begin bargaining. What do you do in this situation?

Be extremely careful. Ascertain from the Employment Appeal Board (EAB) whether or not the union, or any other group, has had the Board make a unit determination to identify those able to be included in the bargaining. Secondly, there must be a petition for certification of an employee organization in which the employees vote by secret ballot whether they want a particular union or none at all.

In this situation, be polite to "Mr. Smith." But, don't commit yourself or sign anything. Tell him that this is a matter that you are not familiar with and that you would like to consult your lawyer or other qualified professional before discussing the matter any further. Politely but firmly refuse to see any authorization cards.

Rather than visit you in person, "Mr. Smith" may ask for recognition by sending you a letter. This letter will usually state that a majority of the employees in the bargaining unit have designated the union to be their bargaining agent, ask you to recognize the union, and suggest that a date be set to begin negotiations. Copies of authorization cards may be enclosed with the letter. If cards are enclosed, do not look at them.

Regardless of the manner in which you are contacted (letter, phone call, personal visit or email) the first thing to do after being contacted is to call your county attorney.

Employment Appeal Board (EAB)

EAB serves as an independent neutral agency to administer PERA. There are three members of the Board appointed by the Governor and approved by two-thirds vote of the Senate. No more than two members of the Board shall be of the same political affiliation. EAB, like other state agen- cies, has the authority to adopt rules and regulations and is also authorized to collect and distribute statistical data relat- ing to wages, benefits and employment practices around the state. EAB also has responsibility for determining appropriate bargaining units, adjudicating unfair labor practice charges and resolving impasse.

Previously, PERA was administered by the Public Employment Relations Board (PERB) but as of July 1, 2024, PERB was eliminated, and the duties and appropriations were transferred to EAB. The powers and duties of EAB as they apply to collective bargaining can be found in Iowa Code chapter 20.6. Other applicable provisions of the EAB can be found in Iowa Code chapter 10A.801. It was created as a neutral agency administered by a three-member Board. PERB's mission is to "To promote harmonious and cooperative relationships between government and its employees without disruption of public services, via the expert and timely services of a neutral agency."

Bargaining Unit Determination

Supervisory personnel are considered to be a part of management and are excluded from the provisions of the PERA. A few county officials, however, have complained that some of their supervisory personnel have been placed in the bargaining unit. This problem probably could be avoided with a comprehensive system of job descriptions based on a careful job analysis. When EAB comes in to conduct a unit determination, you will then be able to substantiate that a particular individual is indeed a supervisor. If you view a particular individual as a part of management, then give him or her clear supervisory responsibility and include it in a job description (Iowa Code §20.4).

The criteria that must be taken into consideration in defining a bargaining unit are the following:

- Principles of efficient administration of government.
- The existence of a community of interest among public employees.
- The history and extent of public employee organization.
- Geographical location.
- The recommendations of the parties involved.

The law also stipulates that professional and non-professional employees shall not be included in the same bargaining unit unless a majority of both agree (Iowa Code §20.13).

Collective Bargaining

Unfair Labor Practices

Another area of responsibility for EAB is the processing of prohibited practice complaints. If either an employee or an employer believes that a violation of the law has taken place, they have 90 days to file the complaint with EAB. The accused party has 10 days to file a written answer to the complaint. The Board may then conduct a preliminary investigation and, if necessary, hold a formal hearing to determine whether a violation did indeed occur. The Board's decision may be appealed to the district court, and the district court's decision may ultimately be appealed to the Iowa Supreme Court.

Prohibited Conduct by Employers

Under the PERA, it is illegal to:

- Interfere with, restrain, or coerce public employees in the exercise of rights granted by the PERA.
- Dominate or interfere in the administration of any employee organization.
- Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.
- Discharge or discriminate against employees because of union activity.
- Refuse to negotiate with a certified employee organization.
- Deny rights accompanying certification or exclusive recognition.
- Refuse to participate in impasse procedures.
- Engage in lockout.

Prohibited Conduct by Employees

It shall be a prohibited practice for public employees or an employee organization or any person, union or organization, or its agents willfully to:

- Interfere with, restrain, coerce or harass any public employee with respect to any of his or her rights under PERA or prevent or discourage his or her exercise of any such rights.
- Refuse to bargain collectively with the public employer.
- Refuse to participate in good faith in any agreed upon impasse procedure, or those set forth in PERA.
- Picket in a manner which interferes with entering and exiting a facility of a public employer.
- 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.
- Picket for any unlawful purpose.

Impasse and Impasse Resolution

The ideal labor-management relationship is one of cooperation and open communication. But the interests of labor and management are frequently in direct opposition and conflict, and the occasional inability to reach agreement on important issues is inevitable. Inexperience of either party at the bargaining table can also lead to impasse. Premature final offers, lack of preparation and personality conflicts are also factors that can lead to a breakdown in negotiations.

In the Iowa public sector, the two parties must agree either to follow the statutory impasse procedure outlined in PERA (Iowa Code § 20.19), or mutually agree upon the procedure that will be followed. Impasse procedures must be implemented not later than 120 days prior to the certified budget submission date of the public employer (March 31). The statutory impasse procedure requires that mediation be the first step in the procedure. This step is then followed by fact finding. If both mediation and fact finding are incapable of resolving the impasse, the law allows for final and binding arbitration (Iowa Code §20.22).

Mediation: Mediation is usually the first method used in attempting to resolve an impasse in collective bargaining. A neutral third party will be appointed by EAB upon request of either party. A mediator's job is to re-establish communication between the parties and encourage them to settle the dispute by themselves. A mediator does not hold formal hearings, keep transcripts or render an opinion about the issues in dispute and may not compel the parties to agree. The amount of intervention is minimal in mediation, but it has been the most effective way of resolving public sector labor disputes. During mediation, the parties continue to bargain with each other, with the neutral third party acting as a go-between, an interpreter and a counselor (Iowa Code §20.20).

Interest Arbitration: Interest arbitration is, under Iowa law, final and binding on both parties. The arbitrator is a neutral third party appointed by EAB. He or she, like the fact finder, holds a hearing, gathers testimony and evidence, and makes a decision. The difference is that the arbitrator's award is binding on both labor and management and becomes part of the written agreement. Interest arbitration, because its recommendations are binding on the parties, presents the risk that both parties will be bound to an unacceptable contract (Iowa Code §20.22). Therefore, more pressure is exerted upon them to settle voluntarily. Under Iowa law, strikes by public employees are illegal (Iowa Code §20.12). As a result of the 2017 law changes to Chapter 20, the parties are prohibited from introducing and the arbitrator is prohibited from considering evidence on subjects excluded from the scope of negotiations. For bargaining units where less than 30% of members are public safety employees, the arbitrator shall not consider past agreements or the employer's ability to impose or increase taxes, fees, or charges. The arbitrator also shall not award an increase in base wages that exceeds the lesser of 3% or the 12-month increase in the consumer price index for the Midwest Region.

Contract Administration

So now you have a contract! The long and difficult process of union-management negotiations is over for another year or two. But the extremely important and even more time-consuming process of administering the contract on a day-to-day basis is just beginning. For better or worse, once the contract is signed and ratified, it becomes legally binding on management, the union, and all of the employees in the bargaining unit. Contract administration is the effort of both management and labor to abide by the terms outlined in the contract.

Collective Bargaining

No Contract Is Perfect: No matter how carefully a contract is written, problems are bound to arise. No contract can ever cover all possible conditions and situations that may exist in the work environment. And even though the union and management agreed to specific contract language during negotiations, each side is likely to have a different interpretation of what the language means or how it should be applied. From time to time, the two parties may have to negotiate new language to cover a specific situation. Some disputes over administration of the contract, however, will never be resolved satisfactorily, and one or both parties may have to wait for the next negotiating period to seek relief. Sometimes contract language is left deliberately ambiguous because union and management officials are unable to reach complete agreement on how a particular clause should be worded.

Necessity of Uniformity and Consistency: The way in which management administers the contract can make or break the collective bargaining relationship. An attitude of cooperation and good faith is just as important in contract administration as it is at the bargaining table. You should try to settle disputes at the lowest level and with the minimum of animosity.

Successful administration of a contract probably depends more on uniformity and consistency than any other elements. It is critically important that the provisions of the contract be applied equally to all employees in all circumstances. If discrimination or favoritism takes place, you are almost certain to be faced with grievances.

Management must also avoid establishing undesirable past practices. Once a supervisor interprets and begins to apply a contract provision, a practice is being established, and it may become as strong as a written rule. If an arbitrator is called in to settle a grievance, he or she will consider both the written provision and the past practice of applying it. Management has often lost the right to enforce a particular contract provision by not enforcing it in the past.

Need For Intra-Management Communications

The importance of intra-management communications cannot be over-emphasized. The problems discussed above can often be avoided if members of the management team will communicate with each other. An annotated version of the contract with a written explanation of the background and intent of each clause can be very useful. Without this knowledge of the intent of the negotiating team, supervisors may give away in administration what the negotiating team refused to give away at the bargaining table. Supervisory personnel should meet and decide on a uniform interpretation and application of each clause and then stick to it. Regular meetings and training sessions where supervisors can discuss problems and share ideas and experiences are also of great value.

Grievances and the Grievance Procedure

As mentioned earlier, differences and disagreements between employees and management are inevitable. In a formal collective bargaining setting, these disagreements take the form of grievances and the method of resolving them is through the grievance procedure. The negotiated grievance procedure is the foundation of contract administration. It consists of a series of steps at which the grievance is heard, and time limits within which the aggrieved party must present the grievance and the management official must respond.

The first step should always involve the employee's immediate supervisor. And, wherever possible, the grievance should be settled at this first level. The employee will benefit by getting a quick solution to his or her problem and management will be able to save much valuable time. Since both the union steward and the first line supervisor are closer to the situation, they are likely to better understand the particular problem at hand than are higher level union or management officials. The mutual respect and working relationship of the two parties is likely to be enhanced if they can resolve the grievance themselves.

The typical grievance procedure will have no fewer than three steps or more than five steps. The final step usually allows for binding arbitration if the grievance has not previously been settled to either party's satisfaction. The scope of the grievance procedure is a question that must be resolved during negotiations. When we speak of the scope of the grievance procedure, we refer to whether or not employees will be allowed to grieve any disagreements with management or only those items covered under the collective bargaining agreement.

Many management officials think of grievances as a totally negative thing. They can tie up a lot of valuable management time, and frequently they are brought more for political reasons or with the purpose of keeping management "on its toes" rather than to bring attention to actual work-related problems. But, grievances can also be a valuable asset to management. An unusually large number of grievances coming from one particular department or supervisor may indicate a serious problem that needs attention. Perhaps that particular supervisor is not doing an effective job and is in need of additional training. Or maybe that department is understaffed.

The grievance procedure also provides a constructive channel through which employees can get gripes and complaints off their chests. This is far preferable to allowing employees to keep their dissatisfactions to themselves and having them adversely affect their job performance or their working relationship with other employees and with their supervisor.

Collective Bargaining

The First Line Supervisor

The first line supervisor is the key person in the labor-management relationship. This is the person who must take the union contract and apply its specific provisions on a day-to-day basis. It is also the supervisor who must keep his or her employees informed of all conditions surrounding the job.

Any new management policies or other changes impacting the employee should be promptly and thoroughly communicated. Lack of understanding between the supervisor and the employee reporting to him or her is the greatest single cause of grievances. Effective communication can go far in reducing grievances and improving working relationships.

It is critically important, too, that the first line supervisor receive all the necessary support and training from top level management. All too often, the first line supervisor is the person "stuck in the middle" - neither "management" nor "labor." He or she frequently adopts either: 1) a tough approach and, therefore, is resented by his or her employees; or 2) feels a stronger tie to the employees in the bargaining unit than to management and, therefore, may undermine management objectives. The first line supervisors have a very difficult job and they are worthy of all the support you can give them. Communicate with them and make it clear that you consider them to be an important part of the management team.

Nonpublic Meetings

Negotiating sessions, strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators are exempt from Iowa's open meetings law. Public employers cannot insist that negotiating sessions, after the initial two meetings, be open to the public.

Summary

The goal in collective bargaining is not to establish a winning record in negotiations with your employees. The employer who always "wins" at the bargaining table more often loses in the long run because of low employee productivity and mo- rale. Remember, not every employee request is excessive or unreasonable, so work to develop the "win - win" relationship with your employees. That is the key to successful bargaining.

Employment Law

Employment Law

This chapter covers employment law generally. For questions regarding unions, refer to the collective bargaining chapter.

Because each employment situation turns on the specific facts involved, this is only a general overview. For help with a specific problem, talk to your county attorney.

Recruiting, Hiring and Promotion Practices

Wages, salaries and fringe benefits comprise one of the largest items in the budget of every county in Iowa. A county needs to recruit and hire the most qualified employees possible to perform its necessary functions in this time of fiscal constraints.

Veteran Preference: Iowa Code §35C.1 requires that all veterans who served on active federal service, other than training, and were honorably discharged are to be given preference in appointment and employment over other applicants of no greater qualifications. In addition, under Iowa Code §35C.1(2), counties are required to utilize written application forms for all positions. And those application forms must inquire about the applicant's military service during time of war.

Iowa Code §35C.1(3) requires that a public notice of the job openings must be posted in a manner similar to the posting of public meeting notices. It must be posted at least 10 days before the application deadline. This is the only posting requirement for county jobs. There is no requirement that the job be advertised in a newspaper. However, you may want to advertise the job opening to get the most qualified candidates.

Regarding hiring, the Veteran Preference Law only requires that if two job applicants are otherwise equal, the job must go to the veteran. You can still hire the most qualified person for the job.

If you decide not to hire a veteran, you must set forth in writing "the specific grounds" upon which you made that decision, and this document must be filed for public inspection. At the time of application, or at the time of a job interview, an applicant may request that he be provided with a copy of this document, and you must provide it within 10 days after the successful applicant is selected (Iowa Code §35C.3).

Need for Recruiting: The first step in the hiring process is recruiting. The importance of attracting qualified applicants for jobs cannot be over-emphasized. The better the group of applicants, the more likely you are to select men and women who will become successful employees. Without active recruitment, available and qualified individuals may be unaware of job opportunities in your county. Two principal benefits can be expected from a good recruiting program: 1) a supply of qualified persons to fill immediate and specific openings; and 2) a knowledge of available sources from which to draw for future needs.

Your Present Work Force: One of the best sources for job applicants is your present work force. Many position vacancies may be filled by promotion or transfer of current employees. And there are some very good reasons for filling jobs in this way. Employee morale will be higher if you make it a policy to promote from within whenever possible. If your employees know that there are opportunities for advancement, they will be less likely to leave the job as soon as something better comes along. Much of the time and money normally involved in training new employees can also be used for other purposes. Your current employees can also serve as a valuable source of referrals. If your employees enjoy working for the county, they will likely tell their friends. Many qualified applicants can be obtained this way. Remember, though, even if you intend to fill a position by promoting a current employee, the county must still use a written job application form and post a notice of the job opening.

Recruitment Sources: While your present work force is valuable as a source of both applicants and referrals, it will still be necessary to look beyond it for many of your personnel needs. The most widely used method of recruiting for job openings is advertising. The classified advertising section of your local Sunday newspaper is a very good source. If you need to fill a specialized job, you can advertise in trade, technical, scientific and professional journals known to appeal to people with needed skills and qualifications.

Local schools and colleges can also be a very valuable source of recruits. Try to develop and maintain good contacts with teachers and guidance counselors. Invite students to tour the courthouse or send someone to speak to a class about county government and its varied functions.

You can encourage minority and female applicants by sending notice of job opportunities to schools and colleges, churches, clubs and organizations that serve these groups. It is important not to forget to post the notice of job openings as explained above.

Application Procedure

After you have recruited an adequate number of qualified applicants, the next step is to evaluate each one's suitability for employment. The two primary goals of the application procedure are: 1) to determine whether the applicant has the necessary qualifications for the job; and 2) to insure that nobody is denied the job solely on the basis of race, color, religion, sex, age or other non-job-related factors.

The procedure that you follow should be thorough and professional. At the same time it must be devoid of practices that may discriminate against any minority group or protected class of citizens. The three main components of the application procedure are the application form, the job interview, and various types of written and oral tests.

The Application Form: The application form is required by the state's veteran preference law and serves many useful purposes:

- Makes possible a preliminary screening of the qualifications of applicants.
- Identifies background information on which to focus employment interviews.
- Assures job seekers that their interest in employment is known to your county.
- Provides a pool of potential candidates when vacancies occur.

Essential information you can obtain from an application form includes the applicant's identification (name, address, and phone), his or her interests (which jobs, salary levels) and a summary of his or her background (education and training, work history and special qualifications). It is a requirement of state law that all application forms inquire about the applicant's military service during time of war.

Your application form should be as simple and brief as possible and still provide essential information about the job applicant. Unnecessarily long application forms may discourage people from applying. And an application form that doesn't reveal what you need to know is next to useless. In addition, under the Americans with Disabilities Act (ADA), the application cannot contain disability-related questions (although you may ask about an applicant's ability to perform specific job functions).

Job Descriptions: The hiring process involves two goals: 1) hiring the most qualified people for available jobs; and 2) carefully avoiding discrimination against otherwise qualified applicants because of their race, sex or other non-job-rated factors. One of the best possible ways of achieving both of these goals is by developing written job descriptions for each position in your county. You can select the most qualified people only if you know exactly what work they will be performing and what knowledge, training and skills they will need to perform it well. You should then use this same knowledge to develop interview and test questions that elicit only job-related criteria. The jobs in your county will change as your needs change, so your job descriptions will also need to be periodically revised and updated.

The Job Interview

The job interview is also an extremely useful tool. Interviews provide the opportunity to observe such things as the applicant's behavior, personality and ability to communicate which cannot be obtained from an application form. It can also provide the job applicant with the feeling that he or she is personally cared about in an otherwise impersonal process.

The interview further allows you the opportunity to inform the applicant of both your expectations of employees and of the benefits available to them. As with application forms you must be extremely careful not to ask questions that may be discriminatory. Under ADA, a county official should never ask if the applicant has any problems that would prevent him or her from being able to do the job. Rather, the county official should ask, "Do you have the ability to perform the essential functions of the job for which you are applying, with or without an accommodation?" If an applicant has an obvious disability, or reveals a disability, the EEOC rules permit the interviewer to ask, "Will you need an accommodation to do the job?" or "What kind of accommodation would you need?"

Testing: After the completion of the interview, some form of test may be administered for certain types of jobs. The three most important criteria for any test are that it must be objective, valid and reliable. By objective, it must disregard non-job related factors such as race, religion, politics, sex, etc. It must identify only those skills necessary to fill the position. A test is valid only if it measures what it purports to measure. If a test is reliable, a person taking it at two different times should make substantially the same score each time. Before assigning an applicant a skills test, speak with your county attorney to determine the appropriateness of any assessments you have devised.

It may be appropriate to require a prospective administrative professional to satisfactorily complete a typing test or to require an applicant for the road crew to demonstrate the ability to operate a truck or road grader. But be sure that you are not requiring more experience or education than is necessary to perform a given job.

Keep in mind that testing is just one of a number of selection devices and no single test or group of tests can determine whether an applicant should be accepted or rejected. Some important qualities cannot be measured by test. An intelligent selection decision is one which considers the information gathered from the application form, the job interview and any tests you may have administered. It is also desirable to check with the applicant's previous employers to obtain information regarding their performance on the job.

There are no state laws regulating county pre-employment drug and alcohol testing, and the only limits are those established by the Fourth Amendment search-and-seizure provisions of the federal Constitution. But a county should not engage in pre-employment drug testing without a written drug testing policy which has been approved by the county attorney. The ADA is neutral on drug testing. Drug and alcohol testing of those seeking jobs requiring CDLs is covered by federal law.

Orientation

Once a decision is made and a person has been hired, it is important that he or she be oriented to the new job. New employees should also be thoroughly informed of the county's personnel policies and have a clear understanding of what is expected of them and of what they can expect of their employer. Be sure to introduce them to other workers in their area and make them feel welcome and comfortable.

Equal Employment Opportunity: All persons regardless of race, color, religion, sex, national origin, age, belief, marital status, disability, sexual orientation or gender identity must be guaranteed genuine and equal access to available job opportunities. There is no conflict between equal employment opportunity and merit principles. Both require that selection, hiring, promotion, transfer and layoff decisions be based solely upon the person's individual ability and merit without regard to race, color or other non-job related factors.

Iowa Code chapter 35C grants veterans a preference at the time of their initial hire, and at the time of removal. But according to the Iowa Supreme Court, "there is nothing to suggest veterans are to be given ongoing preferences during their term of employment." *Stammeyer v. Division of Narcotics Enforcement,* 721 N.W.2d 541, 545 (Iowa 2006).

Employment Law

Personnel Policies: Personnel policies should be in writing, and both management and employees should study them and be aware of what they say. This practice will eliminate confusion and assure that each office is following the same policies.

Uniform personnel policies throughout the county are the most practical and manageable arrangement. Jealousy between employees of different offices or departments within your county will be held to a minimum if everyone is treated equally. Your employees may not always like or agree with everything that you do but they can and should always perceive you as fair. Every county should adopt personnel policies for employees that are not covered by a collective bargaining agreement. However, an elected official can choose not to adopt the county-wide personnel policies for his department.

Each employee should be required to sign a form acknowledging that they have received, and understand, the personnel policies. Reviews and updates by staff, and acknowledgment by employees, of personnel policies periodically is the best way to ensure everyone is aware of the current policies. You should always involve your county attorney in reviews and updates to personnel policies, as changes to the law may have occurred or you may be making changes that could have legal ramifications. For example, personnel policies should not be written in such a way that a court may interpret your handbook to be a contract.

The Costs of Discrimination: Discrimination, in addition to being illegal, is also very costly. In many cases, courts have awarded back pay to employees and applicants who have been victims of discriminatory treatment. The court costs themselves are expensive and can be a great financial burden on a local government's budget. Some political jurisdictions have had to forfeit federal grants in aid because they did not comply with federal EEO regulations. Furthermore, the under-utilization of women and minorities in the workforce denies the employer and public the benefit of their talents and skills.

Equal employment opportunity means equality of opportunity and not strict equality. To say that all persons have the right to compete for available jobs based on their merits does not mean that all persons are qualified or should be hired for a given position. Employers have both the right and the obligation to hire the most qualified individuals available.

Personnel Records: Personnel records maintained by the county are confidential public records under Iowa Code §22.7(11). So they do not have to be provided to the public. They do, however, have to be provided to the employee. Any employee is entitled to obtain a copy of his personnel file, including performance evaluations and disciplinary records (Iowa Code §91B.1).

But county records containing information about a specific employee's compensation, vacation and sick leave usage are public records available to anyone, according to the Iowa Supreme Court. Other records related to your employees may need to be stored separate from your personnel records. For example, HIPAA requires that health records of your employees (which you may have if your county operates a self-funded health insurance program), be stored separately from personnel records.

Discipline

A vital ingredient of successful personnel management in county government is the relationship between employees and their immediate supervisors. The supervisor can become the only member of management with whom the employee has direct contact. Management is represented by the supervisor in the eyes of the employee, and the supervisor's decisions represent management's decisions. Thus, the relationship between supervisor and employee cannot be over-emphasized.

The successful supervisor must outline to employees what their jobs consist of and keep them informed of all conditions concerning their jobs. The supervisor must orient an employee in job performance, work rules and also arrange for training. Once instructions and rules are understood by subordinates, management has the right to expect conformance and observance of them. Without employee discipline, or "orderly behavior," management will not be able to achieve its goals effectively.

Good discipline helps ensure that each employee will work for the good of all and will not transgress upon the rights of others. Good discipline also establishes what constitutes acceptable performance, helps to achieve quality work, and spells out probable reactions of managers to unsatisfactory conduct. The supervisor provides constructive leadership to employees and also affords them opportunity to contribute their ideas to improvement of working patterns.

In addition to being able to get along on a person-to-person basis, the supervisor must interpret the rules that apply to employees both individually and collectively and must apply these rules uniformly and impartially at all times. To apply rules otherwise would jeopardize teamwork and cause ill feel- ing among employees. Favoritism toward one employee could result in discrimination towards another. The supervisor must be fair at all times.

From time to time, supervisors encounter employees who are not living up to the required expectations. These situations demand the utmost in supervisory effort to assist the employee in correcting the problem and maintaining a high level of dedication to the goals of the organization. Effectiveness requires a variety of supervisory attitudes: firmness, patience, understanding and self-confidence. The crux of the problem is communication: explaining to employees what is expected of them, listening to detect their misunderstandings, learning employees' reactions to work environment and resolving problems arising from previous breakdowns in communication are positive steps toward good employee-employer relations. The use of firmness when there should be patience and exercising authority when there should be understanding breaks the lines of the communication process by condoning unacceptable behavior. Thus, knowing the various approaches to solving employees' problems is not sufficient; judgment and timing, when to do what, is critical to applying supervisory skills toward a solution.

The purpose of discipline is correcting job behavior problems of employees. Discipline is a learning process, whereby employee behavior is shaped to result in a cooperative and productive work force; discipline should always be corrective, it should concentrate on rehabilitation.

Disciplinary Principles: The effects of poorly handled discipline result in higher turnover, lowered productivity and increased job dissatisfaction. Also, if discipline is inconsistent and unsystematic, management's disciplinary actions will not stand under the review of a court of law.

Management must communicate standards of conduct and performance. When standards of conduct and performance can be expressed in writing, they should be communicated in writing to all employees. It is also helpful if employees are told the reasons for various rules and standards. An atmosphere of blind obedience to authority does not aid in compliance with the spirit of rules or standards, nor does it help the employer's case when disciplinary action is brought before an appeal body.

Rules and standards should be reasonable. Management has the right to make reasonable rules; rules that do not bear a reasonable relationship to an employee's job requirements can be challenged.

Rules and standards should be consistently applied. Requiring the employee to adhere to a standard or procedure and allowing flexibility to another similarly situated employee is discriminatory treatment. Lack of uniform and impartial treatment undermines respect for management and thwarts the disciplinary process.

Rules and standards should be categorized so employees know the penalties for violation. This also insures consistent treatment under like circumstances. Penalties should match the infraction. Minor infractions should not receive maximal penalties. The purpose of discipline is rehabilitation. Termination should only be used for serious offenses or in situations where rehabilitation has not produced satisfactory results and no alternative remains.

A systematic recording of facts and events relating to problems and attempted corrective action is necessary due to limited human memory. The burden of proof lies with the employer to show just cause for this disciplinary action. Every verbal warning and informal disciplinary conference with employees should be recorded.

Failure to take necessary action when warranted builds a climate which hampers future corrective actions. If discipline is lax or inconsistent, it may be overturned when reviewed. If an employee has been allowed to violate a rule without appropriate corrective action, management is not justified to suddenly impose severe disciplinary action. The same reasoning applies to rules which are not treated consistently within a department. If violations are permitted, employees may feel the supervisor does not consider the rule important and that violations will be condoned. To prevent situations in which the employees are justified in questioning the fairness of discipline, manage- ment must be consistent in taking corrective action each time problems arise.

Many of the principles of discipline inject a degree of formality and impartiality into the system which, if carried too far, will not serve the corrective and positive ends of such a program. Counseling involves a frank and open discussion with the employee regarding the problem situation. Listening, and permitting the employee to express his side of the story, is vital to the communication process and an essential element to problem solving.

The manager must go beyond disciplining the symptoms to try to overcome the underlying problem. For example, an employee who is frequently late for work may receive a written reprimand indicating the importance of arriving to work on time and a warning that repeated tardiness may result in more severe disciplinary action. Perhaps this is an employee who otherwise is a good worker, has been with the county for several years, and knows his job well. Will this reprimand correct the attendance problem? It may, but perhaps not.

What does the manager know about the underlying cause of this problem? Possibly the employee rides the bus and the bus schedules have been changed causing him to arrive late. Possibly the employee has been having family problems; morning squabbles at home have caused tardiness. Maybe the employee has assumed more responsibility and had previously been promised a reclassification, but it has not come, so she or he is now losing interest in working diligently.

The conclusion of the preceding example is if a manager expects to solve job problems, he or she must first identify the nature and the cause of the problems. The objective of corrective discipline is solving problems and retaining employees. This may appear to be a non-job related area; however, a non-job factor that causes a job problem is a legitimate concern of the manager.

Once the problem is identified, the manger must decide whether it is within her/his ability to help correct it. It would be unrealistic to expect the manager to serve as a professional family counselor, social worker, physician or clergyman; but it would be within his/her responsibilities to attempt to help the employee find outside assistance.

Employee counseling, a sincere attempt to resolve the job problem by dealing with the problem from the employee's viewpoint as well as from management's perspective, is probably the most important element in successful discipline.

Considerations prior to disciplinary actions include:

- Was the rule clearly communicated to the employee?
- Is the rule related to efficient, safe operations?
- Was the employee warned of the consequences of violating the rule?
- Did management investigate before administering discipline?
- Was the investigation objective and did it prove substantial evidence or proof of guilt?
- Have the rules and penalties been applied consistently?
- Is the penalty reasonably related to the seriousness of the offense?

Termination: Iowa is an employment at will state. This generally means that an employee can be fired for any lawful reason at any time. But there are many exceptions to this rule.

For instance, an employee cannot be fired for:

- Fulfilling jury duty
- Engaging in union activities
- Whistleblowing
- Filing a worker's compensation claim
- Filing for partial unemployment

In addition, those covered by the veteran preference cannot be fired except for incompetence or misconduct shown at a hearing. They are also entitled to pre-termination notice. An employee may also have a written contract. Also, enforceable contracts can be created by employee handbooks or personnel manuals.

County employees who have been fired due to allegations of dishonesty or immorality need to be given an opportunity to refute charges which may damage their reputation. A post-termination name-clearing hearing is sufficient.

Before terminating an employee, county officials need to consider:

- Is the employee covered by a collective bargaining agreement?
- Is the employee a veteran?
- Is the employee covered by any written employment contract?
- Is the employee being terminated for a reason contrary to public policy?
- Is the employee protected by any special statute such as the whistleblower statute?
- Is the employee being terminated due to his/her age, religion, sex, disability or race?
- Is the termination prohibited by the county's employee handbook/personnel policies?

If the answer to any of these questions is "yes," or if you are unsure, consult with your county attorney prior to taking any action.

References: Iowa Code §91B.2 gives immunity to employers who give information on current or former employees to a prospective employer, as long as the employer has not acted "unreasonably". *Hlubek v. Pelecky*, 701 N.W.2d 93 (Iowa 2005). In that case, the court held school officials acted reasonably when a student had claimed that a teacher had sexually harassed her, and while he was later acquitted, he was denied a position at another school after a background check.

Civil Service

Civil Service

Purpose
Iowa Code chapter 341A mandates that each county establish a civil service commission. The duty of the commission is to oversee the hiring, disciplining and firing of deputy sheriffs. The civil service commission statutes apply to all persons serving as salaried deputy sheriffs except chief deputies.

It is the civil service commission that is responsible for developing personnel rules for deputy sheriffs, testing job applicants, developing the list of qualified candidates for deputy sheriff and overseeing the sheriff's disciplining of the deputy sheriffs. The sheriff is required to follow the rules developed by the commission as far as the manner of appointment and promotion of deputies.

The role of the civil service commission is to guarantee that the appointment and promotion of deputy sheriffs is done on merit and qualifications for the job, not on politics. The civil service commission is also in place to make sure employment decisions regarding deputy sheriffs are not based on improper factors such race, gender and age.

Organization
The civil service commission in each county is to consist of three persons. Two of the members are appointed by the supervisors, the third member is appointed by the county attorney. The members are appointed to staggered six-year terms. All members must be county residents. Members cannot hold other appointed or elected public office while serving on the board. Members serve without compensation, but are reimbursed for necessary expenses and mileage (Iowa Code §341A.2).

Multiple counties can go together and form one multi-county civil service commission by a resolution of the board of supervisors (Iowa Code §341A.3). The civil service commission shall hold at least one meeting per year, and may hold additional meetings as required (Iowa Code §341A.5).

Powers
The civil service commission shall have the power, among other things, to:

- Establish rules regarding appointment, promotion and discharge, and adopt rules regarding civil service examinations.
- Arrange and administer competitive tests.
- Maintain service records for each civil service employee.
- Certify to the sheriff the list of qualifying candidates.
- Conduct informal hearings.

It is the civil service commission that is responsible for testing and ranking candidates for civil service positions. The civil service commission can set the requirements for the position, and then reject any candidate that fails to meet those standards.

The Iowa Supreme Court has held that candidates for civil service promotion are entitled to a list of the raw scores of the candidates and the grading scale (*DeLaMater v. Marion Civil Service Commission*, 554 N.W.2d 875 (Iowa 1996)).

Appointments
When there is a vacancy, the sheriff has to notify the civil service commission. When that happens, the civil service commission has to provide the sheriff with a list of the top 10 candidates for the vacant position, unless there are fewer than 10 qualified candidates (Iowa Code §341A.13). Whenever possible, positions are to be filled through promotion (Iowa Code §341A.8).

The sheriff must appoint from the list and cannot appoint someone not on the list, or reject all of the listed candidates. Each newly appointed deputy sheriff is subject to a probationary period, which is not to exceed nine months. During this period, the deputy sheriff is essentially an at-will employee.

Discipline
Following the disciplinary period, a civil service employee can only be demoted, discharged or suspended "for cause," and only upon written accusation of the county sheriff (Iowa Code §341A.12). The deputy sheriff then has 10 days to appeal the action to the civil service commission. The decision of the civil service commission is binding on the sheriff. If the commission upholds a decision to demote or discharge a deputy sheriff, the deputy sheriff can appeal that decision to district court.

Candidates
Iowa Code §341A.18(5) provides that civil service deputies, as well as chief deputies, who are running for partisan elective office, upon their request, must be given an unpaid leave of absence beginning 30 days before a primary, and again 30 days before a general election. Deputies may also choose to use their accrued vacation time during these periods. They also retain their health insurance during these periods. A sheriff who had permanent civil service rank as a deputy, then is elected as sheriff, is not entitled to automatically revert to a civil service position. This was the conclusion of an Attorney General Opinion (88-12-8).

Sanctions
Any willful violation of any of the civil service provisions constitutes a simple misdemeanor.

Human Services

Human Services

Introduction

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 Human Services Responsibilities

Iowa Code chapter 252 governs the provision of general assistance. Iowa Code §252.25 requires the board of supervisors of each county to provide assistance to poor persons who are residents in the county and who are:

- Ineligible for assistance under federal and state programs, or
- In immediate need and are awaiting approval and receipt of assistance under federal and state programs, or
- In immediate need because their needs cannot be fully met by state or federal assistance.

"Poor person" is defined in Iowa Code §252.1 to mean a person who has no property and is unable because of physical or mental disabilities to earn a living by labor. The Iowa Supreme Court has found that people with some property may still fall within the definition of poor person when their property is insufficient to provide support for them. The county must establish guidelines setting eligibility for the assistance. The board of supervisors determines the form of assistance. For example, it might be food, rent, clothing, utilities or medical care.

Iowa Code chapter 252 also authorizes counties to grant general assistance to "needy persons." Iowa Code §252.1 is not to be construed as prohibiting "aid to needy persons who have some means, when the board shall be of the opinion that the same will be conducive to their welfare and the best interests of the public."

A general assistance program for "needy persons" is optional on the part of counties, but should be considered when developing each county's general assistance ordinance. A county's general assistance guidelines determine who is eligible for such a program, what services will be provided and how much is to be spent per individual and county wide.

Iowa Code §252.26 requires the county board of supervisors to appoint a general assistance director for the county.

The Social Security Act

A substantive part of the federal government's role in human services is support through the Social Security Act and federal block grants.

The Social Security Act was started in the 1930s during the Great Depression. It is the foundation for the federal human services involvement. There are major provisions, or "Titles," of the Act.

Title II: Old age, survivors and disability insurance.

Title IV: Grants to states for aid and services to needy families with children and for child welfare services. Essentially, Title IV outlines the Aid to Families with Dependent Children program (AFDC). In 1996, Congress passed the Temporary Assistance for Needy Families (TANF) Block Grant of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act"). The block grant took effect July 1, 1997. TANF made many changes affecting a range of federal programs, including the Food Stamp Program, other nutrition programs, the Supplemental Security Income (SSI) Program, child support enforcement, and child care. In order to receive the TANF block grant, a state must submit a state plan that the Secretary of Health and Human Services (HHS) finds in compliance with federal law. While counties do not fund these programs, reduction in funding or eligibility can affect counties, as the lack of TANF dollars may increase the number of people seeking county general assistance.

Title XVI: Supplemental security income for the blind, aged and disabled (SSI). This program makes cash payments to disabled persons. SSI benefit levels are important to counties as these standards are used in Iowa to determine eligibility for other programs. In addition, SSI helps pay the cost of housing for disabled persons. The federal government in the mid-1980s initiated the SSI Interim Assistance Reimbursement program. The program provides reimbursement for county expenditures made to individuals through general assistance, veteran's affairs, or other county-funded programs if the individual is eventually determined eligible for SSI. Most counties either delegate the responsibility to a county employee or contract with Legal Services Corporation of Iowa to handle the application and appeals process of those seeking SSI.

Title XVIII: (Medicare): This program provides health insurance for aged, blind and disabled persons. Eligibility and benefits are determined and paid by the federal government. Federal decisions regarding Medicare eligibility and benefits impact counties. When eligibility is restricted or benefits are too low, more people will seek county help.

Title XIX: Medical Assistance Programs (Medicaid). This is a federal-state program providing medical services to eligible persons. The state and federal governments share the cost of Title XIX. Title XIX is used to pay the cost of health care services for individuals of low income who are aged, blind or disabled, or members of families with dependent children. Iowa instituted a limited health care plan, IowaCares, on July 1, 2005 that can provide some inpatient and outpatient services, doctor, and advanced registered nurse practitioner services, dental services, limited prescription drug benefits, and transportation for persons below 200% of federal poverty who would not otherwise be eligible for Medicaid funding. The Consolidated Omnibus Reconciliation Act of 1986 (COBRA) affects Medicaid as persons who are mentally ill, intellectually disabled, or developmentally disabled cannot stay in Intermediate Care Facilities (nursing homes) unless they receive "active treatment" of their disability and are of an appropriate age to stay in a nursing home. These individuals are frequently moved to ICF/ID or other living arrangement where the counties were responsible for the state match until July 1, 2012 when this responsibility was transferred to the state.

Services funded by Title XIX include those provided by private physicians, nursing facilities, hospitals, public health nurses, community mental health centers, and some rehabilitation or in-home services. Products covered under the Iowa Medicaid plan include prescription drugs, prosthetic devices, eyeglasses and other durable medical goods.

In Iowa, Title XIX is used to pay for services to persons with intellectual disabilities at ICF/IDs, including the Woodward State Resource Center and community-based ICF/ IDs and the Home and Community Based Waiver for persons with Intellectual disability (HCBS/ID). Counties paid the non- federal share of Title XIX for all ICF/ID and HCBS/ID Waiver services for person 18 years and older until July 1, 2012, when this responsibility was transferred to the state. The state contin- ues to pay the non-federal share for children under age 18. Prior to July 1, 2018, the state paid for those persons with no county legal settlement as was the case before the transfer. Effective July 1, 2018, the State Payment Program was eliminated, and all funds were redistributed to Child and Family Services.

Under Medicaid, services fall into several different categories. A large portion of the federally mandated services pertains to health care coverage, including visits to physicians and hospitalization. These entitlement services must be included by all states in their Medicaid plans. In addition there are programs that states include under Medicaid that are identified as optional services. Items or services that are optional include: drugs, outpatient mental health, ICF/ID, specialist care such as podiatry or optometry services, and habilitation services.

Iowa has also chosen to develop seven Home and Community Based Waivers services for special populations, including persons with intellectual disability, brain-injury, physical disability, health and disability, AIDS-HIV, children's mental health, and elderly. In these services the federal government waives the normal Medicaid requirements and allows the state to design a program that is: 1) targeted to a specific population or geographic area; 2) limited to the number of persons that can be involved each year; 3) time limited; and 4) cost-effective to the Medicaid program.

Social Services Block Grant

The federal Social Services Block Grant (SSBG) funds are allocated to a number of adult and children's services, including a significant appropriation for the local purchase of adult mental health and intellectual disability services. The services that have traditionally been funded under SSBG are:

- Direct Service. These are social services provided by Iowa HHS employees. Services provided under the direct service portion of SSBG include adoption services, child protective services, community support services, dependent adult protection, family-centered services, juvenile court-related services, client assessment and case management.
- State Purchase. This portion of the SSBG is appropriated by the Legislature to Iowa HHS for purchasing services from other providers, most often private nonprofit agencies. Some of the services Iowa HHS buys with state purchase money include foster care, residential treatment, family planning, foster care group home services and administrative support.
- Local Purchase. Counties used to get local purchases of services that required counties to expend those funds on MH/DS services accord- ing to the county management plan approved by the Director of the Iowa HHS. These funds now go to the state.

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 effective- ness 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 MHDS region must pay for the "treatment, training, instruction, care, habilitation, support, and transportation of persons with an intellectual disability, as provided for in the applicable regional service system management plan implemented pursuant to section 331.393 in a state resource center, or in a special unity, or any public or private facility within or without the state, approved by the director of human services." (Iowa Code §222.60)

Persons with Mental Illness: The MHDS region 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 §230.1A). The MHDS region 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 serious 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 continu- ous, 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 serious mental illness.

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 activ- ity: 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, through the regional service system management plan, 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, through the MHDS region, is generally not required to fund services for persons with a brain injury, but may do so at the region's discretion if included in the region's management plan. In 2019, the Legislature passed a bill that eliminates the monthly budget cap for those that are on the Medicaid Home and Community-Based Services Brain Injury Waiver. The bill further requires the Iowa Department of Human Services to track the average amount that is appropriated per waiver recipient each fiscal year and to provide that information in an annual report to the Iowa General Assembly.

Region Management Plan: Regions are required to submit a county management plan for approval by the director of the Iowa HHS, following review by the MH/DS Commission. The plans must identify how the county plans to implement the follow- ing 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 as- surance. Each region is required to establish a and employ a qualified region CEO.

Mental Health and Disability Services (MH/DS) Redesign

Over the past several 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 transitioned the

basis for funding responsibility from legal settlement to residency; and established core services that would be available throughout the entire state. This bill specified that the county based regional service system would be responsible for MH/DS services for adults that are not covered under the medical assistance program. The bill established the mental health and disability regional services fund, which would distribute future state appropriations to the MH/DS regions to pay for services. The financing of each regional service system was 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. However, an allowed growth adjustment was never approved. In 2021, SF 619 was passed to shift funding from the counties to the state.

The full implementation date for regions was on June 30, 2014 and 15 regions went into effect at that time. As of July 1, 2023, there are 11 regions.

The Legislature set out the per capita funding for FY 2014 and FY 2015. In 2017, SF504 equalized levy capacity within a region but not to exceed the $47.28 cap. Previously, even in a region, each county had different levy authority, and some were not able to contribute an equal amount. This legislation also directed regions to reduce fund balance to either 20% or 25% cash flow across fiscal years depending on their populations. In 2019, Legislation was passed to raise the carry-over restriction to 40%.

In 2018 the Legislature passed HF 2456 which added many crisis services to the list of funding that regions had to provide for. These included services designed to keep persons with mental illness out of institutional, legal and hospital settings. These services are currently being designed and implemented statewide even though no additional funding authority was given to regions.

In 2019, the Legislature passed a bill that establishes a Children's Mental Health System in Iowa. This new system utilizes the existing adult regional based MH/DS system for service delivery and requires a children's mental health coordinator in each of the regions. Further, it outlines what core and core plus services are or could be provided to children and adds members specifically focused on children to the regional governance boards. Unfortunately, no additional revenue was given to the counties and regions to provide these new services nor were counties granted the ability to generate sufficient revenue by eliminating or adjusting the mental health levy caps.

In 2021, the Legislature passed SF 619 which shifted regional funding to the state. The Legislature set out per capita funding for FY 2022 through FY 2025 (FY 2022 was $15.86, FY 2023 is $38 per capita, FY 2024 is $40 per capita, and FY 2025 is $42 per capita). Starting FY 2026, the per capita funding will be calculated using a regional service growth factor, which is defined in Iowa Code § 225C.7A.

In 2024, the legislature passed HF 2673 where MHDS regions will be eliminated and replaced by seven behavioral health districts to be managed by contracted Administrative Service Organizations (ASO). The ASOs will be responsible for ensuring access to comprehensive prevention, treatment, recovery, and crisis services for mental health and addiction (including alcohol, drugs, tobacco, and gambling). The ASOs will also have one behavioral health service system statewide plan, instead of having individual plans for their districts.

Each district will have a 10-person advisory council made up of local providers, elected officials, and other partners to advise the district ASO.

HF 2673 will also transfer oversight of disability services from MHDS regions to the Division of Aging and Disability services (ADRC). HHS will create Disability Access Points (DAPs) to coordinate and oversee access to long-term services and supports in each disability service district.

This realignment plan will go into effect on July 1, 2025.

Iowa Health and Wellness Plan

In legislation passed in 2013, Iowa expanded Medicaid coverage to persons between the ages of 19 and 65 whose income does not exceed 100% of the federal poverty level (FPL). Covered services include prescription, dental, and habilitation services. Persons in the 19 to 65 age range with incomes between 100% and 133% of FPL will receive premium assistance for the purchase of health insurance through the American health benefits exchange.

IA Health Link

On April 1, 2016, most Iowa Medicaid programs were joined together into one managed care program called IA Health Link. In a managed care model, the state contracts with managed care organizations (MCOs) to provide and pay for health care services. IA Health Link brings together physical, behavioral and long term care under one program. Individuals enrolled in IA Health Link choose which MCO they receive coverage through.

Mental Health and Intellectual Disability Funding Streams

Other Funds: Other state funds include the Family Support Subsidy, Special Needs Grants, MH/DS Child and Family Services 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 benefits, the Medicaid program funds several special programs for the MH/DS populations. These services include: 1) ICF/ID; 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 Iowa HHS to the Medicaid Plan in 1988. The state is required to pay for 100% of the non- federal share when services are provided under the medical assistance program to persons with intellectual disability, a developmental disability or chronic mental illness. The candidate services are:

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

Human Services

Mental Health Advocates
Mental health advocates are county paid employees, as required by Iowa Code §229. Mental health advocates are appointed by the court to represent the interests of individuals who have been involuntarily committed.

Iowa HHS Field Services/Service Area Advisory Boards
Iowa HHS maintains an office in each county, though they are not all staffed on a full-time basis. Iowa HHS determines in which com- munity the office will be located. The board of supervisors shall determine the location of the office space for Iowa HHS in that community. The board of supervisors is mandated to "make reasonable efforts" to attempt to co-locate the Iowa HHS 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).

Iowa HHS must use the case-weight system to assure service provi- sion. The county is to be contacted by Iowa HHS 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.

Iowa HHS divides the state up into five service areas. Iowa HHS is man- dated to establish one or more advisory boards. The purpose of the advisory board is to improve com- munication and coordination between Iowa HHS and the counties. Each county board of supervisors in the service area appoints two members. In making the appointment, the county shall make the appointment on the basis of interest in maintaining and improving service delivery. 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. The county is also required to pay for the cost of a physician's examination of an indigent person being committed if ordered by the court.

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

Dual Diagnosis Program
Legislation passed in 1998 expanded the dual diagnosis unit serving persons with co-existing conditions of mental illness and substance abuse at the Mt. Pleasant Mental Health Institute. Counties are required to pay 50% of the actual per diem, but are allowed some flexibility to fund from the county MH/ID/DD/BI Services Fund or the general fund. However, as of July 1, 2015, all state-run facilities that provided the dual diagnosis program have closed.

Juvenile Services
Juvenile Justice System: The county's responsibilities for juvenile programs are identified in Iowa Code §232.141. Costs charged to the county in which the proceedings are held include fees and mileage of witnesses; expenses of officers serving notices and subpoenas; and compensation for a court-appointed attorney serving as counsel or guardian ad item.

Counties must pay the difference between the capped rate that the state pays shelter facilities and the actual and allowable statewide average shelter care rate as determined by Iowa HHS.

Juvenile Detention: In 1987, the state of Iowa was ordered by a federal district court judge to submit a plan to reduce the rate of jailing juveniles to bring Iowa in compliance with the federal juvenile detention standards by the end of 1987. The state passed SF522 in 1987 to comply with the court order and to put severe restrictions on the cases in which a juvenile may be placed in an adult detention facility and the length of time the juvenile may be held there. HF2278, passed during the 1988 session, made further adjustments to the juvenile detention laws. The jail removal effort put additional pressure on county juvenile detention facilities.

In 1991, SF471 loosened the juvenile detention laws, providing that if the court has waived its jurisdiction over the child for the alleged commission of a forcible felony, and there is a serious risk that the child may be a harm to others, the child may be held in the county jail. However, "wherever possible" the child shall be held in sight and sound separation from adult offenders.

In 2008, there were ten juvenile detention facilities in operation around the state, licensed for a total of 235 beds. Some of the facilities are multi-county operations. County and multi-county juvenile detention facilities are entitled to receive financial aid from the state in an amount not to exceed 50% of the costs of establishing, improving, operating and maintaining the facilities. The state has never appropriated a significant amount to assist counties with these expenses. In 1997, the Legislature recognized the need for additional funding for juvenile detention, but instead of increasing the general fund appropriation for juvenile detention, tied the appropriation amount to the first $1 million generated from driver license reinstatement fees.

County of Liability

Previously, legal settlement determined which county was liable for the payment of county services described by the previous sections. In 2012, as a part of the MHDS redesign, responsibility converted from legal settlement to residency. In 2018, other related county services are to be paid by the county of residence (juvenile services, general assistance, etc). County of residence is defined as "the county in this state in which, at the time a person applies for or receives services, the person is living and has established an ongoing presence with the declared, good faith intention of living in the county for a permanent or indefinite period of time. The county of residence of a person who is a homeless person is the county where the homeless person usually sleeps. A person maintains residency in the county or state in which the person last resided while the person is present in another county or this state receiving services in a hospital, a correctional facility, a halfway house for community-based corrections or substance-related treatment, a nursing facility, an intermediate care facility for persons with an intellectual disability, or a residential care facility, or for the purpose of attending a college or university." Iowa Code §225C.61(1).

Local Boards of Health and Public Health Nurses

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)]. In 2020, a bill was passed that allows for a physician assistant or a nurse practitioner to serve on a local board of health in the physician slot. 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 such population-based and personal health services as may be deemed necessary for the promotion and protection of the health of the public as well as environmental health services as may be deemed necessary for the protection and improvement of the public health [Iowa Code §137.104].

The legal responsibilities and duties of the local board of health established in Iowa Code, and implemented through Iowa Administrative Code. Duties are directed by Iowa Code Chapter 137 and Iowa Administrative Code 641.77, but these are not the only areas of code and administrative code that describes responsibilities and duties of the local board of health. It also has to abide by Iowa Code Chapter 80 and 22 and open record guidelines. Local boards of health also responsible for requirements of Iowa Code 351 " - Dogs and Other Animals", Iowa Administrative Code 21 – Chapter 61 " Dead Animal Disposal" and Iowa Administrative Code 567 – Chapter 68 "Commercial Septic Tank Cleaners."

The local board of health is held responsible for public health in its jurisdiction. It supports local public health vision, mission, and advocacy and encourages community involvement in setting public health priorities. The local board of health oversees utilization of the Local Public Health Services Contract. The board also enforces state health laws and rules and lawful orders of the state department. Local health boards also designate an agency to assure compliance with Iowa Public Health Standards in the jurisdiction or county. The Iowa Department of Public Health contracts with local boards of health to assure the delivery of the core public health functions of policy, assurance and assessment are being carried out.

A primary duty of the local board of health is to create reasonable rules and regulations that are not inconsistent with state or federal laws, the rules of the state board, or state health standards. The first priority of the local board of health is the protection and prevention as well as overall improvement of public health practices.

Additional powers of the local boards of health include:

- May provide population based and personal health services as may be deemed necessary for the promotion and protection of the health of the public.
- Provide environmental health services as may be deemed necessary for the protection and improvement of the public health.
- May engage in joint operations and contract with colleges and universities, the state department, other public, private, and nonprofit agencies, and individuals.
- The board of health is in charge of setting fees for personal and public health services. No person shall be denied necessary services within the limits of available resources because of inability to pay the cost of such services.
- The local board of health also enforces appropriate public health ordinances by agreement with board of supervisors or councils. Some local health boards issue licenses and permits and charge reasonable fees in relation to the construction or operation of nonpublic water supplies or private sewage disposal systems.

Finally, local boards of health have oversight for Environmental Health programming including, but not limited to, the grants funding to counties program, lead poisoning prevention, public health nuisances, food establishment inspections, swimming pool, tanning beds and spa inspections, and time of transfer (real estate) inspections for on-site waste water systems.

The board of supervisors may appropriate from the county general fund moneys for the purpose of providing local public health services. The auditor shall keep a record of county appropriations for public health and shall only issue warrants on those funds upon approval from the local board of health. [Iowa Code §331.427(3)(e)].

The Legislature appropriates funds to Iowa HHS for local public health services. The Iowa HHS allocates these funds to each local board of health according to a formula. This appropriation helps the county fund public health services to improve the health of the entire community; prevent illness; enhance the quality of life; provide services to safeguard the health and wellness of the community; reduce, prevent, and delay institutionalization of consumers; and preserve and protect families.

District health boards may be established upon approval of a request from the counties accepted by the state board of health [Iowa Code §137.107]. Eligibility and program standards are developed by the DPH in administrative rules. Upon appointment of a district board, the county boards involved shall be dissolved and their powers and duties transferred to district board [Iowa Code §137.115].

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)].

Iowa HHS is given the power to administer healthy aging and essential public health services by approv- ing 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(10)].

County Care Facilities

County care facilities are residential health care facilities licensed by the Department of Inspections and Appeals under Iowa Code chapter 135C. The populations of county care facilities are primarily persons with serious mental illness, substance abuse, intellectual disability or other disability. Since the mid-1970s, the majority of counties have chosen either to close or to enter into a contractual agreement with private entities for the operation of such facilities. This trend has resulted in only a handful of county care facilities owned and operated by local government. One reason for the move toward private care facilities is a set of federal regulations that prohibit Medicare or Medicaid funding for residents of state-or county-administered facilities that house more than 15 persons.

Torts

It used to be that counties were covered by "sovereign immunity" and could not be sued for their mistakes; however, that is no longer true. Now counties are generally liable for their torts, and those of their officers and employees while acting within the scope of their employment (Iowa Code §670.2). "Torts" include every civil wrong which results in wrongful death or injury to person or property. It includes negligence and breach of duty (Iowa Code §670.1(4)). The county is liable for actions of volunteers, since Iowa Code §670.2 includes under the definition of employee "a person who performs services for a municipality whether or not the person is compensated for the services."

Immunities

While counties are still generally liable for their mistakes, Iowa Code §670.4 establishes many important tort immunities, situations where, for public policy reasons, counties are immune from liability despite mistakes that they might make.

Iowa Code §670.2 states that "except as otherwise provided in this chapter, 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,…" Iowa Code §670.4 then lays out specific immunities, or, exceptions to this rule.

These immunities include:

- Immunity for any claim in connection with the assessment or collection of taxes.
- Immunity for discretionary decisions. Counties can still be sued for mistakes made in carrying out those discretionary decisions.
- Immunity from any claim for punitive damages.
- Immunity for failure to discover a latent defect in the course of an inspection.
- Immunity for negligent design of a road, as long as it was designed in accordance with generally accepted safety standards.
- Immunity for negligent design or construction of any public improvement.
- Immunity for negligently issuing a license or permit to a third party.
- Immunity for negligently conducting an inspection or investigation.
- Immunity in connection with an emergency response, including emergency response communications services.

Road Signs: When it comes to road signs, counties are generally immune from liability due to Iowa Code §668.10(1). This section provides that a county cannot be assigned any percentage of fault for failing to "place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices. However, when a sign or other regulatory device has been set up by the county, then the county "may be assigned a percentage of fault for its failure to maintain the device."

Here are some examples of Iowa Supreme Court cases discussing governmental tort immunities:

Fischer v. City of Sioux City, 695 N.W.2d 31 (2005): A city was immune from liability under Iowa Code § 670.4(8) in a negligence action brought by families whose basements were flooded because when the city installed a storm drainage system in 1973, a 60-inch pipe complied with an existing generally recognized engineering standard.

Madden v. City of Eldridge, 661 N.W.2d 134 (2003): City was immune from liability to deceased tenant for its inspector's omissions pursuant to his inspection of an apartment building during its construction, where, although the city inspected the building, it did not supervise or control the contractor.

Graber v. City of Ankeny, 656 N.W.2d 157 (2003): Because a city's judgment in timing traffic signals was based on nothing more than generic safety considerations, the city was not immune from a tort action brought by a motorist involved in a traffic accident at a city intersection.

Other county officials may have applicable immunity to their roles for the county. *Venckus v. City of Iowa City* is the most recent case that ISAC has signed onto an amicus curiae brief (also known as friend of the court briefs which allow non-parties to a law suit to file arguments before the court so as to assist the court in providing information on possible impacts of its decision). This case is a follow-up case after the *Godfrey* case, in which ISAC also filed a friend of the court case in 2017. In *Godfrey*, the Court was considering if someone could make a monetary claim for a general constitutional violation without a specific statute providing for damages. The Court did not rule in favor of what ISAC advocated for and found that persons could demand monetary damages for general constitutional violations. In *Venckus*, the question is whether prosecutorial immunity applies in *Godfrey*-type claims. ISAC signed onto an amicus curiae brief with the Iowa County Attorneys Association to argue that prosecutorial immunity should apply regardless of the type of claim being made by the plaintiff, so long as type of activity falls within the judicial process. In June of 2019, the Iowa Supreme Court ruled that absolute immunity still applies even after *Godfrey* when actions in question are part of the judicial process. ISAC has signed onto an amicus curiae brief, again with the Iowa County Attorney Association, in the *White v. Karkrider* case to argue that *Godfrey* should be overturned. *Godfrey* was overturned by the Iowa Supreme Court in an opinion prior to *White* and the change was affirmed in the *White* opinion.

Personal Liability

Officers and employees are not personally liable for claims which are covered by the Iowa Code §670.4 immunities. So if the county is immune from liability, so is the county employee. The only exception is claims for punitive damages. Counties are not liable for punitive damages. County employees can be liable for punitive damages. But in order to recover punitive damages, a plaintiff must prove actual malice or willful misconduct or recklessness. The county has to defend and indemnify its officers and employees against any tort claim or demand arising out of an act or omission occurring within the scope of their employment or duties (Iowa Code §670.8). The duty to defend and indemnify applies whether the county is named in the lawsuit or not. There is no responsibility to indemnify officials or employees regarding punitive damages.

Insurance

A county may purchase liability insurance to insure against the actions allowed by Iowa Code §670.2. Or a county may self-insure or join a local government risk pool (Iowa Code §670.7). The purchase of insurance constitutes a waiver of the governmental immunities created in Iowa Code §670.4 “to the extent stated in the policy,” (Iowa Code §670.7). The immunities are not waived if the policy does not cover them in the first place.

Counties therefore need to purchase liability policies which specifically exclude tort claims for which the county is granted immunity under Iowa Code §670.4. If a county adopts a self-insurance program or joins a government risk pool, that action does not waive the Iowa Code §670.4 immunities.

Sources of the Law

Sources of the Law

Statutes
Changes made to the Iowa Code through the 2022 legislative session are included in the 2023 Iowa Code.

Code chapter 331 contains most of the most important provisions related to counties. It is organized, in part, as follows:

331.101
Definitions.

331.201 - 331.216
Board of Supervisors organization.

331.231 - 331.263
Alternative forms of county government.

331.301 - 331.309
General county powers and duties.

331.321 - 331.325
Duties and powers of the board relating to county and township officers and employees.

331.341 - 331.342
Duties and powers of the board relating to county contracts.

331.361 - 331.362
Duties and powers of the board relating to county property.

331.381 - 331.385
Duties and powers of the board relating to county services.

331.401 - 331.491
Duties and powers of the board relating to county finances.

331.501 - 331.512
Responsibilities of county auditor.

331.551 - 331.559
Responsibilities of county treasurer.

331.601 - 331.611
Responsibilities of county recorder.

331.651 - 331.661
Responsibilities of county sheriff.

331.751 - 331.759
Responsibilities of county attorney.

331.801 - 331.805
Responsibilities of medical examiner.

331.901 - 331.909
Miscellaneous provisions.

The "county" section of the Iowa Code is chapters 331 through 356A. Included are county zoning (chapter 335); county civil service for deputy sheriffs (chapter 341A); county conservation boards (chapter 350) and county jails (chapter 356).

Recently enacted legislation can be found on-line through the General Assembly website: www.legis.state.ia.us. That website also has an on-line version of the Iowa Code. (The online version of Iowa Code § 331, can be found here: https://www.legis.iowa.gov/docs/ico/chapter/331.pdf.)

Acts - Session Laws of the General Assembly: Laws and joint resolutions passed during the legislature's annual sessions are collected in hardbound volumes titled Acts 20** Regular Session **G.A. Each act is prefaced by a brief explanation of what action the Legislature has taken. Here is an example taken from the Acts of 1993 Regular Session 75 G.A.:

"Chapter 148
Duties of County Recorder and Auditor
S.F. 165

AN ACT relating to the duties of the county recorder and auditor.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 331.502, subsection 49, Code 1993, is amended to read as follows: Carry out other duties required by law and duties assigned pursuant to section 331.323 or 331.610.

Section 2. NEW SECTION. 331.610 ABOLITION OF OFFICE - TRANSFER OF DUTIES.

If the office of county recorder is abolished in a county, the duties prescribed by law to the office of recorder relating to the filing or recording of instruments affecting real estate shall be performed by the county auditor.

Approved May 20, 1993"

Underlines indicate new material added to the existing statute; ~~strike-through letters~~ indicate deleted material. A statute in the Code will have a reference to its origin in the Acts. It is often useful to check the session law version as it represents the exact form of the proposal ultimately approved by the Legislature. In the back of each volume of the Acts is a subject index.

Electronic versions of the Iowa Acts can be found here: https://www.legis.iowa.gov/law/statutory/acts/actsChapter

Statutory Interpretation
Principles of Statutory Construction: Many judges and lawyers are frequently frustrated by ambiguous statutes. As a county official, you may also ask, "What could the Legislature have meant by this law?" Iowa Code chapter 4 outlines general rules of statutory construction. For example, Iowa Code §4.1(30) provides:

Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:

- The word "shall" imposes a duty.
- The word "must" states a requirement.
- The word "may" confers a power.

Sources of the Law

In construing an ambiguous statute, courts are authorized in Iowa Code §4.6 to consider the following factors:

- The object sought to be attained.
- The circumstances under which the statute was enacted.
- The legislative history.
- The common law or former statutory provisions, including laws upon the same or similar subjects.
- The consequences of a particular construction.
- The administrative construction of the statute.
- The preamble or statement of policy.

Legislative History: Legislative history refers to the background and events, including committee reports, hearings, and floor debates, preceding enactment of a law. The United States Congress publishes the legislative history of major statutes in U.S. Congressional and Administrative News. Determining legislative intent behind Iowa statutes is more difficult because while actual motions and amendments are recorded, there is no record kept of legislative floor debate.

Attorney General Opinions

Attorney General Opinions answer legal questions of a public nature that relate to a public official's duties. An Attorney General Opinion is not binding on a court of law, but is given careful consideration and respect. County officials are not bound by Attorney General Opinions either. But county officials should consider them for what they are: legal advice by some of the state's top lawyers.

Copies of opinions are available at the Iowa Attorney General's website: http://government.westlaw.com/iaag.

Iowa Administrative Code

Suppose the Legislature were to pass a law which requires all jet ski operators to have 20 hours of safety instruction from the Department of Public Safety (DPS). The legislation would most likely be very vague, and not go into details about what was to be covered in the 20-hour course, who would offer it and what the certificate confirming the training would look like. Those details would be covered in administrative rules issued by the DPS, for two reasons: 1) the Iowa Code would be 50 volumes long if all those details were included in legislation; and 2) the DPS knows a lot more about jet ski safety than the Iowa Legislature.

Administrative rules are the method by which state agencies take the responsibilities assigned to them by law, and flesh out the details. Properly established administrative rules and regulations issued by state agencies and departments have the force and effect of law.

Iowa county officials should care about administrative rules because there are administrative rules concerning the following "county" topics, among others:

- Annexation
- Autopsies
- Budget Amendments
- Bridges
- Conservation Boards
- Elections
- Empowerment Areas
- Health Boards
- Indigents
- Jails
- Mental Health Services
- Supervisor Boards
- Taxation

The Administrative Code is available online through the Iowa General Assembly website at www.legis.state.ia.us.

The Iowa Administrative Procedure Act (Iowa Code chapter 17A) requires that prior to the adoption, amendment or repeal of a rule an agency shall give notice of its intended action. Notice of intended agency action must be published in the Iowa Administrative Bulletin, a biweekly publication, at least 35 days in advance of the rule being adopted in final form. The notice indicates the time when, the place where and the man- ner in which interested persons may present their views on the proposed action, and must include a description of the subject and issues involved. All interested persons must have no less than 20 days to submit their written response to the proposal; in certain situations an oral hearing might be granted.

Following the public input, the state agency files the final version of the proposed rule, which is published in the Iowa Administrative Bulletin. Then at least 35 days must pass before the rule becomes effective. On occasion rules are filed on an "emergency basis," meaning that the rule goes into effect on an expedited basis without notice and opportunity to comment.

During the rulemaking process, the proposed rules come before the Administrative Rules Review Committee (ARRC), a legislative committee charged with overseeing the administrative rules process. Information about the ARRC, including upcoming agendas and meeting dates, is published in the Iowa Administrative Bulletin.

Sources of the Law

Court Decisions

The Iowa District Court is a unified trial court of general jurisdiction.

Appeals from the district court are filed with the Iowa Supreme Court, which may transfer appeals to the Iowa Court of Appeals. The Court of Appeals was created in 1976.

Recent Iowa Supreme Court decisions, and Court of Appeals decisions, are available online at: http://www.iowacourts.gov/.

A specific decision can be located by interpreting its citation. For example, the citation of *Oliver v. Sioux City Community School District* is 389 N.W.2d 665 (Iowa 1986). This 1986 Iowa Supreme Court decision can be found in volume 389 of the Northwestern Reporter, second series, on page 665. The Iowa Reports are abbreviated in citations as "Iowa", and the first series of the Northwestern Reporter is cited as "N.W."

If you find a case which seems to answer a question or give guidance in some way, make sure that you consult your county attorney as to whether the ruling is still applicable. County attorneys have the research tools to determine whether courts have overruled or modified prior decisions.