



**REPORT OF THE  
IOWA ATTORNEY GENERAL  
2001-2002**

## TABLE OF CONTENTS

Attorneys General of Iowa .....	1
Personnel of the Attorney General's Office .....	2
Administrative Divisions of the Attorney General's Office .....	15
Summaries of Attorney General's Opinions .....	32
Index:	
Statutes Construed .....	43
Topical .....	47

## ATTORNEYS GENERAL OF IOWA

Name	Home County	Served Years
David C. Cloud	Muscatine	1853-1856
Samuel A. Rick	Mahaska	1856-1861
Charles C. Nourse	Polk	1861-1865
Isaac L. Allen	Tama	1865-1866
Frederick E. Bissell	Dubuque	1866-1867
Henry O'Connor	Muscatine	1867-1872
Marsena E. Cutts	Mahaska	1872-1877
John F. McJunkin	Washington	1877-1881
Smith McPherson	Montgomery	1881-1885
A.J. Baker	Appanoose	1885-1889
John Y. Stone	Mills	1889-1895
Milton Remley	Johnson	1895-1901
Charles W. Mullan	Black Hawk	1901-1907
Howard W. Byers	Shelby	1907- 1911
George Cosson	Audubon	1911-1917
Horace M. Havner	Iowa	1917-1921
Ben J. Gibson	Adams	1921-1927
John Fletcher	Polk	1927-1933
Edward L. O'Connor	Johnson	1933-1937
John H. Mitchell	Webster	1937-1939
Fred D. Everett	Monroe	1939-1940
John M. Rankin	Lee	1940-1947
Robert L. Larson	Johnson	1947-1953
Leo A. Hoegh	Lucas	1953-1954
Dayton Countryman	Story	1954-1957
Norman A. Erbe	Boone	1957-1961
Evan Hultman	Black Hawk	1961-1965
Lawrence F. Scalise	Warren	1965-1967
Richard C. Turner	Pottawattamie	1967-1979
Thomas J. Miller	Clayton	1979-1991
Bonnie J. Campbell	Polk	1991-1995
Thomas J. Miller	Clayton	1995-

PERSONNEL OF THE  
ATTORNEY GENERAL'S OFFICE

## PERSONNEL 2001-2002

### ADMINISTRATIVE SERVICES

Thomas J. Miller, 1-79-1/91, 1/95 JD, Harvard, 1969	Attorney General
Gordon E. Allen, 8/82 JD, Iowa, 1972	Deputy Attorney General
Dennis W. Johnson, 6/00-6/02 JD, Iowa, 1975	Deputy Attorney General
Douglas E. Marek, 8/89 JD, Drake, 1984	Deputy Attorney General
Tam B. Ormiston, 8/89 JD, Iowa, 1974	Deputy Attorney General
Julie F. Pottorff, 7/79 JD, Iowa, 1978	Deputy Attorney General
Eric J. Tabor, 9/95 JD Iowa, 1980	Deputy Attorney General
Donald D. Stanley, Jr., 10/00 JD, Drake, 2000	Assistant Attorney General
Marilyn S. Lantz, 8/95-8/02 JD, Drake, 1975	Assistant Attorney General
Kevin M. McCarthy, 11/02 JD, Drake, 1998	Assistant Attorney General
Anne M. Sheeley, 1/98	Executive Officer
John H. Pederson, 8/91	Investigator
Clark R. Rasmussen, 9/92-10/01	Management Analyst
Patricia A. Harahap, 11/99-8/01	Investigator
Robert P. Brammer, 11/78	Executive Officer
William C. Roach, 9/95	Executive Officer
Karen A. Redmond, 10/80	Executive Officer
John W. Hugg, 2/99	ITS Specialist
John N. Boccella, 2/98	ITS Specialist
Jane Ambrozic, 10/76	Executive Secretary
Cathleen M. White, 2/89	Training Officer
Vivone Abdel-Razeq, 3/00	HR Associate
Diane Dunn, 10/88	Administrative Assistant
Pamela R. O'Brien, 11/98	Administrative Assistant
Jennifer Coolidge, 6/92	Clerk

## AREA PROSECUTIONS

Harold A. Young, 7/75-1/02 ..... Division Director  
JD, Drake, 1967

Thomas H. Miller, 10/85 ..... Division Director  
JD, Iowa, 1975

Virginia D. Barchman, 10/86 ..... Assistant Attorney General  
JD, Iowa, 1979

Douglas D. Hammerand, 8/96 ..... Assistant Attorney General  
JD, Drake, 1989

James E. Kivi, 2/80 ..... Assistant Attorney General  
JD, Iowa, 1975

Thomas E. Noonan, 6/89 ..... Assistant Attorney General  
JD, Iowa, 1982

Charles N. Thoman, 7/84 ..... Assistant Attorney General  
JD, Creighton, 1976

Robert J. Glaser, 7/86 ..... Assistant Attorney General  
JD, Creighton, 1978

Denise A. Timmins, 10/99 ..... Assistant Attorney General  
JD, Drake, 1997

Laura M. Roan, 8/96 ..... Assistant Attorney General  
JD, Drake, 1991

Scott D. Brown, 8/97 ..... Assistant Attorney General  
JD, Oklahoma City University, 1991

Andrew B. Prosser, 8/00 ..... Assistant Attorney General  
JD, Drake, 1985

Lisa A. Nelson, 5/01-2/02 ..... Assistant Attorney General  
JD, Drake, 1991

Teresa K. Baumann, 7/02 ..... Assistant Attorney General  
JD, Iowa, 01

Shawn S. Wehde, 11/99 ..... Assistant Attorney General  
JD, Iowa, 1986

John S. Courter, 8/99 ..... Assistant Attorney General  
JD, Drake, 1991

Jason T. Griess, 3/00 ..... Assistant Attorney General  
JD, Nebraska, 1993

John H. Lammers, 12/01 ..... Assistant Attorney General  
JD, Drake, 1994

Matthew J. Cole, 10/99-4/02 ..... Assistant Attorney General  
JD, Drake, 1997

Kristal M. Gibson, 8/00-9/01 ..... Assistant Attorney General  
JD, Syracuse, 1994

Shannon T. Olson, 3/01-11/02 ..... Assistant Attorney General

JD, Kansas, 1993  
 Kimberly S. Hughes, 9/01 ..... Investigator  
 Candis J. Lockard, 10/97 ..... Investigator  
 Michael J. Ferjak, 8/98 ..... Investigator  
 Barbara H. Giller, 8/00-3/01 ..... Investigator  
 Connie L. Lee, 12/76 ..... Legal Secretary  
 Catherine Schapman, 5/98 ..... Paralegal

## CIVIL RIGHTS

Teresa M. Baustian, 4/81 ..... Assistant Attorney General  
 JD, Iowa, 1979  
 Richard R. Autry, 9/86 ..... Assistant Attorney General  
 JD, Drake, 1986

## CONSUMER ADVOCATE

John R. Perkins, 10/01 ..... Consumer Advocate  
 JD, Iowa, 1968  
 Jennifer Easler, 12/94 ..... Utility Attorney  
 JD, Drake, 1993  
 Jack Dwyer, 1/97 ..... Utility Attorney  
 JD, Iowa, 1969  
 Craig Graziano, 4/99 ..... Utility Attorney  
 JD, Drake, 1975  
 Donald G. Henry, 4/91 ..... Utility Attorney  
 JD, Michigan, 1985  
 Alice Hyde, 7/78 ..... Utility Attorney  
 JD, Iowa, 1978  
 Ron Polle, 8/79 ..... Utility Attorney  
 JD, Drake, 1979  
 Ben Stead, 8/81 ..... Utility Attorney  
 JD, Kansas, 1974  
 Gary Stewart, 7/74 ..... Utility Attorney  
 JD, Iowa, 1974  
 Mark Condon, 7/82 ..... Utility Specialist  
 Fasil Kebede, 3/87 ..... Utility Specialist  
 Shelia Parker, 6/88 ..... Utility Specialist  
 Brian Turner, 7/82 ..... Utility Specialist  
 Gregory Vitale, 8/85 ..... Utility Specialist  
 Joyette Henry, 6/76 ..... Senior Utility Analyst  
 Khosrow Khojasteh, 11/87 ..... Senior Utility Analyst

Xiaochuan, Shi, 3/90	Utility Reg Engineer
Christine Collister, 5/88	Utility Administrator
Charles Fuhrman, 9/81	Utility Administrator
Joe Murphy, 6/77	Utility Administrator
David Habr, 9/81	Utility Administrator
John Hughes, 4/96	Utility Analyst
Ann, Kreager, 11/84	Secretary
Karen Goodrich-Finnegan, 7/76	Secretary
Beverly V. Bergen, 5/97	Advanced Typist

## CONSUMER PROTECTION

William L. Brauch, 7/87	Division Director
JD, Iowa, 1987	
Raymond H. Johnson, 7/87-6/02	Assistant Attorney General
JD, Iowa, 1986	
Kathleen E. Keest, 9/96	Assistant Attorney General
JD, Iowa, 1974	
Steven M. St. Clair, 5/87	Assistant Attorney General
JD, Iowa, 1978	
Benjamin E. Bellus, 3/97	Assistant Attorney General
JD, Drake, 1991	
Debra A. Moore, 12/84	Executive Officer
Susan M. Bulver, 9/95	Investigator
Sandra J. Kearney, 7/90	Investigator
Lise D. Ludwig, 5/85	Investigator
Holly G. Merz, 10/88	Investigator
Barbara A. Blake, 8/90	Investigator
Stephen E. Switzer, 12/89	Investigator
Janice M. Bloes, 3/78	Administrative Assistant
Katherine N. M. Gray, 3/84	Legal Secretary
Marilyn W. Rand, 10/69-9/02	Legal Secretary
Natalie L. Kellenberg, 7/96	Legal Secretary
Helen K. Alessio, 9/01	Secretary/Receptionist
Jennifer L. Morrison, 10/02	Secretary/Receptionist
Charlotte H. Mosher, 6/01-10/01	Secretary/Receptionist
Margaret A. Climie, 9/00-1/01	Secretary/Receptionist
Denise M. Falck, 5/00-8/01	Secretary/Receptionist
Dorene M. Stevens, 5/94-5/01	Secretary/Receptionist

## CRIME VICTIM ASSISTANCE



Martha J. Anderson, 7/89	Program Director
Julie Swanston, 2/00	Executive Officer
Virginia W. Beane, 6/89	Executive Officer
Rebecca Kinnamon, 6/02	Executive Officer
Kristi L. Etzel, 12/97	Accountant
Ruth I. Wright, 1/00	Program Planner
Alison E. Walding, 7/92	Program Planner
Donna J. Phillips, 6/02	Program Planner
Carole D. Meade, 11/01	Investigator
Shonna K. Swain, 5/81	Investigator
Kimberly J. Kluxdal, 9/00	Investigator
Anne K. Kaercher, 9/00	Investigator
Nicole D. Stutzman, 3/01	Investigator
Katie K. Kuhr, 6/01	Investigator
Mary K. Bartine, 11/01	Investigator
Theodore L. Peso, 5/99	Investigator
Kirstin R. Isenhardt, 2/01	Investigator
Melissa J. Miller, 1/88	Investigator
Ruth C. Walker, 2/79	Investigator
Amy M. Ritzman, 11/00-8/01	Investigator
Keli J. Theilen, 7/98-1/01	Investigator
Andrea F. Schaffer, 7/99-8/01	Investigator
Catherine E. Kubik, 3/00-6/01	Investigator
Sheri L. Floyd, 3/00-4/02	Investigator
Grace M. Armstrong, 7/89	Accounting Clerk
Michaela S. Rotert, 9/00	Legal Secretary
Sharon K. Hayes, 4/99	Legal Secretary
Edith M. Omlie, 6/89	Legal Secretary

## CRIMINAL APPEALS

Mary E. Tabor, 8/93	Division Director
JD, Iowa, 1991	
Bridget A. Chambers, 2/90	Assistant Attorney General
JD, Iowa, 1985	
Richard J. Bennett, 6/86	Assistant Attorney General
JD, Iowa, 1978	
Martha E. Boesen, 7/91	Assistant Attorney General
JD, Notre Dame, 1991	
Karen B. Doland, 7/90	Assistant Attorney General
JD, Iowa 1989	
Robert P. Ewald, 2/81	Assistant Attorney General
JD, Washburn, 1980	
Sharon K. Hall, 7/96	Assistant Attorney General

JD, Drake, 1993  
 Roxanne M. Ryan, 9/80 ..... Assistant Attorney General  
 JD, Iowa, 1980  
 Sheryl A. Soich, 2/88 ..... Assistant Attorney General  
 JD, Drake, 1987  
 Thomas S. Tauber, 7/89 ..... Assistant Attorney General  
 JD, Drake, 1989  
 Jean C. Pettinger, 10/97 ..... Assistant Attorney General  
 JD, Iowa, 1994  
 Kevin R. Cmelik, 10/98 ..... Assistant Attorney General  
 JD, Drake, 1986  
 Kristin A. Mueller, 8/99 ..... Assistant Attorney General  
 JD, Drake, 1997  
 Thomas W. Andrews, 3/99 ..... Assistant Attorney General  
 JD, Yale, 1989  
 Cristen Gale Odell, 7/90 ..... Assistant Attorney General  
 JD, Gonzaga, 1978  
 Darrel L. Mullins, 8/98 ..... Assistant Attorney General  
 JD, Colorado, 1996  
 Linda J. Hines, 10/98 ..... Assistant Attorney General  
 JD, Wisconsin, 1992  
 Christy J. Fisher, 1/67 ..... Administrative Assistant  
 Mary L. Robertson, 3/92 ..... Legal Secretary  
 Susan R. Johannsen, 12/99 ..... Legal Secretary

## ENVIRONMENTAL LAW

David R. Sheridan, 5/87 ..... Division Director  
 JD, Iowa, 1978  
 Timothy D. Benton, 7/77 ..... Assistant Attorney General  
 JD, Iowa, 1977  
 David L. Dorff, 4/85 ..... Assistant Attorney General  
 JD, Drake, 1982  
 Michael H. Smith, 9/84 ..... Assistant Attorney General  
 JD, Iowa, 1977  
 David S. Steward, 7/99 ..... Assistant Attorney General  
 JD, Drake, 1994  
 Richard C. Heathcote, 9/89 ..... Investigator  
 Cynthia L. Jacobe, 8/84 ..... Legal Secretary  
 Colleen Baker, 1/92 ..... Legal Secretary

## FARM DIVISION

Stephen E. Reno, 7/89 ..... Assistant Attorney General  
 JD, Drake, 1981  
 Stephen M. Moline, 7/90 ..... Assistant Attorney General  
 JD, Iowa, 1986  
 Marc A. Wallin, 3/00 ..... Investigator

**LICENSING AND ADMINISTRATIVE LAW**

Pamela D. Griebel, 4/91 ..... Division Director  
 JD, Iowa, 1977  
 Heather L. Adams, 7/94 ..... Assistant Attorney General  
 JD, Iowa, 1994  
 Andrew R. Anderson, 7/94-9/02 ..... Assistant Attorney General  
 JD, Iowa, 1992  
 Jean M. Davis, 7/96 ..... Assistant Attorney General  
 JD, Suffolk, 1990  
 Grant K. Dugdale, 5/91 ..... Assistant Attorney General  
 JD, Iowa, 1987  
 Jeffrey D. Farrell, 6/91 ..... Assistant Attorney General  
 JD, Iowa, 1989  
 Scott M. Galenbeck, 1/84 ..... Assistant Attorney General  
 JD, Iowa, 1974  
 Christie J. Scase, 7/85 ..... Assistant Attorney General  
 JD, Drake, 1985  
 Donald G. Senneff, 7/85 ..... Assistant Attorney General  
 JD, Iowa, 1967  
 Theresa O. Weeg, 10/81 ..... Assistant Attorney General  
 JD, Iowa, 1981  
 James S. Wisby, 10/88 ..... Assistant Attorney General  
 JD, Iowa, 1968  
 Chantelle C. Smith, 3/00 ..... Assistant Attorney General  
 JD, Iowa, 1998  
 Jeffrey W. Nelson, 8/00 ..... Assistant Attorney General  
 JD, Iowa, 1987  
 Jeanie K. Vaudt, 10/98 ..... Assistant Attorney General  
 JD, Drake, 1991  
 John R. Lundquist, 4/99 ..... Assistant Attorney General  
 JD, Iowa, 1997  
 Mark A. Thompson, 8/99 ..... Assistant Attorney General  
 JD, Iowa, 1990  
 Shauna R. Shields, 11/98 ..... Assistant Attorney General  
 JD, Iowa, 1994  
 Melissa A. Biederman, 3/00 ..... Assistant Attorney General

JD, Iowa, 1997  
 Cristina F. Kuhn, 5/99-11/02 . . . . . Assistant Attorney General  
 JD, Drake, 1994  
 Elizabeth A. Nelson, 8/00-11/02 . . . . . Assistant Attorney General  
 JD, Drake, 1980  
 Roxanna Dales, 9/89 . . . . . Legal Secretary  
 Ruth Manning, 9/89 . . . . . Legal Secretary  
 Valerie S. Naset, 2/98 . . . . . Legal Secretary  
 Junie R. Gookin, 8/01 . . . . . Legal Secretary

**PROSECUTING ATTORNEYS TRAINING COUNCIL**

Corwin R. Ritchie, 9/00 . . . . . Division Director  
 JD, Iowa, 1975  
 Ann E. Brenden, 3/85 . . . . . Assistant Attorney General  
 JD, Drake, 1981  
 Peter J. Grady, 1/95 . . . . . Assistant Attorney General  
 JD, Iowa, 1984  
 Kevin B. Struve, 7/86 . . . . . Assistant Attorney General  
 JD, Iowa, 1979  
 Peggy L. Baker, 9/94 . . . . . Administrative Assistant  
 Stacey A. Anderson, 9/98 . . . . . Legal Secretary  
 Susan K. Adkins, 9/96 . . . . . Legal Secretary

**REGENTS AND HUMAN SERVICES**

Ann Marie Brick, 9/00 . . . . . Division Director  
 JD, Drake, 1980  
 George A. Carroll, 2/98 . . . . . Assistant Attorney General  
 JD, Iowa, 1985  
 Kerry K. Anderson, 6/91 . . . . . Assistant Attorney General  
 JD, Drake, 1982  
 Darci L. Frahm, 4/99-11/01 . . . . . Assistant Attorney General  
 JD, Iowa, 1994  
 Daniel W. Hart, 7/85 . . . . . Assistant Attorney General  
 JD, Iowa, 1983  
 Charles K. Phillips, 8/84 . . . . . Assistant Attorney General  
 JD, Columbia, 1982  
 Bruce L. Kempkes, 4/94 . . . . . Assistant Attorney General  
 JD, Iowa, 1980  
 Mary K. Wickman, 8/89 . . . . . Assistant Attorney General  
 JD, Iowa, 1986

Mary Elise Pippin, 4/94 . . . . . Assistant Attorney General  
JD, Louisville, 1980

Marne E. Woods, 6/93 . . . . . Assistant Attorney General  
JD, Drake, 1991

Barbara E. Galloway, 3/91 . . . . . Assistant Attorney General  
JD, Iowa, 1976

Kathrine Miller-Todd, 1/85 . . . . . Assistant Attorney General  
JD, Wake Forest, 1974

Tabitha J. Gardner, 6/98 . . . . . Assistant Attorney General  
JD, Drake, 1999

Janet L. Siegel, 8/94 . . . . . Assistant Attorney General  
JD, Iowa, 1990

Debora Neumeyer, 12/92 . . . . . Assistant Attorney General  
JD, Drake, 1991

Mary W. Vavroch, 7/97-6/02 . . . . . Assistant Attorney General  
JD, Iowa, 1981

Patricia R. Hemphill, 2/83 . . . . . Assistant Attorney General  
JD, Drake, 1981

Kevin E. Kaufman, 4/96 . . . . . Assistant Attorney General  
JD, Creighton, 1986

Mark A. Haverkamp, 6/78 . . . . . Assistant Attorney General  
JD, Creighton, 1976

Michael J. Parker, 7/91 . . . . . Assistant Attorney General  
JD, Drake, 1989

Patricia A. McGivern, 9/95 . . . . . Assistant Attorney General  
JD, Iowa, 1977

Tamara A. Lorenz, 5/96 . . . . . Assistant Attorney General  
JD, Drake, 1991

Christina F. Hansen, 3/91 . . . . . Assistant Attorney General  
JD, Drake, 1987

Karla J. Henderson, 2/00 . . . . . Assistant Attorney General  
JD, Iowa, 1986

William J. Jacobs, 3/01 . . . . . Assistant Attorney General  
JD, New York, 1991

Emily Kimes-Schwiesow, 5/01 . . . . . Assistant Attorney General  
JD, Drake, 2001

Wayne J. Bergman, 1/01 . . . . . Assistant Attorney General  
JD, Iowa, 1995

Wendy E. Dishman, 7/98 . . . . . Assistant Attorney General  
JD, Drake, 1995

Mitchell K. Mahan, 7/98 . . . . . Assistant Attorney General  
JD, Iowa, 1990

Melissa L. Gross, 7/98 . . . . . Assistant Attorney General

JD, Iowa, 1996  
 Mark L. Greiner, 11/99-6/01 . . . . . Assistant Attorney General  
 JD, Drake, 1994  
 Loretta A. Greiner, 8/00-9/01 . . . . . Paralegal  
 Jennifer L. Howicz, 10/01-5/02 . . . . . Paralegal  
 Rhonda E. Pettit, 11/01 . . . . . Paralegal  
 Lori E. Kern, 11/91 . . . . . Legal Secretary  
 Shannon P. Wineland, 7/94 . . . . . Legal Secretary  
 Betty Christensen, 7/99 . . . . . Legal Secretary

## REVENUE

Harry Max Griger, 12/71-1/02 . . . . . Division Director  
 JD, Iowa, 1966  
 Lucille M. Hardy, 8/86 . . . . . Assistant Attorney General  
 JD, Iowa, 1985  
 James D. Miller, 10/86 . . . . . Assistant Attorney General  
 JD, Drake, 1977  
 Marcia E. Mason, 7/82 . . . . . Assistant Attorney General  
 JD, Iowa, 1982  
 Valencia V. McCown, 6/83 . . . . . Assistant Attorney General  
 JD, Iowa, 1983  
 Gerald A. Kuehn, 9/71-12/01 . . . . . Assistant Attorney General  
 Drake, 1965  
 Connie M. Larson, 6/89 . . . . . Legal Secretary

## SPECIAL LITIGATION

Craig A. Kelinson, 11/86 . . . . . Division Director  
 JD, Iowa, 1976  
 Greg H. Knoploh, 5/87 . . . . . Assistant Attorney General  
 JD, Iowa, 1978  
 Joanne L. Moeller, 8/84 . . . . . Assistant Attorney General  
 JD, Iowa, 1984  
 Julie A. Burger, 7/93 . . . . . Assistant Attorney General  
 JD, Drake, 1991  
 Shirley A. Steffe, 9/79 . . . . . Assistant Attorney General  
 JD, Iowa, 1979  
 Charles S. Lavorato, 9/83 . . . . . Assistant Attorney General

JD, Drake, 1975  
 Deborah M. Stein, 4/00 ..... Assistant Attorney General  
 JD, Minnesota, 1993  
 Stephan K. Bayens, 7/00-9/01 ..... Assistant Attorney General  
 JD, Drake, 1999  
 Forrest A. Guddall, 7/94 ..... Assistant Attorney General  
 JD, Gonzaga, 1994  
 Loraine H. Wallace, 7/96 ..... Assistant Attorney General  
 JD, Iowa, 1983  
 Kristin W. Ensign, 10/88 ..... Assistant Attorney General  
 JD, Drake, 1983  
 Layne M. Lindeback, 7/79 ..... Assistant Attorney General  
 JD, Iowa, 1979  
 William A. Hill, 8/90 ..... Assistant Attorney General  
 JD, Drake, 1989  
 Marjorie A. Leeper, 7/82 ..... Investigator  
 Cathleen L. Rimathe, 8/78 ..... Investigator  
 Connie D. Hadaway, 9/89 ..... Investigator  
 David H. Morse, 3/78 ..... Investigator  
 Marcia A. Jacobs, 8/82 ..... Legal Secretary  
 Kathleen A. Pitts, 5/87 ..... Legal Secretary  
 Mary L. Sebben, 4/91 ..... Legal Secretary  
 Kristine L. Rogowski, 2/00 ..... Legal Secretary  
 Debra S. Caldbeck, 7/00 ..... Legal Secretary  
 Rebecca A. Griglione, 12/92 ..... Legal Secretary

## TRANSPORTATION

David A. Ferree, 3/84 ..... Division Director  
 JD, Iowa, 1978  
 John W. Baty, 9/72 ..... Assistant Attorney General  
 JD, Drake, 1967  
 Mark Hunacek, 7/82 ..... Assistant Attorney General  
 JD, Drake, 1981  
 Noel C. Hindt, 7/89 ..... Assistant Attorney General  
 JD, Iowa, 1983  
  
 Richard E. Mull, 9/84 ..... Assistant Attorney General  
 JD, Iowa, 1977  
 Robin Formaker, 4/84 ..... Assistant Attorney General  
 JD, Iowa, 1979  
 Carolyn J. Olson, 8/87 ..... Assistant Attorney General  
 JD, Drake, 1984

James M. Strohman, 2/88 ..... Executive Officer  
Michael J. Raab, 1/85 ..... Paralegal  
Carmen C. Mills, 8/91 ..... Paralegal



**ATTORNEY GENERAL'S OFFICE**  
**ADMINISTRATIVE DIVISIONS**

## CRIMINAL LAW

### **AREA PROSECUTIONS DIVISION**

The Area Prosecutions Division has a number of responsibilities which are critical for the public safety of Iowans. The primary purpose of the division is to assist local county attorneys in difficult, technical, or multi-jurisdiction felony criminal cases; and in major felony cases where a conflict of interest or the appearance of a conflict precludes the county attorney from handling a prosecution. To carry out this purpose, the division has eleven attorneys, two investigators, one paralegal, two victim-witness coordinators, and one secretary.

Seven of the attorneys are located at the Attorney General's office in Des Moines. Of the others, one is located in western Iowa, one in eastern Iowa, one at the Iowa State Penitentiary in Fort Madison, and one is located with the Medicare Fraud Control Unit at the Department of Inspections and Appeals. The division has at least one attorney with specialized training for each of the following areas: 1) violence against women cases; 2) state environmental crimes; 3) obscenity; 4) crimes occurring in state penal institutions; 5) state tax violations including personal income tax, corporate income tax, sales tax, and motor fuel tax; 6) medicaid fraud, 7) criminal securities fraud and other financial crimes, and 8) sexual violent predator (SVP) commitments.

The division continues to investigate and prosecute virtually all of the public official misconduct and corruption allegations raised throughout the state. The division also represents the Commission on Judicial Qualifications, investigating and prosecuting complaints against Iowa judges and magistrates.

During the period of this report 399 major criminal cases, including 46 homicides, were referred from all corners of the state and handled by the division's attorneys.

In addition to criminal cases, the division's mission also includes responsibility for enforcing Iowa's sexually violent predator (SVP) program. Of the above personnel, two attorneys, one investigator and a paralegal are assigned to this unit. During the period, 113 SVP investigations were opened, and 26 civil commitments made.

The division's two crime victim witness coordinators provide services to victims of crime and to persons who must appear as witnesses in criminal or SVP trials.

In addition to the criminal and SVP prosecutors, and in conjunction with the Iowa Division of Narcotics Enforcement and U.S. attorneys, the division has five attorneys who prosecute high profile drug cases under the High Intensity Drug Traffic Area program (HIDTA).

## **CRIMINAL APPEALS DIVISION**

The Criminal Appeals Division represents the State of Iowa in all direct appeals from criminal convictions, all appeals from postconviction relief actions, and all federal habeas challenges to Iowa convictions. County attorneys generally prosecute criminal cases in the district court. After they obtain a conviction either by plea or trial, the appeals division works to keep the conviction in place by arguing the State's position before the Iowa Court of Appeals, Iowa Supreme Court, federal district courts, the Eighth Circuit Court of Appeals, and even the United States Supreme Court, if need be.

In the year 2001, defendants filed 791 notices of appeal in Iowa criminal cases; another 757 were filed in 2002. The division filed a total of 746 briefs in the Iowa Supreme Court during the years 2001 and 2002. Attorneys from the division presented oral argument before the Iowa appellate courts in a total of 154 cases in 2001 and 105 cases in 2002.

The Criminal Appeals Division also responds to scores of applications for discretionary review filed by defendants seeking to have the Iowa Supreme Court review a case in advance of final judgment. The division likewise files applications for discretionary review, petitions for certiorari and notices of appeal when the State is interested in challenging an adverse district court ruling. The Criminal Appeals Division also represents the State when an inmate seeks certiorari to the United States Supreme Court in a state criminal matter.

Another function of the division is keeping registered victims informed of the progress and outcome of appeals. A total of 730 victims received information from the division in 2001 and 2002.

In its federal practice, the division saw 92 new habeas corpus cases filed in the past two years. The division's federal attorneys appeared before the Eighth Circuit Court of Appeals about 20 times in 2001 and 2002.

In 2001, the division assumed a new case load of appeals from sexually violent predator (SVP) commitments. Sixteen appeals were filed in the first year of the program and 13 were filed in 2002.

The division also provides advice to trial-level prosecutors on an informal basis and helps train prosecutors, law enforcement officers, prison officials, and victim workers from across the state. The division also reviewed 172 extradition files from the governor's office during 2001 and another 162 files during 2002.

## **CRIME VICTIM ASSISTANCE DIVISION**

The Crime Victim Assistance Division administers federal funds and state level programs that benefit crime victims including Crime Victim Compensation (CVC), Sexual Abuse Examination (SAE), and Victim Services Grant (VSG) programs.

Funds for these programs and the operational costs of the division come primarily from fines and penalties paid by convicted criminals. No tax dollars are used for the CVC and SAE programs which are supported with state and federal criminal fines and penalties, restitution, and civil suit recoveries from the perpetrator or others responsible for the crime.

**Crime Victim Assistance Board.** The Crime Victim Assistance Board was created by the 1989 legislature. Members are appointed by the Attorney General to three-year terms. The ten-member multi-disciplinary board has statutory responsibility for adoption of rules relating to CVAD programs. The board also receives and acts on program appeals filed by crime victims and service providers.

**Crime Victim Compensation.** In FY02, the program awarded a total of \$3,503,665 compensation to 2,149 victims and their families for injury-related expenses resulting from crime. The average compensation awarded to a victim was \$1,630.

The CVC program pays only for expenses not covered by another source such as insurance or government benefit programs. Victims must report the crime to law enforcement, cooperate with the reasonable requests of investigators and prosecutors, and make application for compensation within two years of the crime. Victims are disqualified if their own actions caused the injury through consent, provocation, or incitement of the crime.

**Sexual Abuse Examination.** In FY02, a total of \$480,620 was paid for evidentiary sexual abuse examinations for 1,729 victims. Of those victims, 1,352 (78%) were under 18 years of age. The average cost of a sexual abuse examination was \$274. Victims are not required to apply for the programs. Providers submit an invoice and are paid directly for the examinations.

The SAE program pays for evidentiary examinations regardless of whether the victim has decided to report the sexual abuse to law enforcement. If the victim later decides to report the crime, law enforcement officers and prosecutors have the benefit of evidence that was collected in a timely and effective manner.

**Victim Services Grant.** The CVAD administers five state and federal grant funds that provide partial financial support to community based victim service programs. In FY02, a total of \$7,411,794 was distributed to programs that provide counseling, advocacy and shelter to crime victims. The programs served 27,497 victims.

Programs partially funded include 36 domestic abuse, 34 rape crisis, 13 prosecutor-based victim service, 2 teen victim, 4 survivors of homicide victims programs, and 1 general violent crime program. Also partially funded was the Iowa Coalition Against Domestic Abuse.

### **PROSECUTING ATTORNEYS TRAINING COORDINATOR**

The Prosecuting Attorneys Training Coordinator provides continuing education, training, and support for Iowa prosecuting attorneys, their assistants, and their victim/witness coordinators in order to promote the uniform and effective administration of criminal justice. Services are provided to all 99 county attorneys, approximately 280 assistant county attorneys, and 40 victim/witness coordinators, as well as to other government attorneys and law enforcement officials. The Coordinator is assisted in an advisory capacity by a Council consisting of the Attorney General, the president of the Iowa County Attorneys Association, and three county attorneys elected to staggered three-year terms. The office was created in 1975 and its duties and functions are found in Iowa Code Chapter 13A.

The Prosecuting Attorneys Training Coordinator annually provides approximately 80 to 100 plus hours of training and 50 or more hours of continuing legal education. Training events normally include annual Spring and Fall County Attorney Conferences, and New Legislation Workshops, as well as specialized training on topics of Search and Seizure, Drug Enforcement, OWI law, victim witness assistance issues, and child abuse detection and prosecution.

In addition to continuing education, the Prosecuting Attorneys Training Coordinator provides administrative support services, technical assistance, and educational publications to prosecutors and law enforcement officials. Publications include three newsletters: Annotations, Highway Safety Law Update, and Drug Enforcement Update; Eight legal manuals: Iowa Charging Manual, OWI Traffic Offenses Manual, Prosecution of Domestic Violence in Iowa, Iowa Sex Abuse Prosecution Manual, Iowa Search and Seizure Manual, Iowa Civil Desk Reference, Criminal Law Handbook, and Iowa Acts of Interest to Law Enforcement. The Comprehensive Career Criminal and Drug Prosecution Support Program provides research assistance and training to multi-jurisdictional task forces and prosecutors across Iowa. The OWI/Traffic Safety Specialist coordinates efforts of prosecutors of impaired driving and related offenses through specialized publications, newsletters, and instructional programs. The Prosecuting Attorneys Training Coordinator administers the Attorney General's asset forfeiture program established by Iowa Code section 809A which returns 90% of the proceeds of forfeiture cases to governmental agencies to enhance law enforcement within the state.

## CONSUMER PROTECTION/ECONOMIC COMPETITION

### **CONSUMER PROTECTION DIVISION**

The Consumer Protection Division administers and enforces the Iowa Consumer Fraud Act, the Iowa Consumer Credit Code, the Iowa Campground Act, the Iowa Physical Exercise Club Regulation Act, the Charitable Organization Act, and the Iowa Lemon Law.

In addition, the Consumer Protection Division may bring enforcement actions for violations of the Iowa Door to Door Sales Act, the Iowa Drug and Cosmetic Act, the Iowa Motor Vehicle Service Trade Practices Act, the Iowa Car Rental and Collision Damage Waiver Act, the Motor Vehicle Damage Disclosure Law, the Prize Notice Law, and several other state and federal laws and regulations.

The Consumer Protection Division consists of four attorneys, plus six investigators, two legal secretaries, two secretary/receptionists, one administrative assistant and the Consumer Education Specialist/Older Iowans Project Coordinator. The division is fortunate to have the assistance of two volunteer investigators. In addition, the division occasionally receives help from student interns who handle consumer complaints, do research and perform other important tasks.

In 2002, 5,312 consumer complaints were opened and 5,880 complaints were closed. The total amount of consumer restitution was \$3,750,907. In 2001, 5,485 complaints were opened and 5,578 complaints were closed. The total amount of restitution in 2001 was \$1,246,790.

During 2001 and 2002, the Division focused on several areas of enforcement, including:

1. Predatory Lending - Attorney General Miller was named Chair of the Predatory Lending Working Group of the National Association of Attorneys General. He testified before a Congressional Committee about the problem and lead a large group of states in an investigation and settlement with Household Finance regarding certain lending practices.

2. Automobile Safety - Attorney General Miller lead a group of 53 states in obtaining Consent Judgments against Ford Motor Company regarding advertising of the safety of Ford sport utility vehicles. In addition, the Consumer Protection Division was one of 53 states which obtained Consent Judgments against Bridgestone/Firestone regarding the sale of defective tires.

3. Sweepstakes - the Consumer Protection Division entered into settlements with two of the nation's largest sweepstakes companies concerning deceptive mailings, including refunds for Iowans of almost \$1 million.

#### 4. Other cases of note including:

- a settlement with major insurance company which failed to obtain salvage titles on certain cars;
- a judgment regarding an investment advisor to pay over \$300,000 in refunds to victims;
- judgments against health club operators who took money but didn't open or provide refunds;
- actions against home improvement scam artists;
- investigations of retailers for alleged gasoline price-fixing on 9-11-01;
- a settlement with a propane company to provide customer refunds for overcharges;
- a judgment against a used car dealer for concealing that a car's air bag was missing;
- a judgment against the state's largest cellular telephone service provider relating to charges and consumer contract cancellation rights;
- settlements with the nation's biggest telephone long distance providers regarding misleading advertising practices;
- settlements with two national banks relating to their sharing of customer data with telemarketers;
- a judgment against a company which used misleading tactics to sell buying club memberships to consumers;
- settlements with major retailers which sell tobacco products to provide greater assurance that minors will not be sold cigarettes and other tobacco products;
- a lawsuit against a campgrounds club operation;
- settlement with a major prescription drug manufacturer regarding patient privacy; and,
- a lawsuit against individuals allegedly engaged in unlawful gifting pyramid schemes.

The division further engaged in a number of activities in enforcing Iowa's antitrust laws, including:

- a judgment against Microsoft Corporation regarding anticompetitive practices;
- a settlement with a major contact lens provider that resulted in thousands of dollars in consumer refunds;
- testimony by Attorney General Miller to the U.S. Senate Commerce Committee on airline competition issues;
- settlements with several major prescription drug manufacturers which resulted in over \$1 million in refunds for Iowa consumers, and a lawsuit against another drug manufacturer;
- settlement with record companies which could result in over \$1 million in refunds for Iowa consumers; and,
- action to block a satellite company TV merger that would harm rural Iowans and reduce customer choice.

The Consumer Protection Division engages in many programs of preventative consumer protection designed to deter potential schemes and inform consumers. The Consumer Protection Division's involvement in handling individual consumer complaints, investigating possible deception in advertising and sales practices, and filing lawsuits has a substantial deterrent effect

on persons and companies who might be tempted to engage in fraudulent practices either against Iowans or from an Iowa base.

The division attempts to inform the public about both specific and common schemes of fraud through a variety of means including press releases, informational brochures, and public speaking engagements. In addition, a section of the Attorney General's Internet web site is devoted to the work of the Consumer Protection Division. Citizens may access that section by going to [www.IowaAttorneyGeneral.org](http://www.IowaAttorneyGeneral.org), and then to the link labeled, "Protecting Consumers." There, citizens can link to consumer education brochures and advisories, news releases about lawsuits filed and settlements obtained by the Consumer Protection Division, and to the laws enforced by the Division. In addition, the web site includes an interactive complaint form, allowing consumers to file complaints on line. Consumer complaints may also be sent to the Division via e-mail at: [consumer@ag.state.ia.us](mailto:consumer@ag.state.ia.us), via fax to: 515-281-6771, or via U.S. mail to: Consumer Protection Division, 1305 E. Walnut Street, Des Moines, IA 50319.

Finally, the division worked to educate the public in 2001 and 2002 about a number of consumer issues including: a scheme targeting African-Americans regarding slave reparations claims; avoiding home improvement schemes; avoiding flood-related consumer scams; helping college students avoid overextended credit card debt; avoiding becoming a victim of certain scams coming out of Nigeria; avoiding becoming involved in illegal "gifting" pyramid schemes; avoiding an auto service contract scams; watching out for catches in "free trial" offers; warning consumers about buying Anthrax cures and preventative devices over the Internet; and many others.

## **FARM DIVISION**

The Farm Division serves as primary legal support for nearly all bureaus of the Iowa Department of Agriculture & Land Stewardship, including all thirteen administrative bureaus, five regulatory bureaus, five laboratory bureaus, and the Agricultural Development Authority.

Litigation commenced during this time involved a suit to enforce Iowa's corporate farming statute (Iowa Code chapter 9H) regarding Smithfield Foods' acquisition of Murphy Family Farms' Iowa assets. In addition, the Farm Division led a multi-state effort resulting in a mitigation agreement with Aventis Crop Science, recouping in excess of fourteen million dollars for Iowa farmers and grain elevators affected by StarLink corn.

The Farm Division spearheaded a multi-state legislative initiative aimed at creating legislation to provide farmers engaged in production and marketing contracting with tools to enhance their positions in those contracts. The division also presented many educational programs around the state, providing updates to rural Iowans as to legislative and other changes that affect their lives.

Many Farm Advisories were prepared with emphasis on fertilizer and insecticide application, as well as cooperative deferred dividend issues, farm safety and farm implement



hour meter concerns, just to name a few.

## REPRESENTATION OF STATE INTERESTS

### **SPECIAL LITIGATION DIVISION**

The Special Litigation Division provides legal representation to the Department of Corrections and defends the state in tort and workers' compensation cases, including defense of the Second Injury Fund. The division's attorneys litigate at all levels of state and federal court, as well as before administrative agencies. The division is charged with the investigation of all administrative claims made to the State Appeal Board under both Iowa Code chapter 25, general claims, and chapter 669, tort claims. Other duties include providing advice to other state agencies concerning risk management, representation of the Civil Reparations Trust Fund with regard to awards of punitive damages, and representation of the State Appeal Board concerning local budget appeals.

Tort litigation involves claims of medical and dental malpractice, premises liability, motor vehicle accidents, social service liability and employment discrimination and wrongful discharge, among others. The state, elected officials, agencies and state employees are represented by division attorneys in these suits. The division saw a 36% increase in tort litigation from the prior biennium. Overall the division appeared on behalf of the state and/or state employees in district court litigation in 413 new cases during the two years.

Tort and general claims are investigated and recommendations concerning the claims made to the State Appeal Board. There was a decrease in the number of general claims presented under chapter 25 because of efforts by the Board and this office to streamline the procedure and allow agencies to pay many claims which previously required consideration by the Board. Still, 4,384 general and tort claims were filed during this two-year period and 4,407 general and tort claims were determined with recommendations to the State Appeal Board.

The division advises and represents the Department of Corrections on various legal concerns, including the impact of policy, the effect of new legislation and case law, and contract matters. This representation involves the DOC central administration, the nine prison facilities around the state, and the eight judicial district departments of correctional services which administer community corrections programs. The attorneys defend the department and its employees in prisoner civil rights litigation and challenges to prison disciplinary action.

Workers' compensation cases brought by state employees and claims against the Second Injury Fund are initiated as administrative actions before the Workers' Compensation Commissioner. During the 2001-2002 biennium the division opened 504 new workers' compensation and SIF contested cases, a 95% increase over the previous two year period. The division also represents the Commissioner in litigation brought against the agency.

## REPRESENTATION OF STATE AGENCIES

### **TRANSPORTATION DIVISION**

Pursuant to Iowa Code section 307.23, a special assistant attorney general and assistant attorneys general serve as General Counsel to the Iowa Department of Transportation. Six assistant attorneys general, three legal assistants and five support staff provide legal services to the department, including litigation representation and agency advice.

The three main areas of litigation activity are tort claims, judicial review proceedings, and condemnation appeals. The legal staff represents the department in tort claims which involve highway accidents or accidents on property owned or controlled by the DOT. During 2001-2002, 13 tort cases were opened and 22 were closed.

The legal staff represents the department when judicial review is sought of department action involving, for example, driver's license revocation or suspension. The Department is represented at the contested case hearing by three legal assistants under the direct supervision of an assistant attorney general. During 2001-2002, 1,605 administrative hearings were held. The assistant attorneys general handle the judicial review procedures in the district court on behalf of the Department. During the same time, 103 judicial review proceedings were opened and 128 were closed. The legal staff also represents the department in judicial condemnation actions. During 2001-2002, 17 condemnation appeals were filed and 10 were closed.

The division represents the DOT at the trial and appellate level in both federal and state court in cases involving contract disputes, employment discrimination claims, constitutional challenges, environmental issues and railroad issues.

The legal staff also provides non-litigation services to the department. Consultation routinely occurs with respect to statutes, court decisions, state and federal regulations, and policy matters. Department contracts, easements, and other agreements are reviewed. The legal staff is also consulted with regard to proposed legislation and administrative rules.

### **REGENTS AND HUMAN SERVICES DIVISION**

Regents & Human Services is the largest division in the Attorney General's office. The 30 attorneys in this division perform legal services for the Department of Human Services, the State Board of Regents and their respective institutions. The Department of Human Services' institutions include the four mental health institutions at Cherokee, Clarinda, Independence and Mount Pleasant; the Iowa Veterans Home; the Civil Commitment Unit for Sexual Offenders (CCUSO); Eldora State Training School, the Toledo Juvenile Home; Glenwood Resource Center and Woodward Resource Center. The Regents' institutions represented by the division are the University of Iowa, University of Northern Iowa and the State University of Iowa; the Iowa School for the Deaf and the Iowa School for the Blind.

In addition to serving as general counsel to the respective boards and commissions of DHS and the Regents, division attorneys specialize in areas of practice, which demand a special expertise. For DHS these areas are:

**Juvenile Law.** The division handles delinquency, child in need of assistance and termination of parental rights appeals before the Iowa Supreme Court and the Iowa Court of Appeals. In the year 2002, the division represented the State of Iowa in 236 terminations, 55 CINAs and 8 delinquencies totaling 299 cases. This represented an increase over 2001 statistics which were 178 terminations, 25 CINAs and 9 delinquencies totaling 212 cases. The division also occasionally prosecutes those cases at the trial court level. In addition, the division represents the Department of Human Services in all contested cases involving the Child Abuse Registry, Daycare Licensing and Registration, and Foster Care Licensing.

**Child Support Recovery.** Thirteen of the division's attorneys are located in regional child support recovery offices throughout the state. The attorneys appear in court daily to prosecute child support recovery actions. In addition, 2 attorneys, housed in the Hoover Building, provide legal support for all the attorneys in the unit as well as the Child Support Recovery Bureau.

**Entitlement Programs.** The division attorneys provide legal advice in the areas of Medicaid, Aide to Families with Dependant Children, Food Stamps and other programs. The division seeks to recoup overpayments which are made inadvertently and payments which are made as a result of fraud. The division also seeks reimbursement from third parties who are responsible for injuries sustained by an individual whose medical treatment has been paid by Medicaid. The division represents the Department of Human Services in actions for a judicial review of eligibility decisions denying Medicaid, Aid to Families with Dependant Children, Food Stamps and other entitlement programs. The division attorneys also represent the Department of Human Services and the Department of Inspections & Appeals in actions to establish and collect Medical Assistance debts resulting from a transfer of assets for less than fair market value.

**Board of Regents.** Division attorneys represent the State Board of Regents and the Regents' institutions in all facets of litigation. Regents' litigation includes actions involving commercial transactions, civil rights and employment discrimination claims. On matters of general legal advice, division attorneys work closely with attorneys in the Board of Regents office as well as the staff counsel of the three state universities.

## LICENSING AND ADMINISTRATIVE LAW DIVISION

The Licensing and Administrative Law Division is one of the largest and most diverse divisions in the Office. The division provides legal services to all levels of state government from the highest elected officials to the employees of the smallest state agencies. Division attorneys defend state officials and agencies in state and federal court, prosecute administrative

hearings, initiate consumer litigation in areas such as securities fraud, draft Attorney General's opinions, review and draft legal documents, and provide day-to-day legal guidance on a wide range of issues. In addition, the division advises county attorneys on questions involving civil law, enforces the public interest in charitable trusts, and disseminates information on key issues affecting government operations, such as open meetings, public records, gift law, conflicts of interest, and rule making.

Over the past two bienniums, the division experienced significant growth in the volume and complexity of legal services involving public financing, bonding, commercial transactions, construction contracts, technology contracts, intellectual property, enterprise-wide contracting models, and competitive bidding. Division litigation during the 2001-02 biennium included judicial review of agency decisions, civil rights proceedings, employment discrimination cases, FLSA cases, constitutional challenges to state laws, mortgage foreclosures, and contract disputes.

During the 2001-02 biennium the division initiated monthly advisories on Iowa's Public Records and Open Meetings laws, our "sunshine" laws. "Sunshine Advisories" are distributed electronically to governmental bodies, governmental associations, and media organizations to educate Iowa citizens and public officials on their rights and obligations under Iowa's sunshine laws.

The division advises and represents the State Treasurer, Secretary of State, State Auditor, Judicial Branch, Iowa Commerce Department (including the Commissioner of Insurance, Superintendent of Banking, Superintendent of Credit Unions, Alcoholic Beverages Division, and Professional Licensing Division), Iowa State Fair, Emergency Management, National Guard, State Librarian, Iowa College Student Aid Commission, Iowa Finance Authority, Iowa Communications Network, City Development Board, Vision Iowa, Law Enforcement Academy, Targeted Small Business, Foster Care Review Board (now Child Advocacy Board), Parole Board, Iowa Public Television, State Lottery, Racing and Gaming Commission, and the Departments of Management, Education, Cultural Affairs, Elder Affairs, Blind, Personnel, General Services, Inspection and Appeals, Personnel, Public Safety, Technology, Workforce Development, Economic Development, Public Health, and Human Rights.

Division attorneys represent and prosecute disciplinary cases before nearly three dozen professional licensing boards, regulating a wide range of professions, including physicians, pharmacists, dentists, nurses, engineers, land surveyors, real estate brokers and salespersons, real estate appraisers, certified public accountants, accounting practitioners, architects, landscape architects, social workers, physical and occupational therapists, podiatrists, nursing home administrators, psychologists, funeral directors, cosmetologists, optometrists, dieticians, massage therapists, barbers, behavioral scientists, athletic trainers, chiropractors, hearing aid dealers, respiratory care practitioners, speech pathologists, audiologists, physician assistants, teachers, school administrators, and shorthand reporters. The division also prosecutes adult abuse and violations of law by health facilities.

## **REVENUE DIVISION**

The Revenue Division advises and represents the Department of Revenue and Finance with respect to various taxes which are administered by the department, including income taxes, franchise tax imposed on financial institutions, state sales and use taxes, cigarette and tobacco taxes, drug tax, motor vehicle fuel taxes, inheritance and estate taxes, property taxes, hotel and motel local option taxes, local option sales taxes, real estate transfer tax, and grain-handling tax. In addition, the division drafts responses to tax opinion requests made to the Attorney General.

During the 2001-2002 biennium, the division participated in the resolution of informal proceedings for 197 protests filed by audited taxpayers. The division also litigated or resolved 44 contested case proceedings. In the biennium, nine contested cases were litigated or resolved at the State Board of Tax Review level.

During the biennium, 21 Iowa district court cases and two federal district court cases were handled by the division.

This division was involved in eight cases in the United States Supreme Court during the biennium either as amicus curiae or, in opposition to certiorari.

On the appellate Iowa court level, the division handled twelve cases in the Iowa Supreme Court and Iowa Court of Appeals.

A total of four responses to requests for opinions of the Attorney General were issued during the biennium. The division also assisted the Department of Revenue and Finance in disposing of 13 petitions for declaratory rulings. In addition, 372 proposed rules of the Department were reviewed for content and legality at the department's request.

As a result of the division's activities on behalf of the Revenue Department during the biennium, \$19,454,826 of tax revenue was directly collected or requested refund amounts were not paid.

## **ENVIRONMENTAL LAW DIVISION**

The Environmental Law Division represents the State of Iowa in issues affecting the environment and agriculture. The majority of the division's work involves representing the Department of Natural Resources, the Department of Agriculture and Land Stewardship, and the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board.

The division prosecutes civil environmental enforcement actions involving water

pollution, water supply, solid waste, air pollution, leaking underground storage tanks, hazardous conditions, and flood plains pursuant to Iowa Code chapters 455B and 459. The division is also responsible for implementing the One Call Education and Enforcement Initiative, including educating excavators and operators of underground facilities of the requirements of Iowa Code chapter 480 and, when appropriate, initiating civil enforcement actions. The division also defends its assigned agencies in citizen suits, civil rights actions, judicial proceedings, and other litigation.

The division routinely advises the Department of Natural Resources concerning statutory and rule interpretations, administrative law questions, and enforcement strategies. The division reviews grants to cities for various environmental construction projects. The division also provides legal assistance to the DNR in matters relating to acquisition and management of state-owned lands and waters and development projects on state-owned lands including National Environmental Policy Act requirements, construction contract disputes, drainage disputes, permits and leases for special uses of public lands and waters, and regulations relating to fishing, hunting, trapping, boating and use of state parks. The division advises the DNR and other state agencies in matters relating to federal management of the Missouri and Mississippi Rivers.

The division represents the Division of Soil Conservation of the Department of Agriculture and Land Stewardship. The division enforces coal and mineral mining laws, assists in collecting administrative penalties, drafts easements and provides title opinions in connection with water quality protection projects, prepares documents in connection with the agricultural drainage well closure program, prepares and reviews contracts, prepares releases and subordination agreements, provides counsel on personnel matters, and defends the agency when sued. The Pesticide Bureau of the Department of Agriculture and Land Stewardship is also represented by the division. The division assists in collecting administrative penalties regarding pesticide handling violations.

The division also represents the 100 soil and water conservation districts by enforcing administrative orders, soil loss limits, and maintenance agreements; providing title opinions in connection with watershed projects; preparing contracts; providing counsel on personnel matters; and defending the districts when sued.

The division serves as general counsel to the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board. General counsel duties include advising the board on issues relating to the UST remedial action and loan guarantee programs; reviewing and drafting UST legislative proposals; assisting in the rulemaking process; handling administrative contested cases; and defending the board when sued. General counsel duties also include contract drafting and review, negotiations, and handling personnel issues for the board. In addition, the division handles cost recovery efforts requested by the board pursuant to Iowa Code chapter 455G and assists the DNR and board in evaluating corrective action proposals at contaminated sites.

The division represents the State Archaeologist and provides legal assistance to the National Guard and the State Historical Society on real estate matters. The division also advises,

as needed, the Iowa Commissioner to the Midwest Interstate Low-level Radioactive Waste Commission, the Iowa Nebraska Boundary Commission, and the Energy Fund Disbursement Council.

## ADMINISTRATIVE SERVICES

### **ADMINISTRATIVE SERVICES DIVISION**

The Administrative Services Division performs four main functions: providing administrative management of the department, communicating with the legislature, communicating with the public through the media, and carrying out projects that advance the special priorities of the attorney general.

The administrative functions of the division include managing budget and fiscal matters, determining personnel policies and staffing, coordinating computer support, and managing office facilities.

The division's legislative liaison staff represents the attorney general before the General Assembly by advocating the office's many legislative priorities, answering questions posed by lawmakers, providing information on many matters, and coordinating the interaction between lawmakers and other members of the attorney general's staff.

The division issues news releases, brochures and other material about important matters such as consumer protection warnings or services available to crime victims. It answers wide-ranging questions posed by the media. The division also maintains a website with information about the attorney general's office ([www.iowaattorneygeneral.org](http://www.iowaattorneygeneral.org)).

The administrative services division coordinates and undertakes most of the activity required by special priorities chosen by the attorney general.

## CONSUMER ADVOCATE

### **OFFICE OF CONSUMER ADVOCATE**

The Office of Consumer Advocate (OCA) represents all consumers generally and the public generally in all proceedings before the Iowa Utilities Board, which implements and enforces the provisions of Iowa's public utility regulation statutes in Iowa Code chapters 476 and 476A. The OCA is also independently authorized to investigate the legality of all rates, charges, rules, regulations and practices of all persons under the jurisdiction of the Board, and may

institute proceedings before the Board or court to correct any illegality.

Proceedings before the Board in which OCA participated during the 2001-2002 biennium included annual reviews of electric and natural gas utilities' fuel purchasing and contracting practices, electric transmission line and gas pipeline certificate cases, formal complaints & investigation dockets of specific utility practices, purchased gas adjustment cases, electric utility service area disputes, rulemakings, energy efficiency program proposals, proposed utility reorganization (acquisitions), and rate cases. OCA also reviews the rates, terms, and conditions of negotiated interconnection agreements between competitors and incumbent local exchange providers; notices of inquiry, which are informal proceedings to educate the participants on a particular issue or set of issues; and non-exclusive service territories for telephone utilities and certificates of public convenience and necessity.

Investigation of the legality of proposed rate increases filed by investor-owned utilities represents the most significant area of OCA's litigation before the Board. To carry out its investigatory duties in a rate case, the OCA utilizes its technical staff as well as outside consultants at times to analyze the information presented in the filing by the utility company, and review the utility's books and records to determine the reasonable costs of providing utility service. OCA participates in the case by attending consumer comment hearings held at locations throughout the state, cross-examining utility witnesses at technical hearings, offering evidence through OCA-sponsored expert witnesses and filing briefs with the Board. During 2001-2002, OCA represented ratepayers and the general public in the resolution of 21 proposed rate increases filed by electric, natural gas, telephone and water utilities.

During the 2001-2002 biennium, OCA was involved in 104 electric transmission line certificate or renewal cases and 14 gas pipeline certificate or renewal cases. OCA was involved in 19 formal complaints (investigations brought against a utility by another utility, a customer, or by the Board) and monitored over 525 informal complaint cases. There were over 55 purchased gas adjustment filings made by utilities, which were reviewed. OCA participated in 29 utility service area boundary disputes. In addition, OCA was involved in 19 rulemaking proceedings, 19 formal utility investigations and 34 energy efficiency program plans. During the 2001-2002 biennium, OCA was involved in 18 judicial review proceedings in Iowa's District, Appellate and Supreme Courts.

During this time, OCA participated in discussions to increase electric generation and transmission investment in Iowa.

Finally, the OCA reviewed and processed hundreds of utility tariffs and related filings with the Iowa Utilities Board.

## LEGAL SERVICES



## **LEGAL SERVICE GRANTS**

Under Iowa Code section 13.34, the attorney general is directed to contract with eligible nonprofit organizations to provide legal assistance to eligible individuals in poverty. In FY02 and FY03, the attorney general's office utilized available appropriations and contracted with the Legal Services Corporation of Iowa and the Polk County Legal Aid Society under this section.

## **SUMMARIES OF ATTORNEY GENERAL OPINIONS**

**Note: Iowa Attorney General Opinions issued after 1977 are now available on the Department of Justice's website: [www.IowaAttorneyGeneral.org](http://www.IowaAttorneyGeneral.org).**

**For opinions issued prior to 1977, opinions can be obtained by contacting the Attorney General's Office at 515/281-5166.**

## SUMMARY OF OPINIONS ISSUED 2001-2002

### APPROPRIATIONS; COUNTIES

Transfer from special fund for unrelated program. 2001 Iowa Acts, 79<sup>th</sup> G.A., ch. \_\_\_\_, § \_\_ (S. F. 65); Iowa Code §§ 25B.2, 455E.11 (2001). The General Assembly in Senate File 65 can divert money from the groundwater protection fund to the Low-Income Home Energy Assistance Program before the end of the fiscal year as long as the diversion impairs no contractual obligation. The State Mandates Act, which may excuse local entities from paying administrative fines or penalties levied by the State, does not apply to a legislative scheme in which the State provides financial benefits to local entities that achieve waste-reduction goals. (Kempkes to Jackson, Des Moines County Attorney, 9-6-01) #01-9-1

### CASH RESERVE FUND

Iowa Code § 8.56 (2001). The cash reserve fund sets forth separate methods under which money in the cash reserve fund can be disbursed. Subsection 1 authorizes disbursement of money for cash flow purposes which must be returned to the cash reserve fund by the end of the fiscal year in which it was disbursed. Subsection 3 authorizes appropriations from the cash reserve fund for nonrecurring emergencies. (Pottorff & Biederman to Wandro, Director, Iowa Department of Transportation, 6-11-01) #01-6-1(L)

### CIVIL SERVICE; COUNTIES; SHERIFF

Office reorganization. Iowa Code §§ 20.7, 331.323, 331.652, 331.903, 341A.6, 341A.8, 341A.12 (2001). Acting in good-faith and for the purpose of economy or efficiency, county sheriffs can eliminate a lieutenant's position in reorganizing their offices and effectively demote the lieutenant having the least seniority. They may not undertake such a reorganization for the purpose of avoiding the civil service laws. (Kempkes to Martin, Cerro Gordo Attorney, 10-31-01) #01-10-5(L)

### CIVIL SERVICE; COUNTY AND COUNTY OFFICERS

Appointment of jailer. Iowa Code §§ 331.652, 331.903, 341A.7, 341A.8, 341A.14, 356.1 (2001). The civil service laws for deputy sheriffs, Iowa Code ch. 341A, do not *per se* apply to the position of jailer. Whether they apply to a jailer in a particular county constitutes a matter of fact, which falls outside the proper scope of an opinion and rests upon an analysis of job duties. Although a written certificate of appointment from the civil service commission to county officials should precede their payment of compensation to a properly appointed jailer for services rendered, they may pay compensation in the absence of such certificate. (Kempkes to

TeKippe, Chickasaw County Attorney, 12-19-01) #01-12-2(L)

### **CONFLICTS OF INTEREST; CIVIL SERVICE**

Civil service commissioners, city and county attorneys, union representation on appeal. Iowa Code §§ 341A.12, 341A.16, 362.5, 400.2, 400.26, 400.27 (2001). Depending upon the surrounding facts and circumstances, (1) civil service commissioners may have a conflict of interest if they conduct business with their respective city or county and (2) city or county attorneys may have a conflict of interest when serving as legal counsel to their respective civil service commissions. Union members without licenses to practice law may not provide legal representation to employees in appeals to civil service commissions. (Kuhn and Kempkes to Connors, State Representative, 12-5-01) #01-12-1

### **CONSTITUTIONAL LAW**

Denial of nonprofessional weapons permit. U.S. Const. amend. II; Iowa Const. art. I, § 1, 6 (1857); Iowa Const. art. I, § 1 (amend. 45); Iowa Code §§ 724.4, 724.7, 724.8, 724.11 (2001). Section 724.11, which provides the ninety-nine county sheriffs with discretion to issue nonprofessional weapons permits to individuals residing in their counties, does not facially offend the state constitutional guarantee to defend life and liberty and protect property. Section 724.11 does not implicate a violation of the state constitutional guarantee to equal protection of the law. (Kempkes to Boddicker, State Representative, 10-2-01) #01-10-1

### **CONSTITUTIONAL LAW; TAX CREDITS**

Use of tax credits as incentives to investors in venture capital. Iowa Const. art. VII, § 1. There is no violation of Iowa Const. art. VII, § 1, when tax credits are issued to taxpayers who purchase equity interests in a venture capital fund and when taxpayers are allowed to redeem those tax credits if these investments fail to produce scheduled profits. (Johnson to Vilsack, Governor, 1-18-02) #02-1-1

### **CONSTITUTIONAL LAW; CITIES**

Home inspections. Iowa Const. art. III, § 38A (amend. 25); Iowa Const. art. I, § 6 (1857); Iowa Code § 364.1 (2001). Cities have home rule authority to pass ordinances requiring home inspections only for homes sold on contract. Such an ordinance would not, on its face, violate

constitutional guarantees of equal protection, even if it only applied to persons or entities selling

a minimum number of homes per year on contract. (Kempkes to Deluhery, State Senator, 9-20-01) #01-9-2

## **COUNTIES**

Prisoner reimbursement. Iowa Code §§ 356.7, 356.30 (2001). A county with insufficient jail space that pays other counties to house its prisoners may seek reimbursement from the transferred prisoners for the cost of their room and board. (Kempkes to Edmondson, Washington County Attorney, 7-2-02) #02-7-1(L)

## **COUNTIES; SCHOOL DISTRICTS**

County contribution to wellness center; public purpose. Iowa Const., art. III, § 31 (1857); Iowa Code §§ 331.301, 346A.2 (2001). Consistent with the state constitutional requirement that an expenditure of public funds serve a public purpose, a county may contribute money to a regional wellness center, owned and operated by a school district, which will have an aquatic area, track, cardio-respiratory room, and other facilities that promote good health. (Kempkes to Ridout, Emmet County Attorney, 4-27-01) #01-4-2(L)

## **COUNTIES; ZONING; TAXATION**

Distinguishing “industry” from “agriculture”; egg breaking. Iowa Code §§ 331.304, 335.1, 335.2, 335.3, 335.4, 428.20, 441.21 (1999). A county may subject a proposed egg-breaking operation to zoning regulations, because, as a matter of law, that particular operation does not constitute agriculture. “Agriculture” in this context means the art or science of cultivating the ground, including the harvesting of crops and the rearing and managing of livestock. Whether the county may classify the proposed egg-breaking operation as industry for property tax purposes is a question of fact initially for the county assessor’s determination and ultimately a court’s. “Industry” in this context includes any process of manufacturing, refining, and purifying and excludes any process that does not change the character of an agricultural commodity. (Kempkes to Eddie, State Representative, 2-1-01) #01-2-1

## **COUNTY AND COUNTY OFFICERS**

Board of Supervisors; Veteran Affairs Commission; payment of expenses and review of certified claims. Iowa Code §§ 35B.6, 35B.7, 35B.10, 35B.13, 35B.14, 35B.17 (2001). County commissions of veteran affairs must pay for training the executive director, or designee, and burial expenses of any indigent veteran up to the level established by the supervisors. The supervisors must provide funds for the maintenance of the graves of veterans and their spouses and children, if other provisions for such maintenance are not in place. Appropriations for grave markers and other allowable benefits, as delineated in Code section 35B.14, are discretionary. After funds are appropriated, county supervisors possess limited power to review certified claims for the purpose of preventing results based upon biased or unreasonable judgment; they must confine their review to the record, which consists of the certified list of names and amounts, applications, investigation reports, and case records; and they may overturn decisions of county commissions only if the evidence clearly preponderates against the decisions. A board of supervisors may, through enactment of an ordinance, obligate the county to provide veterans with services and benefits which are discretionary under chapter 35B. (Scase to Ferguson, Black Hawk County Attorney, 10-22-02) #02-10-1(L)

## **COUNTY AND COUNTY OFFICERS**

County attorney giving legal advice. Iowa Code § 331.756 (2001). A county attorney *qua* county attorney lacks authority to give legal advice to a private, nonprofit corporation that supervises criminal defendants released on probation or parole pursuant to court order. (Kempkes to Holmes, Story County Attorney, 5-17-01) #01-5-3(L)

## **COUNTY AND COUNTY OFFICERS; COURTS**

Control over courthouse and personnel. Iowa Code §§ 331.301, 331.361, 331.502, 331.503, 331.903, 331.904 (2001). The supervisors and the auditor both act as caretakers of the courthouse, but the auditor acts subject to instruction from the supervisors. The auditor's general custody and control of the courthouse only involves the building, or buildings, occupied and appropriated according to law for the holding of courts. The supervisors, not the auditor, have authority to hire, fire, and assign maintenance and custodial personnel for the courthouse, purchase maintenance and custodial supplies, and determine the budget therefor. (Kempkes to Dearden, State Senator, 4-12-01) #01-4-1

## **COUNTY AND COUNTY OFFICERS; INCOMPATIBILITY OF OFFICES**

County board of supervisors appointing supervisor to county conservation board. Iowa Code section 331.216 (2001) supersedes the common law and permits county supervisors to appoint one of their own members to serve simultaneously on the county's conservation board. Enactment of section 331.216 reverses the conclusions reached in our prior opinions -- *e.g.*, 1980 Op. Att'y Gen. 51 (#79-4-4(L)); 1980 Op. Att'y Gen. 202 (#79-6-5(L)); 1970 Op. Att'y Gen. 27 -- that the common law does not permit a supervisor to serve simultaneously as a member of another county office. (Kempkes to Hansen, Osceola County Attorney, 4-27-01) #01-4-4(L)

## **ECONOMIC EMERGENCY RESERVE FUND; CASH RESERVE FUND**

Use of funds for cash flow purposes. Iowa Code §§ 8.55(1), (3), 8.56(1), (3), (4) (2001). Moneys from the economic emergency fund and the cash reserve fund may be used for cash flow purposes to pay legal obligations of the State for which the Legislature has made appropriations. Moneys so used from the cash reserve fund must be returned by the end of the fiscal year. The law does not state when moneys used from the economic emergency fund must be returned. (Johnson to Eisenhauer, Director, Iowa Department of Management, 10-5-01) #01-10-2

## **EMINENT DOMAIN; MUNICIPALITIES; SCHOOLS**

City condemning school property. Iowa Const. art. IX (2<sup>nd</sup> part), § 1 (1857); Iowa Code §§ 6A.4, 297.1, 306.2, 306.19 (2001). Absent a clear showing of fraud, bad faith, or arbitrary abuse of discretion, a city may condemn property owned by a school district to use as right-of-way for a street. (Kempkes to McKean, State Senator, 7-31-01) #01-7-1(L)

## **GAMBLING; ADMINISTRATIVE RULES**

Video gambling devices at racetrack enclosures. Iowa Code §§ 99F.1, 99F.4, 99F.17A (2001). The Iowa Racing and Gaming Commission rule authorizing video slot machines at race track enclosures, 491 Iowa Admin. Code 11.5 is consistent with Iowa Code section 99F.1(9), and is within the Commission's rulemaking authority pursuant to that section and section 99F.4. (Davis to Raecker, State Representative, 9-10-02) #02-9-1

## **JUVENILE LAW**

Delinquents at juvenile home. Iowa Code §§ 218.4, 232.52, 232.102, 233B.3, 233B.5, 233B.7 (2001). The Iowa Juvenile Home may admit juvenile delinquents adjudicated as children in need of assistance. (Kempkes to Davis, Scott County Attorney, 10-10-01) #01-10-3(L)

## **JUVENILE LAW; COUNTIES**

Unreimbursed shelter care costs. Iowa Code §§ 232.141, 234.35, 234.39 (1999). When counties incur expenses for providing children with shelter care services that the State does not reimburse, section 234.39 does not authorize counties to pursue reimbursement for those expenses from the parents. (Kempkes to Zenor, Clay County Attorney, 1-11-01) #01-1-1

## **LAW ENFORCEMENT; COUNTIES AND COUNTY OFFICERS**

Use of special deputies. Iowa Code § 331.652 (2001). County sheriffs may not use special deputies on a regular, ongoing basis to assist in performing official duties. They may only appoint them to assist in handling an emergency. (Kempkes to Goodlow, Monroe County Attorney, 10-17-01) #01-10-4(L)

## **LAW ENFORCEMENT; POLICEMEN; FIREMEN; SHERIFF**

Appointment of reserve peace officers. Iowa Code §§ 80D.1A, 80D.6, 80D.9, 80D.11, 331.903, 362.10 (2001). The maximum age limitations imposed by Iowa Code sections 331.903(6) and 362.10 (2001) upon the service of “deputy sheriffs” and “police officers” in the State of Iowa are applicable to reserve peace officers appointed or employed pursuant to Iowa Code chapter 80D because reserve peace officers perform the same duties and functions as regular deputy sheriffs and police officers. (Lundquist to Shepard, Director, Iowa Law Enforcement Academy, 4-27-01) #01-4-3(L)

## **LOESS HILLS ALLIANCE; CONSERVATION EASEMENTS; ENVIRONMENTAL LAW; REAL PROPERTY**

Permanent conservation easements. Iowa Code §§ 161D.6, 457A.2 (2001). The Loess Hills Alliance -- in cooperation with the DNR, county conservation boards, cities, or private, nonprofit organizations -- may acquire permanent conservation easements from private landowners in the Loess Hills by making single payments thereto. (Kempkes to Warnstadt, State Representative, 12-19-01) #01-12-3



## **MUNICIPALITIES**

Public notice and required readings and publication of proposed ordinances. Iowa Code §§ 21.4(1), 380.3, 380.6(1)(a) (2001). Iowa Code section 21.4(1) requires that the council give notice of the time, date, and place of each meeting as well as its tentative agenda, which would include listing of proposed ordinances to be discussed. Iowa Code section 380.3 allows a municipal council to suspend the multiple reading requirements therein and approve an ordinance by affirmative vote at a single meeting. Iowa Code section 380.6(3) requires that proposed ordinances be published after passage. (Biederman to Hardisty, Adams County Atty., 3-2-01) #01-3-1(L)

## **MUNICIPALITIES; PUBLIC RECORDS**

Publishing minutes of city council meetings. Iowa Code §§ 21.3, 137.6, 372.13 (2001). A city clerk must cause the publication of the minutes of a city council meeting in a newspaper within fifteen days after the city council meets. (Kempkes to Lundby, State Senator, 7-10-02) #02-7-3(L)

## **NUISANCE; COUNTIES**

Assessment for abatement by county. Iowa Code §§ 331.384, 364.12, 384.62 (1999). A county abating a nuisance located on a private lot has authority to assess all reasonable abatement costs against the lot. (Kempkes to Lloyd, Clarke County Attorney, 1-18-01) #01-1-2

## **OPEN MEETINGS LAW; SCHOOLS**

Board member absent during closed session. Iowa Code § 21.5 (2001). A school board member, absent during a closed session of the board, may subsequently obtain and review the minutes and tape recording of the closed session. (Kempkes to Shey, State Representative, 11-19-01) #01-11-1(L)

## **PROFESSIONAL LICENSING BOARDS; CONSTITUTIONAL LAW**

Validity of administrative rule adopted by the Board of Dental Examiners. Iowa Const. art I, § 7, Iowa Code §§ 153.34, 272C.10 (2001). 650 Iowa Admin. Code subrule 27.7(8) is designed as a restriction on commercial speech. Whether the rule infringes upon a dentist's free speech rights largely rests on resolution of the factual question of whether the restricted speech is false, deceptive, or misleading. An Attorney General's opinion is not the proper forum in which to weigh the strength of competing views on whether the removal of restorations from nonallergic patients may free the body of toxic substances. Having codified a specific standard of care, the Dental Board has the corresponding responsibility to monitor continued support for its position. Dentists do not have a free speech right to practice incompetent dentistry or recommend to prospective or current patients treatment regimens which are deceptive or which fall substantially below an acceptable standard of care. Dentists do have a free speech right to voice a personal opinion and to in good faith counsel patients free of unwarranted governmental intervention. The Dental Board must be cautious in the application of this or a similar rule to avoid encapturing fully-protected speech. (Griebel to Rittmer, State Senator, 12-10-02) #02-12-1

## **PROPERTY TAX; COUNTY AND COUNTY OFFICERS; STATE OFFICERS AND DEPARTMENTS**

Pollution-control property. Iowa Code §§ 421.17, 427.1 (2001). A county assessor does not have authority under county home rule to deny exemptions to taxpayers for pollution-control property when the Iowa Department of Natural Resources has certified their property as pollution-control property. (Kempkes to Bonnett, Taylor County Attorney, 5-1-02) #02-5-1

## **PUBLIC EMPLOYEES; GROUP INSURANCE**

Continuance of group insurance for retirees under the age of sixty-five. Iowa Code §§ 509A.13, 509B.3(5), 509B.4(3) (2001). Retired public employees under the age of sixty-five who continue group insurance under Iowa Code section 509A.13 must be placed in the same risk pool as all other participants in the group plan for purposes of determining premiums. (Johnson to McCoy, State Senator, 5-14-02) #02-5-2

## **PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM**

Member contribution rate for pension accumulation fund. Iowa Code §§ 97A.5, 97A.7, 97A.8 (2001). Section 97A.8(1)(f)(8) does not preclude the trustees of the pension accumulation fund from increasing the member's contribution rate in a year in which the General Assembly has not enhanced the member's pension benefits. The increase in rate must be necessary to cover any increase in cost to the retirement system resulting from statutory changes if the increase cannot be absorbed within the contribution rates otherwise established by section 97A.8. The trustees, after approving such increases, have discretion to reduce them if future actuarial evaluations support a rate reduction consistent with chapter 97A. (Kempkes to Techau, Commissioner, Department of Public Safety, 2-13-02) #02-2-2(L)

## **SCHOOLS AND SCHOOL DISTRICTS; STATE OFFICERS AND DEPARTMENTS**

Pupil transportation. Iowa Code §§ 256.11, 285.1, 285.2, 285.16 (2001). Resident pupils attending accredited college preparatory schools located either within or without the school district of their residences shall be entitled to transportation on the same basis as provided for resident pupils attending public schools. (Kempkes to Veenstra, State Senator, 6-11-01) #01-6-2(L)

## **STATE OFFICERS AND DEPARTMENTS**

Iowa Department of Natural Resources; validity of rules promulgated by Environmental Protection Commission on beverage container deposits. Iowa Code §§ 455C.1, 455C.2, 455C.3, 455C.4, 455C.6 (2001); 567 Iowa Admin. Code 107.4(3)(d), 107.4(4)(a), 107.9(2), 107.9(3), 107.14. The Commission did not exceed its authority in promulgating a new administrative rule relating to the Department's approval of redemption centers. The Commission exceeded its authority in promulgating new administrative rules relating to distributor pick up of empty beverage containers from dealer agents, distributor pick up of empty beverage containers from redemption centers, and distributor payment to dealer agents. (Kempkes to Rittmer, Chair, Administrative Rules Review Committee, 7-8-02) #02-7-2

## **STATE OFFICERS AND DEPARTMENTS; SCHOOLS; PUBLIC RECORDS; HEALTH**

Record checks of students. Iowa Code §§ 135C.33, 235A.15, 235B.6, 692.2 (2001 & Suppl. 2001). Section 135C.33(1) does not require health care facilities to request record checks for nursing and health care students who will perform tasks in health care facilities as part of academically required clinical training requirements. Sections 235A.15(2)(f) and 692.2 limit disclosure to a health care facility or a community college of information relating to crimes and, under some circumstances, child abuse. Section 135C.33(3) does not preclude a health care facility from refusing to employ persons who have “non-abuse criminal convictions”; subject to its arrangement with a community college, a health care facility may refuse to permit students with such convictions from participating in academically required clinical training requirements. (Kempkes to Stilwill, Director, Department of Education, 2-13-02) # 02-2-1

## **TAXATION; NONPROFIT CORPORATIONS; COOPERATIVE ASSOCIATIONS; RURAL WATER DISTRICTS**

Property tax exemptions for pollution-control or recycling property of entities providing water to rural areas. Iowa Code §§ 357A.15, 427.1, 427A.1 (2001). Either section 427.1(17) or section 427.1(19) may exempt from property taxes the pollution-control or recycling property of nonprofit corporations having sewage treatment facilities and providing water to rural areas; only section 427.1(19) may exempt from property taxes the pollution-control or recycling property of cooperative associations having sewage treatment facilities and providing water to rural areas; the question whether either exemption applies to particular items of pollution-control or recycling property will depend upon an assessment of the relevant facts and circumstances, a task lying outside the proper scope of an opinion. Section 357A.15 exempts from property taxes all pollution-control or recycling property of rural water districts having sewage treatment facilities. (Kempkes to McKibben, State Senator, 5-1-01) #01-5-1

## **TRANSPORTATION, DEPARTMENT OF; COUNTIES; MUNICIPALITIES**

Train speed regulation. Iowa Code § 327F.31 (2000). The Iowa Department of Transportation may only issue an order approving a locally proposed regulation for train speed if, in addition to meeting the requirements in its administrative rules and the test of reasonableness, the proposal satisfies the requirements of 49 U.S.C. § 20106: (1) it must be “necessary to eliminate or reduce an essentially local safety hazard”; (2) it must not be “incompatible with” a federal law, regulation, or order; and (3) it may not “unreasonably burden” interstate commerce. An opinion, which determines matters of law, cannot determine as a matter of fact whether a specific proposal satisfies the administrative rules or the second exception. (Kempkes to Wandro, Director, Iowa Department of Transportation, 5-7-01) #01-5-2

# INDEX

## STATUTES CONSTRUED

January 2001 through December 2002

### 1999 IOWA CODE

	OPINION
232.141	01-1-1
234.35	01-1-1
234.39	01-1-1
331.304	01-2-1
331.384	01-1-2
335.1	01-2-1
335.2	01-2-1
335.3	01-2-1
335.4	01-2-1
364.12	01-1-2
384.62	01-1-2
428.20	01-2-1
441.21	01-2-1

### 2001 IOWA CODE

	OPINION
6A.4	01-7-1(L)
8.55(1)	01-10-2
8.55(3)	01-10-2
8.56	01-6-1(L)
8.56(1)	01-10-2
8.56(3)	01-10-2
8.56(4)	01-10-2
20.7	01-10-5(L)
21.3	02-7-3(L)
21.4	01-3-1(L)
21.5	01-11-1(L)
25B.2	01-9-1
35B.6	02-10-1(L)
35B.7	02-10-1(L)
35B.10	02-10-1(L)
35B.13	02-10-1(L)
35B.14	02-10-1(L)
35B.17	02-10-1(L)

80D.1A	01-4-3(L)
80D.6	01-4-3(L)
80D.9	01-4-3(L)
80D.11	01-4-3(L)
97A.5	02-2-2(L)
97A.7	02-2-2(L)
97A.8	02-2-2(L)
99F.1	02-9-1
99F.4	02-9-1
99F.17A	02-9-1
135C.33	02-2-1
137.6	02-7-3(L)
153.34	02-12-1
161D.6	01-12-3
218.4	01-10-3(L)
232.52	01-10-3(L)
232.102	01-10-3(L)
233B.3	01-10-3(L)
233B.5	01-10-3(L)
233B.7	01-10-3(L)
235A.15	02-2-1
235B.6	02-2-1
256.11	01-6-2(L)
272C.10	02-12-1
285.1	01-6-2(L)
285.2	01-6-2(L)
285.16	01-6-2(L)
297.1	01-7-1(L)
306.2	01-7-1(L)
306.19	01-7-1(L)
327F.31	01-5-2
331.216	01-4-4(L)
331.301	01-4-1
	01-4-2(L)
331.323	01-10-5(L)
331.361	01-4-1
331.502	01-4-1
331.503	01-4-1
331.652	01-10-4(L)
	01-10-5(L)
	01-12-2(L)
331.756	01-5-3(L)
331.903	01-4-3(L)
	01-4-1

	01-10-5(L)
	01-12-2(L)
331.904	01-4-1
341A.6	01-10-5(L)
341A.7	01-12-2(L)
341A.8	01-10-5(L)
	01-12-2(L)
341A.12	01-10-5(L)
	01-12-1
341A.14	01-12-2(L)
341A.16	01-12-1
346A.2	01-4-2(L)
356.1	01-12-2(L)
356.7	02-7-1(L)
356.30	02-7-1(L)
357A.15	01-5-1
362.5	01-12-1
362.10	01-4-3(L)
372.13	02-7-3(L)
380.3	01-3-1(L)
380.6	01-3-1(L)
400.2	01-12-1
400.26	01-12-1
400.27	01-12-1
421.17	02-5-1
427.1	01-5-1
	02-5-1
427A.1	01-5-1
455C.1	02-7-2
455C.2	02-7-2
455C.3	02-7-2
455C.4	02-7-2
455C.6	02-7-2
455E.11	01-9-1
457A.2	01-12-3
509A.13	02-5-2
509B.3(5)	02-5-2
509B.4(3)	02-5-2
692.2	02-2-1
724.4	01-10-1
724.7	01-10-1
724.8	01-10-1
724.11	01-10-1

IOWA CONSTITUTION

art. I, § 1 (1857)  
art. I, § 6 (1857)  
  
art. I, § 1 (amend. 45)  
art. I, § 7  
art. III, § 31  
art. III, § 38  
art. VII, § 1  
art. IX (2<sup>nd</sup> part), § 1 (1857)

OPINION

01-10-1  
01-10-1  
01-9-2  
01-10-1  
02-12-1  
01-4-2(L)  
01-9-2  
02-1-1  
01-7-1(L)

IOWA ACTS, 79<sup>th</sup> G.A.

ch. \_\_\_\_, § \_\_\_\_ (S.F. 65)

OPINION

01-9-1

IOWA ADMINISTRATIVE CODE

567-107.4(3)  
567-107.4(4)  
567-107.9(2)  
567--107.9(3)  
567--107.14

OPINION

02-7-2  
02-7-2  
02-7-2  
02-7-2  
02-7-2



## TOPICAL INDEX

January 2001 through December 2002

### Administrative Rules

#02-9-1 Gambling: Video gambling devices at racetrack enclosures

### Appropriations

#01-9-1 Counties: Transfer from special fund for unrelated program

### Cash Reserve Fund

#01-6-1(L) Cash reserve fund sets forth separate methods under which money in the fund can be disbursed

#01-10-2 Economic Emergency Reserve Fund: Use of funds for cash flow purposes

### Cities

#01-9-2 Constitutional Law: Home inspections

### Civil Service

#01-12-1 Conflicts of Interest; Civil service commissioners, city and county attorneys, union representation on appeal

#01-10-5(L) Counties; Sheriff: Office reorganization

#01-12-2(L) County and County Officers: Appointment of jailer

### Conflicts of Interest

#01-12-1 Civil Service: Civil service commissioners; city and county attorneys, union representation on appeal

### Conservation Easements

#01-12-3            Loess Hills Alliance; Environmental Law; Real Property: Permanent conservation easements

### Constitutional Law

#01-9-2            Cities: Home inspections

#01-10-1           Denial of nonprofessional weapons permit

#02-12-1           Professional Licensing Boards; Validity of administrative rule adopted by the Board of Dental Examiners

#02-1-1            Tax Credits: Use of tax credits as incentives to investors in venture capital

### Cooperative Associations

#01-5-1            Taxation; Nonprofit Corporations; Rural Water Districts: Property tax exemptions for pollution-control or recycling property of entities providing water to rural areas

### Counties

#01-9-1            Appropriations: Transfer from special fund for unrelated program

#01-10-5(L)        Civil Services; Sheriff: Office reorganization

#01-1-1            Juvenile Law: Unreimbursed shelter care costs

#01-1-2            Nuisance: Assessment for abatement by county

#02-7-1(L)        Prisoner reimbursement

#01-4-2(L)        School Districts: County contribution to wellness center; public purpose

#01-5-2            Transportation, Department of; Municipalities: Train speed regulation

#01-2-1            Zoning; Taxation: Distinguishing “industry” from “agriculture”; egg breaking

### County and County Officers

- #02-10-1(L) Board of Supervisors; Veteran Affairs Commission; payment of expenses and review of certified claims
- #01-12-2(L) Civil Service: Appointment of jailer
- #01-5-3(L) County attorney; giving legal advice
- #01-4-1 Courts: Control over courthouse and personnel
- #01-4-4(L) Incompatibility of Offices: County board of supervisors appointing supervisor to county conservation board
- #01-10-4(L) Law Enforcement: Use of special deputies
- #02-5-1 Property Tax; State Officers and Departments: Pollution-control property

### Courts

- #01-4-1 County and County Officers: Control over courthouse and personnel

### Economic Emergency Reserve Fund

- #01-10-2 Cash Reserve Fund: Use of funds for cash flow purposes

### Eminent Domain

- #01-7-1(L) Municipalities; Schools: City condemning school property

### Environmental Law

- #01-12-3 Loess Hills Alliance; Conservation Easements; Real Property: Permanent conservation easements

### Firemen

#01-4-3(L) Law Enforcement; Policemen; Sheriff: Appointment of reserve peace officers

### Gambling

#02-9-1 Administrative Rules: video gambling devices at racetrack enclosures

### Group Insurance

#02-5-2 Public Employees: Continuance of group insurance for retirees under the age of sixty-five

### Health

#02-2-1 State Officers and Departments; Schools; Public Records: Record checks of students

### Incompatibility of Offices

#01-4-4(L) County and County Officers: County board of supervisors appointing supervisor to county conservation board

### Juvenile Law

#01-1-1 Counties: Unreimbursed shelter care costs

#01-10-3(L) Delinquents at juvenile home

### Law Enforcement

#01-10-4(L) Counties and County Officers: Use of special deputies

#01-4-3(L) Policemen; Firemen; Sheriff: Appointment of reserve peace officers

### Loess Hills Alliance

#01-12-3 Conservation Easements; Environmental Law; Real Property: Permanent

conservation easements

### Municipalities

- #01-7-1(L) Eminent Domain; Schools: City condemning school property
- #01-3-1(L) Public notice and required readings and publication of proposed ordinances
- #02-7-3(L) Public Records: Publishing minutes of city council meetings
- #01-5-2 Transportation, Department of; Counties: Train speed regulation

### Nonprofit Corporations

- #01-5-1 Taxation; Cooperative Associations; Rural Water Districts: Property tax exemptions for pollution-control or recycling property of entities providing water to rural areas

### Nuisance

- #01-1-2 Counties: Assessment for abatement by county

### Open Meetings Law

- #01-11-1(L) Schools: Board member absent during closed session

### Policemen

- #01-4-3(L) Law Enforcement; Firemen; Sheriff: Appointment of reserve peace officers

### Professional Licensing Boards

- #02-12-1 Constitutional Law: Validity of administrative rule adopted by the Board of Dental Examiners

### Property Tax

#02-5-1 County and County Officers; State Officers and Departments: Pollution-control property

### Public Employees

#02-5-2 Group Insurance: Continuance of group insurance for retirees under the age of sixty-five

### Public Records

#02-7-3(L) Municipalities: Publishing minutes of city council meetings

#02-2-1 State Officers and Departments; Schools; Health: Record checks of students

### Public Safety Peace Officers' Retirement, Accident and Disability System

#02-2-2(L) Member contribution rate for pension accumulation fund

### Real Property

#01-12-3 Loess Hills Alliance; Conservation Easements; Environmental Law: Permanent conservation easements

### Rural Water Districts

#01-5-1 Taxation; Nonprofit Corporations; Cooperative Associations: Property tax exemptions for pollution-control or recycling property of entities providing water to rural areas

### Schools

#01-7-1(L) Eminent Domain; Municipalities: City condemning school property

#01-11-1(L) Open Meetings Law: Board member absent during closed session

#02-2-1 State Officers and Departments; Public Records; Health: Record checks of students

School Districts

#01-4-2(L) Counties: County contribution to wellness center; public purpose

#01-6-2(L) State Officers and Departments: Pupil transportation

Sheriff

#01-10-5(L) Civil Service; Counties: Office reorganization

#01-4-3(L) Law Enforcement; Policemen; Firemen: Appointment of reserve peace officers

State Officers and Departments

#02-7-2 Iowa Department of Natural Resources; validity of rules promulgated by Environmental Protection Commission on beverage container deposits

#02-5-1 Property Tax; County and County Officers: Pollution-control property

#02-2-1 Schools; Public Records; Health: Record checks of students

#01-6-2(L) Schools and School Districts: Pupil transportation

Tax Credits

#02-1-1 Constitutional Law: Use of tax credits as incentives to investors in venture capital

Taxation

#01-2-1 Counties; Zoning: Distinguishing “industry” from “agriculture”; egg breaking

#01-5-1 Nonprofit Corporations; Cooperative Associations; Rural Water Districts: Property tax exemptions for pollution-control or recycling property of entities providing water to rural areas

Transportation, Department of

#01-5-2 Counties; Municipalities: Train speed regulation

Zoning

#01-2-1 Counties; Taxation: Distinguishing “industry” from “agriculture”; egg breaking