COUNTIES: Iowa Constitution art. III, §§ 30 and 39A; Iowa Code §§ 331.301; 1848 Iowa Acts, 1st G.A., extra session, ch. 52. Lee County, under County Home Rule powers granted under Iowa Constitution art. III, sec. 39A, may eliminate one of its county seats designated by the special law contained in 1848 Iowa Acts, 1st G.A., extra session, ch. 52, requiring district court be held in two cities in Lee County provided such action does not seek to close the district court, clerk of court's office or discontinue sheriff's services to these courts in either city. (Thompson & Bennett to Taylor, 1-16-15) #15-1-1

The Honorable Rich Taylor
State Senator
LOCAL

Dear Senator Taylor:

You have requested an opinion from this office whether current Iowa law would permit the Lee County Board of Supervisors to eliminate one of the two county seats in that county.[1] It is our determination that action by Lee County to designate a single county seat by ordinance would be permitted under County Home Rule as long as such action does not close or move the district court and clerks of court offices maintained in Fort Madison and Keokuk or discontinue sheriff's services to both courts at these cities.

County Seat under Iowa Law

County seat, as defined in *Way v. Fox*, 109 Iowa 340, 80 N.W. 405 (1899), is the place properly designated for doing the business of the county, where public buildings are to be erected, where the courts are held, and where county offices are located. This is consistent with the following description of the purpose of county seat made during debate on Article III, Section 30 of the Iowa Constitution during the 1857 Constitutional Convention:

> Every county must have a point, a public place in which to transact county business, hold their courts, have their public offices, keep their records, receive their taxes, &c.

Comments by J. C. Hall, Debates of the 1857 Iowa Constitutional Convention, Vol. I, p. 536. *See also* 56 Am. Jur. 2d. Municipal Corporations § 27 (county seat is principal city of the county where county officers perform their functions, county records are kept, and ordinarily the principal county buildings including the county courthouse are located).

The current Code of Iowa uses "county seat" as a legal designation for a variety of matters. *See* Iowa Code § 6B.46 (2014) (location for court of condemnation for condemnation

[1] In your letter requesting formal opinion on this issue you referenced informal advice previously provided by this office in 2013 expressing uncertainly as to the validity of a county ordinance that would alter the county seat designations in Lee County under its Home Rule powers. That informal advice is superseded by this formal opinion.

of existing utility); Iowa Code § 62.10 (2014) (location for trial of contested election); Iowa Code § 346.27 (2014) (allow county and its county seat to create an authority to construct joint buildings); Iowa Code § 450.66 (2014) (location to appear before director of revenue under citation to locate inheritance tax property); Iowa Code § 455C.14 (2014) (location for beverage container redemption center); Iowa Code § 468.184 (2014) (place for hearing on reclassification of levee district lands); Iowa Code §§ 478.6, 479.8, and 479C.6 (2014) (location for condemnation hearing on utility improvements); Iowa Code § 602.1303 (2014) (city supplies courtrooms for court held outside county seat); and Iowa Code § 602.8102(1) (2014) (clerk of court to keep office at county seat).

Significantly, designation as the "county seat" triggers a duty for the county board of supervisors to provide offices to the recorder, treasurer, auditor, county attorney, county surveyor or engineer, county assessor and city assessor at the county seat. Iowa Code § 331.322 (2014). Iowa Code section 331.322 is titled "Duties relating to county and township officers" and generally lists responsibilities of the board of supervisors to provide adequate resources for the other county officers to conduct their duties. When the board has not provided such office space at the county court house, this duty has been interpreted to require the board to compensate county officers for necessary office space elsewhere. 1970 Op. Atty. Gen. 607 (#70-4-37), 1970 WL 207689. Iowa Code section 331.322(5) provides no requirement on the staffing of these offices, nor does it provide hours that county offices must be open. Contrast this to the pre-county home rule provision, Iowa Code section 335.2 (1981), which required the recorder to keep an office at the county seat.

While "county seat" continues to have legal significance post-home rule, the requirement that court be held at the county seat is no longer a mandatory requirement in all instances. *See* Iowa Code § 602.6105(1) (2014) and Iowa Code § 331.381(16) (2014) (allowing a county with less than fifteen thousand residents to enter an agreement with a contiguous county to provide space for the district court); Iowa Code § 602.1303(9) (2014) (county may elect not to maintain space for district court in the county by cost sharing with contiguous county and approval of the Supreme Court). Other provisions allow for court to be held at places in the county outside of the county seat. *See* Iowa Code § 602.1303(1)(c) (2014) (city to provide court rooms when court is held in city not the county seat); Iowa Code § 602.6105(2) (2014) (court in Pottawattamie County to be held at Avoca in addition to the county seat); Iowa Code § 602.6106 (2014) (providing all code provisions relating to district courts applicable when court not held in county seat). These authorities suggest that while holding district court in a city remains a characteristic of a "county seat", it is no longer an essential requirement to be a county seat, and a city could hold this status whether or not district court is held in the community.

Location of County Seats

A. Territorial and Early Statehood

During territorial times and early statehood, county seats in Iowa were designated by special act of the legislature. *See* Act to divide Henry County, Statute Laws of the Territory of Iowa (1st Legislative Assembly Session, 1838-39), p. 97-99 (creating Jefferson County, and designating commissioners to fix the court seat), available October 1, 2014 at

https://www.legis.iowa.gov/docs/shelves/code/ocr/1839%20Iowa%20Statute%20Laws.pdf. In that era, the location of the county seats were commonly changed by special acts of the legislature that were requested by small groups with financial interests in relocation of the county seat, were passed without knowledge of the majority of county residents, caused disruption in county services, and expended valuable legislative resources. *See* Debates of the 1857 Iowa Constitutional Convention, Vol. I, p. 532-535 available October 1, 2014 at http://publications.iowa.gov/7313/1/The_Debates_of_the_Constitutional_Convention_Vol%231.pdf.

As a result of these concerns, the Revised Iowa Constitution of 1857 contains a provision that specifically bars local or special laws for "locating or changing county seats". Iowa Constitution, art. III, sec. 30. The General Assembly enacted general legislation to provide a statutory process to relocate county seats through a local election upon petition to the county government requesting to locate the county seat. Iowa Code §§ 231-39 (1860). This statutory county seat relocation process remained in a similar form until the implementation of the County Home Rule constitutional amendment. *See* Iowa Code chapter 353 - Relocation of County Seats (1981) (repealed 1981 Iowa Acts, 69th G.A., ch.117, § 1097).

B. County Home Rule Era

The current county powers chapter, Iowa Code Chapter 331-County Home Rule Implementation, contains no statutory provision for relocation of a county seat, or explicit limitation on the county's power to do so. This is consistent with the general grant to counties, under county home rule, to exercise powers the county deems appropriate in its local affairs when not inconsistent with state law. Iowa Constitution art. III, sec. 39A; Iowa Code § 331.301(1) (2014). The County Home Rule Amendment, passed in 1978, followed the almost identical Municipal Home Rule Amendment, Article III, section 38A of the Iowa Constitution, passed in 1968. Because of the similarity of the city and county home rule provisions, courts use analysis interchangeably between these provisions. *See Goodell v. Humboldt County*, 575 N.W.2d 486, 492 (Iowa 1998) (footnote 7). The powers under this enactment are vested in the board of supervisors, unless otherwise designated by code, and the repeal of a grant of power or failure to state a power by the legislature does not restrict home rule powers of a county. Iowa Code § 331.301 (2014). The county board of supervisors exercises its powers under county home rule by ordinance, resolution or motion. Iowa Code § 331.302(1) (2014).

Through these constitutional amendments, the voters of Iowa reset the scale by which county and city powers are measured in local affairs. Prior to passage of county and city home rule, a city or county could only act if it was granted a power to act under state law, or such act was necessarily implicated for a power expressly granted by state law. *Worth County Friends of Agriculture v. Worth County*, 688 N.W.2d 257, 265 (Iowa 2008) (footnote 7). After home rule, counties were empowered to act on local affairs unless state law forbade such action, or it was inconsistent with state law. *Id.,* at 265.

The legislature may preempt city or county home rule regulation by three methods: express preemption, implied field preemption, and implied conflict preemption. *City of Davenport v.*

Seymour, 755 N.W.2d 533, 538-39 (Iowa 2008); *Goodell,* at 492-93. Express preemption occurs where the legislature specifically prohibits regulation in an area. *Goodell,* at 492. Implied field preemption occurs where the legislature has enacted a comprehensive regulation in a field so as to reveal a clear intent by the state to occupy that field barring county or city regulation. *Seymour,* at 539. Implied conflict preemption occurs where a city or county action conflicts with state statutes. *Goodell,* at 493; *Seymour,* at 538-39. Exercise of a county power is not inconsistent with state law unless it is irreconcilable. *Seymour,* at 539. "Irreconcilable" conflict between state law and county action must be unresolvable short of choosing one enactment over the other. *Id.* The conflict must be obvious, unavoidable, and not a matter of reasonable debate. *Id.* The action of the county will be presumed to be valid and the conflicting state law should be interpreted to render it harmonious with the local action if possible. *Id.*

After repeal of Iowa Code Chapter 353- Relocation of County Seats (1981), the Code is silent on the power or process of a county to relocate a county seat. Such a power would therefore, be the proper subject for county regulation under the County Home Rule unless such local action is in conflict with state statutory provisions and therefore subject to implied preemption.

The Unique Case of Lee County

Lee County, Iowa was established in 1836 by an act of the Wisconsin Territorial legislature which further provided that court in the newly-established county would be held in the city of Madison. 1837 Wisconsin Territorial Statutes, Act No. 21, Sections 1 and 8 (enacted December 7, 1836). Soon after Iowa statehood, the First Iowa General Assembly passed a special law providing that district court in Lee County was to be held in both Fort Madison and Keokuk. 1848 Acts, 1st G.A., extra session, ch. 52, §§ 1, 5, 6 (hereinafter "Special Law of 1848"). This special law also required the clerk of court and sheriff maintain offices at both Fort Madison and Keokuk, that either the sheriff or a deputy reside at each city, and provided jurisdiction for each of the Lee County courts. *Id.* The act required the city of Keokuk to provide the facilities for holding court, but made no further provision of placement of other county offices. *Id.* Notably, the special law contained no language specifically designating a "county seat" or seats. Case law and other authorities have characterized Lee County as having two county seats, but none of these authorities indicate the Special Law of 1848 designated these two cities as county seats. *See Froman v. Keokuk Health Systems, Inc.*, 755 N.W.2d 528 (Iowa 1998); *Committee on Professional Ethics and Conduct v. Liles*, 430 N.W.2d 111, 111-12 (Iowa 1988); *State v. Turner*, 114 Iowa 426, 87 N.W. 287 (Iowa 1901); 1976 Op. Att'y Gen. 341 (#75-12-3).

Can Lee County Unilaterally Eliminate a County Seat?

While it is relatively clear that counties in Iowa may relocate the county seat under home rule powers (see discussion above) it is less clear that Lee County may eliminate one of its two county seats given the Special Law of 1848 requiring that district court be held in both Fort Madison and Keokuk, and that clerk of court and sheriff maintain offices in both cities. 1848 Acts, 1st G.A., extra session, ch. 52, §§ 1, 5, 6. Such action would only be lawful if it is not

preempted by the Special Law of 1848 establishing the dual court in Lee County, and if it is not preempted by other statutory provisions.

A. Special Law of 1848

The relevant provisions of the 1848 Special Law creating the dual court system in Lee County follow:

> 1. That district courts shall be held in the county of Lee at Fort Madison and at the city of Keokuk.
>
> 2. That the city of Keokuk shall provide necessary rooms for holding court there free of charge.
>
> 3. That the clerk of the district court will keep an office and perform all duties of the court at both Fort Madison and Keokuk by himself or by a deputy, one of whom shall reside at each city.
>
> 4. That the sheriff will maintain offices and perform all duties to the district court at both Fort Madison and Keokuk by himself or a deputy, one of whom shall reside at each city.

1848 Acts, 1st G.A., extra session, ch. 52, §§ 1, 5, 6.

1. Express preemption

There is no express language in the special act forbidding or otherwise limiting the power of Lee County to designate its county seat. *Id.* Therefore, Lee County is not expressly preempted from eliminating a county seat by this special law.

2. Implied field preemption

The special act does not specifically designate either city as a "county seat", nor does it mention this term at all. Special Law of 1848. The act makes no provision regarding location for offices of any of the other county officers or functions except for the sheriff. *Id.* Rather, the act is focused on the functions of the courts in Lee County. It could hardly be said that the legislature comprehensively covered the subject of the location of county seats in Lee County in this legislation so as to demonstrate a legislative intent that local action in the field is preempted by state law.

3. Implied conflict preemption

A. County action to close court functions

The *Seymour* test for implied conflict preemption requires comparison of the proposed county action and the terms of the special act, to determine if the two are "irreconcilable" interpreting, if possible, the state law in such a manner as to render it harmonious with the

county action. *Seymour,* at 539. If Lee County by ordinance sought to close either district court or clerks of court offices at Fort Madison or Keokuk, or discontinue sheriff's services to the district court at either, such ordinance would cause the kind of direct, irreconcilable conflict that would invalidate the county's action under implied preemption.

B. County action to change county seat without closing court functions

Conversely, if Lee County passed an ordinance merely ending the designation of one of these cities as a county seat, the ordinance would not cause a similar direct conflict with the Special Law of 1848. There are no provisions in that act purporting to designate either Keokuk or Fort Madison as a county seat, or to locate any county offices other than the district courts, clerks of court and sheriff. The General Assembly during this era commonly passed legislation directly addressing location of county seats, but failed to so designate in the Special Law of 1848. *Compare* 1848 Acts, 1st G.A., extra session, chs. 48, 49, and 50 (requiring elections to be held to relocate county seats for Jackson, Clinton, and Davis Counties); 1846 Acts, Territorial G.A., ch. 47 (providing commission to relocate county seat of Keokuk County) with 1848 Acts, 1st G.A., extra session, ch. 52, §§ 1, 5, 6 (requiring district court, clerk of court, and sheriff services in two cities, but not specifically designating county seat). The General Assembly certainly could have specifically designated both cities as county seats in the Special Law of 1848, or required the other county offices to be located in each of these cities, but failed to do so. The Iowa Supreme Court's instruction in the *Seymour* case, to interpret legislation to render it harmonious with local actions, if possible, would support reading the Special Law of 1848 narrowly to only require the district courts, clerks of court offices and sheriff's services to the court be provided in both Fort Madison and Keokuk and allowing the county to otherwise determine the location of the county seat, and where other services not mentioned in the Special Law would be provided.

However, it may be argued that prior case law characterizing Lee County as having two county seats would prevent this narrow reading of the 1848 Special Law. These cases were not focused on the issue of whether the Special Law of 1848 created two county seats, the ability of Lee County to change county seat status, or where county offices are required to be located. *See Froman v. Keokuk Health Systems, Inc.*, 755 N.W.2d 528, 530 (Iowa 1998) (footnote stating Lee County is the only county having two county seats in a case determining proper venue for a Lee County civil case); *Committee on Professional Ethics and Conduct v. Liles*, 430 N.W.2d 111, 111-12 (Iowa 1988) (dicta in disciplinary case involving assistant county attorney stating Lee County has two county seats in explaining allocation of duties that existed in the county attorney's office); *State v. Turner*, 114 Iowa 426, 87 N.W. 287 (Iowa 1901) (determining validity of a jury panel drawn by deputy recorder where recorder was absent conducting duties at the other county seat in Lee County).

Several prior opinions of this office have repeated the characterization of Lee County as having two county seats in determining applicability of statutes fixing compensation for county officials serving counties with two county seats. 1976 Op. Att'y Gen. 341 (#75-12-3), 1975 WL 368858 (statute providing deputy officers of county with two county seats limited to salary up to 75% of principal); 1940 Op. Att'y Gen. 280, 1939 WL 77220 (Pottawattamie County does not

have two county seats unlike Lee County, deputy officer is not entitled to higher maximum salary applicable in counties with two county seats); 1924 Op. Att'y Gen. 129, 1923 WL 54934 (not allowing expenses to county officers for travel between the two county seats in Lee County). These opinions do not address the issue of Lee County's power to designate the location or number of county seats.

The narrow interpretation of the Special Law of 1848 is consistent with other legal requirements. Such reading would be in harmony with the prohibition of Article III, Section 30 of the Iowa Constitution, barring legislative action to locate or change a county seat by special or local acts. *See Santi v. Santi*, 633 N.W.2d 312, 316 (Iowa 2001) (courts obliged to adopt construction of statute that upholds its constitutionality if susceptible to multiple constructions). This construction also comports with the power enjoyed by counties since early statehood to locate their county seats under Iowa Code Chapter 353 - Relocation of County Seats (1981) (repealed 1981 Iowa Acts, 69th G.A., ch. 117, § 1097), and now under home rule powers. The narrow reading is consistent with evolving idea of "county seat" under Iowa law where location of the district court is not conclusive as to whether a city is or is not the "county seat". *See* discussion of "county seat" above page 3.

Additionally, the narrow interpretation of the Special Law of 1848 is consistent with the construction given to a strikingly-similar statute that required an additional court to be held in Pottawattamie County. 1884 Acts, 20th G.A., ch. 198. This legislation required district court to be held in Avoca in addition to the court held at the county seat, to maintain a clerk of court office at Avoca, to keep a sheriff's office in Avoca, for the city of Avoca to pay expenses for the court rooms, and dividing the county for jurisdiction and jury pools between these two courts. *Id.* This legislation was upheld against a claim it violated Article III, Section 30 of the Iowa Constitution as a special law locating a county seat. *See Cooper v. Mills County*, 69 Iowa 350, 28 N.W. 633, 636 (1886). *See also* 1979 Op. Att'y Gen. 206 (# 79-6-9), 1979 WL 20985. This legislation has been described as creating two court houses, not two county seats. 1940 Op. Att'y Gen. 280, WL 77220 (Pottawattamie County has two court houses unlike Lee County which has two county seats) (*recognized by* 1976 Op. Att'y Gen. 341, 1975 WL 368858). *But see True v. City of Council Bluffs*, 230 Iowa 1109, 300 N.W. 264 (1941) (characterizing Pottawattamie County as having two county seats in unsuccessful venue dispute claiming Pottawattamie special act created two counties). This distinction is also reflected in statute. *See* Iowa Code § 602.6105 (2014) (requiring court to be held in each county seat for counties having two county seats and in Pottawattamie County at Avoca and the county seat).

Under this narrow reading of the Special Law of 1848 as only pertaining to establishment of district courts, clerks of court offices, and sheriff's services to the district courts at both Fort Madison and Keokuk, we find no irreconcilable inconsistency creating an implied preemption of county home rule powers if Lee County eliminated by ordinance one of these cities' designation as a "county seat" as long as this ordinance did not seek to discontinue these courts services in either city. Even without using a narrow reading of the 1848 Special Law, implied conflict preemption requires identification of some provision in that law that is in direct and irreconcilable conflict with a county action. An ordinance that would end county seat designation

for one of Lee County's two county seats without removing the services and offices required by the Special Law of 1848 would not create such a conflict.

C. Inconsistency with other statutes

Finally, we have been unable to find other statutes that would be irreconcilably inconsistent with an ordinance revoking designation of one of the current county seat designations in Lee County. Iowa Code section 602.6105(2) (2014) requires district court to be held in both county seats for a county having two seats and Iowa Code § 602.8102(1) (2014) requires the clerk of court to keep an office at the county seat. This would not change the current status as the Special Law of 1848 would continue to require court to be held in both Keokuk and Fort Madison and to maintain a clerk of court office in each. Nor would there be an effect on current Iowa Code section 607A.23, requiring counties "divided for judicial purposes" and in which court is held in more than one place, to be treated as separate counties requiring juries to be drawn and serve within each division. Lee County would continue to have court in both cities, and the Special Law of 1848 would continue to divide the county for court purposes.

Conclusion

Based on the foregoing analysis, it is our determination that Lee County could eliminate one of its current two county seats under its home rule powers. This is premised upon such action not seeking to close the district courts, clerks of court offices or discontinue the services of the Lee County sheriff to these courts in either Keokuk or Fort Madison.

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