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A HANDBOOK FOR

Iowa Mayors

Iowa

State of Public Affairs, The University of Iowa
in cooperation with the League of Iowa Municipalities

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Revised 1965

Iowa City: 1965

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Foreword

Being mayor of your city or town is a challenging position. You have many important tasks to perform and decisions to make. How well you carry out your duties and responsibilities will affect the well-being of your community.

This handbook is designed to assist you in your job as mayor. It deals with the powers and duties of the chief municipal administrative officer in Iowa cities and towns that operate under the mayor-council form of government. Its purposes are to tell you what you are required to do as mayor, what you may do at your discretion, and the procedures you must follow.

Since many of the mayor's powers and duties are prescribed by state law, the 1962 Code of Iowa, as amended by the 60th and 61st General Assemblies, is the basis for this publication. Wherever Code provisions have been interpreted by the Supreme Court or the Attorney General, those interpretations have been included.

A Handbook for Iowa Mayors was first published in 1942; the first revision was made in 1951, and the second in 1957. Like its predecessors, the current volume represents a co-operative effort of the Institute of Public Affairs of The University of Iowa and the League of Iowa Municipalities. This revision is the work of Mr. H. Paul Friesema, Research Specialist in the Institute of Public Affairs.

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Iowa City
November, 1965

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Your Job as Mayor

As mayor of your city or town, you do the work of three men: as a legislator, you preside at meetings of your city or town council; as an administrator, you supervise many operations of the municipal government and you may appoint and fire certain officials under certain conditions; and, as a judge, you hold mayor's court. Your job is indeed an important one, and how well you do it will be reflected in the well-being of your community.

More than 900 municipalities in Iowa operate under the mayor-council form of government; in each of these places, the mayor is the chief executive officer. State law spells out the mayor's importance in this form of government in these words: "All executive functions and powers shall be exercised by the mayor and other officers and boards, and neither the council nor the members thereof shall exercise any executive functions unless expressly conferred by law."

You receive your authority for the things you do as mayor from the state; the things you can and can't do, your powers, rights, duties and responsibilities, are stated in detail in the state laws. And, of course, you have to follow these laws exactly in all your official actions. Be sure to use the latest Code of Iowa when you're looking up the law: many of the laws that pertain to your job are changed from time to time.

And if you don't understand just what you're supposed to do in a particular matter, it would be wise to talk with your city or town attorney.

Qualifications for Office

To hold the office of mayor you must meet certain legal qualifications. First, you must be a qualified voter of your

city or town.¹ This means that you must be a citizen of the United States, at least twenty-one years old, and you must have lived in Iowa for six months, in the county for sixty days, and in your precinct for ten days. Also, you must be a resident of your city or town during your term of office. If you should establish a residence elsewhere during your term of office, you will have to resign as mayor. (Secs. 363.23, 69.2(3))²

Persons in the Armed Forces do not, by virtue of being stationed in Iowa, become residents, and thus eligible for the office of mayor. Persons who have been convicted of any crime for which they could be sent to a penitentiary are barred from the office, unless this qualification has been removed.³

You become disqualified for the job of mayor if you accept what is called an incompatible office. That is, if in the light of public policy it would be undesirable for one person to hold two different offices, you would have to give up one of them. This is a difficult and close legal issue. The facts and circumstances of each case will determine whether or not two offices are incompatible. As an example of incompatible offices, it has been held that you cannot serve as mayor and as justice of the peace at the same time.⁴

Term of Office

Most mayors are elected for two-year terms; some serve for four years. In any city or town, the term can be changed from two to four years, or from four to two years, through a process involving a petition signed by a certain number

¹ A city is an incorporated place with a population of 2,000 or more; a town is an incorporated place of less than 2,000 population. Code 1962, Sec. 363.4

² Unless otherwise indicated section references are to the Code of Iowa, 1962

³ Iowa Constitution, Art. II, Secs. 4-5; State ex rel. Dean v. Haubrich, 248 Iowa 978, 83 N.W.2d 451 (1957)

⁴ State v. Anderson, 155 Iowa 271, 136 N.W. 128 (1912)

of voters, followed by a special election. Incidentally, one of your duties as mayor is to call the special election if such a petition is filed. (Secs. 363.9, .31-.35)

The term of office of the mayor begins upon the date of assuming office, and not upon the date of election. This applies whether the mayor-elect is an incumbent or not.⁵

Bond and Oath of Office

After your election has been declared by the board of canvassers you must qualify for your office as mayor. You qualify by taking an oath of office and by giving a bond of not less than \$500. If you have been re-elected or have held over for some reason, you must requalify in the same manner. (Secs. 63.7, .12, 64.13) You can qualify anytime before you take office on the second working day of January. (Sec. 63.1)

Your oath of office should be substantially as follows: (Sec. 63.10)

I, _____, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of mayor in (name of the city or town), as now or hereafter required by law.

You must sign this oath on the back of your bond or on a paper attached to the bond and have it certified by the officer administering the oath to you. (Sec. 63.11) While several officials may administer the oath to you, the person most likely to be available is the clerk. Others who may administer the oath are the judge, court reporter, clerk or deputy clerk of a district, superior, municipal, or police court, justices of the peace, and notaries public. (Secs. 78.1-2)

You are required to give a bond of not less than \$500 but

⁵ Schanke v. Mendon, 250 Iowa 303, 93 N.W.2d 749 (1958)

it may be more if your town has an ordinance fixing it at a higher figure. Your bond probably will be issued by a bonding company which is authorized to do business in Iowa, but two persons who own land in the state may be sureties on your bond. (Secs. 64.13, .16-.17)

If you have been re-elected you must produce and account to the council for all public funds and property under your control. Only after you have done this can your bond be approved by the council. When approving the bond the council must endorse upon it that you have complied with this provision before time of approval. (Sec. 63.13) After your bond has been approved by the council it is deposited with the city or town clerk. (Secs. 64.19(6), .23(6))

You usually pay the cost of your bond. However, if you receive an annual salary of \$100 or less, the cost of the bond may be paid by the municipality. (Sec. 64.14) In addition, your council may purchase a surety bond covering all officers and employees to protect the city or town against loss occasioned through the failure of such officers and employees to perform their duties faithfully, or, in the alternative, the council may purchase a surety bond indemnifying the city or town against any loss due to any fraudulent or dishonest act of such officers and employees. (Sec. 368A.1(13))

Even if you take the office of mayor without giving a bond your acts are probably legal (Op. Atty. Gen. 1916, p. 87), but you should make certain that you give bond and oath before you act. For failing to give bond you may be fined as much as the amount of the required bond. (Sec. 64.25) If you willfully fail to take the required oath you may be fined up to \$5,000, or imprisoned for as long as five years, or both. (Sec. 740.11)

Compensation

Your regular salary as mayor is set by the council. (Sec. 363A.4) The council may change the mayor's salary from time to time, however, any salary change made during your

term of office cannot apply during that term of office, because state law requires that salary increases for elective officials cannot go into effect before the next term of office. (Sec. 368A.21) You do receive extra pay for holding mayor's court. This may be in the form of additional salary, set by ordinance, or you may be paid upon the basis of the fees you collect. (Sec. 367.15) These fees are exactly the same as the fees collected by justices of the peace. They are set by state law, and are listed in the last chapter of this book.

Except for holding mayor's court, you cannot be paid anything in addition to your regular salary for special duties you may perform for your city or town government. However, you may be reimbursed for actual expenses involved in conducting municipal business. For example, you may be reimbursed for travel expenses.

Maintaining an Office

You are required to keep an office at some convenient place in your city or town. It is the council's duty to provide this office for you. You also are given custody of the corporate seal of your municipality. (Sec. 368A.2) The corporate seal is used to authenticate documents of the city.

Vacancies in Office

If you should want to resign as mayor you may do so by submitting a resignation in writing to the city or town clerk. (Sec. 69.4(5)) When you have filed this resignation with the clerk, upon that date or upon the date specified in the resignation, the office of mayor is considered vacant. (Sec. 69.2(4))

While you are out of the state temporarily, you cannot use the rights, powers, and duties of your office. Nor can you approve or veto ordinances. (Op. Atty. Gen., 1925-26, p. 490) There is some question regarding whether or not you can exercise your powers legally while you are out of

town, but still within the state. For this reason it's a good idea for you to perform all of your official acts within your city or town.

If you serve as a member of the National Guard or the organized reserves of the United States or State armed forces, you do not lose your status as mayor. This applies only if you return from military service before your term as mayor expires. You are given a leave of absence for the duration of your military service. You will get your regular salary during the first thirty days of the leave of absence, but you will receive no salary after that until you return from service. Your council will appoint somebody else to serve as mayor until you get back. (Sec. 29.28)

Under state law, your office is considered vacant if any of these things happen: (Sec. 69.2)

1. If no one is elected at the proper election, or appointed within the time fixed by law, unless the incumbent holds over.

2. If the incumbent or holdover officer fails to qualify within the time prescribed by law.

3. If the incumbent ceases to be a resident of the city or town by which he was elected.

4. If the incumbent, or the mayor-elect, dies or resigns before qualifying.

5. If the incumbent is removed from office, or forfeits it, or a court having proper jurisdiction declares his office vacant.

6. If the incumbent is convicted of an infamous crime, or of any public offense involving his oath of office.

In any of these events the council will select a new mayor. (Sec. 368A.1(8))

Removal from Office

You may be removed from your office by the district court of the county in which your city or town is located. This may happen for the following reasons: (Sec. 66.1)

1. For willful or habitual neglect or refusal to perform the duties of office.
2. For willful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated.

A certain procedure must be followed in order for the district court to consider charges against a mayor. First, a petition for removal must be filed by the Attorney General, by the county attorney, or by five qualified voters of the municipality. (Sec. 66.3) This petition is filed in the office of the clerk of the district court. Then the judge may suspend the mayor from office if he feels sufficient evidence is presented in support of the charges. If the judge grants a suspension order, it is unlawful for the mayor to exercise any of the functions of his office until the suspension has been revoked. The council then appoints a temporary mayor in the same manner in which a vacancy is filled. During the period of suspension the salary of the mayor is also suspended until the petition is dismissed or the mayor is acquitted of the charges. If a judgment of removal follows, the vacancy is filled by the council in the usual way for the unexpired term. If the petition is dismissed or the mayor is acquitted, he is reinstated as mayor. (Secs. 66.7-9, .19)

The decision of the district court can be appealed to the Iowa Supreme Court. If the final hearing results in favor of the mayor, the state is charged for costs and attorney's fees if the Attorney General instituted the action. If the action was started by the county attorney, the city or town must pay the costs and fees.⁶ (Sec. 66.23) If the action was started by a group of citizens, they would have to pay the expenses if it appears to the court that there was no reason-

⁶ City of Des Moines v. District Court, 241 Iowa 256, 41 N.W.2d 36 (1950)

able cause for filing the complaint. (Sec. 66.24) But the court has interpreted this to mean that the citizens are to pay expenses only if they did not bring the suit in good faith.⁷

You may also be removed from office by a two-thirds vote of the entire membership of the council. This can happen only after written charges have been filed and there has been a hearing. Any of the charges listed above would constitute sufficient cause for removal by the council. (Sec. 66.29) The council can pass an ordinance setting up the manner of hearing such charges. You cannot be removed from the office of mayor by the council more than once for the same offense. Proceedings by the council will not prevent subsequent proceedings in the district courts. (Sec. 66.30)

Conflict of Interest

As with other officers and councilmen of your municipality, you may not use your public office for private gain. The laws defining what constitutes a prohibited conflict of interest, and what is an allowable activity, are quite specific and detailed. The law provides that neither the mayor nor any other officer or employee shall have a direct or indirect interest in any contract or job of work or material, or the profits of such services to be furnished or performed for his municipality. However, the law also provides that any of the following circumstances does not constitute a conflict of interest:⁸

1. Payment for holding compatible governmental positions.
2. Designation of a bank or trust company as a depository, paying agent, or for investment of funds.
3. Making contracts in municipalities of less than 3,000 population upon competitive bid in writing, publicly invited and opened.

⁷ State v. Hospers, 147 Iowa 712, 126 N.W. 818 (1910)

⁸ Laws 1965, Chapter 326

4. Making contracts with a person, firm, corporation, or association in which the mayor has an interest for the following reasons:

a. Personal employment.

b. Stock interest of less than 5 per cent of the outstanding stock of the corporation (if the contracts are made by competitive bid, publicly invited and opened, and if the remuneration of the mayor isn't directly affected as the result of such employment, and provided that the mayor does not have as a duty of his employment any activities directly involved with procurement or preparation of the contract).

5. Designation of an official newspaper.

6. Contracts made before the mayor took office.

7. Other contracts with corporations in which the mayor owns or controls, directly or indirectly, less than 5 per cent of the outstanding stock.

These provisions, along with some others, apply to other municipal officers and employees, as well as the mayor.

Civil Liability

Under some circumstances you may be held personally liable for acts performed while you are mayor. This refers to your civil liability for damages. It does not refer to any criminal charges, or to the possible liability of the municipality for any acts you perform as a city official.

The general rule is that you are not personally liable for damages for any things you do that are within the scope of your authority, as set out in the laws of the state. This is because, as the court has said, "To hold public officials personally and financially liable for the loss to some individual following official action would deter all but the most foolhardy or insolvent from assuming public responsibility. Municipal government might fall from lack of personnel."⁹

While you are not personally liable for acts done within

⁹ Lacy v. City of Des Moines, 253 Iowa 621, 113 N.W.2d 279 (1962)

the scope of your authority, if you act outside the scope of your authority you may be held financially responsible for your acts. This is because you will be considered as acting outside your position as mayor, and thus should be held to the same liability as any private citizen. You may not use your office as a shield for the commission of otherwise unacceptable acts.

The extent of your immunity is quite hard to pinpoint, and will depend upon the individual case. Roughly, so long as you act in good faith and attempt to comply with the statutes you will not be held personally liable for mistakes made in carrying out your duties. Most of the Iowa cases in which mayors have been adjudged personally liable for acts they purported to carry out as mayor have involved quite blatant wrongs committed upon the complaining party. The wrongful confinement of a person in jail, without any charge against the person, has resulted in personal liability for a mayor.¹⁰ The refusal of a mayor to fix or accept bail for a bailable offense has also resulted in personal liability for a mayor.¹¹ In these instances there was a clear showing of personal interest of the mayor against the person who was wronged.

You are probably not liable for libel or slander while acting in your judicial capacity while holding mayor's court, if your action was related to judicial proceedings. On the other hand, you do not seem to have an absolute privilege or absolute immunity from libel or slander suits while performing other acts as mayor. You have only a "qualified privilege," for example, from slander suits while presiding over council.¹² This means that to be found personally liable for slanderous words you must be found to have spoken with malice.

¹⁰ *Foft v. Hamilton*, 170 Iowa 576, 153 N.W.2d 146 (1915)

¹¹ *Andersen v. Spencer*, 229 Iowa 595, 295 N.W. 904 (1940)

¹² *Mills v. Denny*, 245 Iowa 584, 63 N.W.2d 222 (1954)

Your Job as Administrator

All executive functions and powers of your city or town are exercised by you, the mayor, and the other municipal officers and boards. The council and the individual councilmen do not perform any executive functions except in those specific instances where they are told to do so by state law. (Sec. 363.3) When powers to be exercised and duties to be performed are not specified in the Code, the council will prescribe them by ordinance. (Sec. 368A.1(10))

Some of your executive functions you handle personally, and others are carried out by others acting under your instructions. One crucial function is your duty to carry out and enforce all regulations and ordinances of your city or town. (Sec. 368A.2(1)) Other important areas of your executive functions include appointment and removal of officers and supervision of other municipal activities.

Law and Ordinance Enforcement

Under state law you are responsible for preserving the peace within the limits of your municipality. You have all the powers of a sheriff to suppress disorders. It is your duty to enforce all regulations and ordinances of your city or town. You can arrest anyone whom you see violating any local ordinance or laws of the state. Also, you can order the arrest of a person accused of violating an ordinance. That is, if a citizen comes to you and says that somebody has violated an ordinance, you can ask the citizen to sign a formal charge, called an information, setting out the facts of the case. After this statement has been signed and sworn to, you can issue a process for the arrest of the accused person.

Of course, most law enforcement duties are carried out by the marshal or the police department. As a practical matter, it is advisable that you personally as mayor should

not make arrests, except in emergency situations. But the chief responsibility for law enforcement rests on you; your diligence in enforcing state laws and local ordinances will greatly influence the welfare of your community.

Power of Appointment

You probably will appoint many municipal officers to various offices, boards, and commissions. Approval by the council is required for most of these appointments. State law gives you power to appoint officials to certain positions and, in addition, the council by ordinance can give you power to fill other offices. (Sec. 363A.3) Some officials, such as the city attorney, city clerk, engineer, and health officer, must be appointed by the council. (Sec. 368A.1(7))

The accompanying table lists the officials you have authority to appoint under state law. Your appointive power for some of these offices is limited by various considerations which are discussed later in this chapter.

It is advisable for you to read the pertinent Code sections when making appointments to these offices. The circumstances under which you can make these appointments are stated in detail in the Code.

General Considerations in Appointments

There are certain considerations which you must take into account when making appointments: several state laws may be factors in your selection of persons to be appointed.

Soldiers' Preference—Former servicemen who served in time of war are entitled to preference in public employment and promotion. When two or more persons whose qualifications are otherwise equal are being considered for a position, the person who has soldiers' preference should be given the job. This does not mean that the appointment should go to an otherwise unqualified ex-serviceman instead of to a person who is qualified for the post. Persons to whom the preference is given are those who have been honorably discharged from the military or naval forces of the United

<i>Officials Whom You Can Appoint</i>	<i>1962 Code Provision</i>	<i>Restrictions to Your Appointive Power</i>
Marshal	363A.3	
Other police officers and matrons	363A.3	As provided by ordinance in cities and towns
Chief of police and chief of the fire department	365.13	Chosen from a civil service list in cities that have civil service
Treasurer	368A.2(4)	In all cities and towns, with council approval. However, the council by ordinance can make the treasurer an elective official.
Library trustees, five, seven, or nine members	378.3-.4; Laws 1965, Chapter 327	In cities and towns that have a free library; council approval required. If municipality receives county funds, you may appoint one nonresident with approval of board of supervisors
Sanitation and quarantine officer	137.5	In all cities and towns if requested by the local board of health
Airport commission, not more than five members	330.20	In all cities or towns which by vote approve of airport control and management by a commission; council approval required
Civil service commission, three members	365.1-.3	In cities of 8,000 population or more that have a paid fire or police department or other cities that adopt civil service; council approval required
Sewage works trustees, three members	368.26(3) 397.32	In towns and cities of less than 50,000 population
Waterworks trustees, three members	398.8	In cities over 10,000 population that acquire a waterworks under the provisions of Code Chapter 398
Waterworks trustees, five members elected by the council from nominations made by the mayor	399.14	In cities over 50,000 population that acquire a waterworks under the provisions of Code Chapter 399

<i>Officials Whom You Can Appoint</i>	<i>1962 Code Provision</i>	<i>Restrictions to Your Appointive Power</i>
Utility trustees, three members	397.32	In all cities and towns that have public utilities if such a board of trustees has been authorized by an election; council approval required
Boards of fire and police trustees, two of the board members appointed by mayor	411.5(1)	In all civil service cities and towns that have a paid police or fire department; council approval required
Juvenile playground commission, five to nine members	377.2	In all cities authorized by voters to provide playgrounds and recreation centers, for which the council by ordinance creates a playground commission; council approval required
Municipal court officers, other than judge	602.6	In all cities that have municipal courts, only in event of a vacancy; council approval required
Interstate bridge commission, four members	383.14	In all cities where taxes support interstate bridges; council approval required
Officers or employees, including a superintendent, to maintain an interstate bridge	382.6	In cities which, by authorization of the voters, purchase an interstate bridge; with council approval
Comfort station commission, three members including one woman	376.3	In all cities maintaining a comfort station
Park policeman, one or more	370.10(3)	In cities or towns that have a board of park commissioners; recommendation by park board required
Department of publicity, development, and general welfare, a superintendent and assistants	364.1	In all cities that have such a department; council approval required
City plan commission, not less than seven members	373.1	In all cities and towns that have such a commission; council approval required
Board of art trustees, five to nine members	379.2	In cities over 20,000 population that establish a municipal art gallery; council approval required

<i>Officials Whom You Can Appoint</i>	<i>1962 Code Provision</i>	<i>Restrictions to Your Appointive Power</i>
Registers of voters	47.3	In all cities that require temporary registration, and only if a vacancy exists that is not filled by the council
Urban renewal agency commissioners, a chairman, a vice-chairman, and three other commissioners	403.15	In all cities and towns that authorize the urban renewal agency to exercise powers under the urban renewal law; council advice and consent required
Low-rent housing agency, five commissioners, designating a chairman and vice-chairman	Laws 1965, Chapter 334	In all cities and towns that authorize a low-rent housing agency; council advice and consent necessary

States and are citizens and residents of Iowa. They must have served in some war, including the Philippine insurrection, the China relief expedition, and the Korean conflict between June 27, 1950 and July 27, 1953. (Sec. 70.1) This preference does not apply to appointments you might make to a position in which the person would have a confidential relationship to you, such as a secretary or an administrative assistant. (Sec. 70.8) Moreover, the court has held that the position of attorney in a municipal legal department is confidential to the city council, and so the veterans' preference law was not applicable.¹ The court has held that "confidential relationship" is to be construed broadly to cover all persons who are associated by any relationship of trust or confidence.²

Nepotism—Nepotism means appointing a person who is related by blood or marriage to you to a public job. For example, suppose the council by ordinance gives you authority to appoint a clerk or helper: it would be unlawful for you to appoint a person closely related to you by blood or marriage to that position. However, such an appointment would be lawful if it was made with the approval of the

¹ Bianco v. Mills, 248 Iowa 365, 80 N.W.2d 753 (1957)

² Andreano v. Gunter, 252 Iowa 1330, 110 N.W.2d 649 (1961)

council, or if the salary of the position was less than \$600 a year. (Sec. 71.1)

Civil Service—If your city has a population of 8,000 or more and has a paid fire or police department, certain employees are under civil service regulations. (Sec. 365.1) Cities with less than 8,000 population can adopt civil service by ordinance. (Sec. 365.3)

If your city does have civil service, the positions covered by this law again depends upon the size of your city. In cities with a population of 15,000 or less, the civil service law applies only to members of the police and fire departments. Even in those departments, a number of positions are not included. The excluded positions are chiefs of police, janitors, clerks, stenographers, secretaries, and casual employees. (Sec. 365.6)

In cities with a population of 15,000 or less, under civil service, all policemen and firemen are appointed upon the basis of competitive examinations, by the chief of police and fire chief respectively. (Sec. 365.15) You, as mayor, appoint the chief of police and fire chief. The chief of the fire department is selected from the chiefs' civil service eligible list. The police chief is selected from the active members of the police department with five years' seniority. (Sec. 365.13)

In cities with a population in excess of 15,000 all appointive officers and employees are covered, except for specifically excluded officials. These include city clerks, city solicitors, assistant solicitors, assessors, treasurers, auditors, civil engineers, health physicians, chiefs of police, unskilled laborers, election officials, secretaries to mayors and commissioners, commissioners, and casual employees. (Sec. 365.6)

In appointing, promoting, or firing employees who are covered by the civil service act, you will be required to be in strict compliance with Chapter 365 of the Code of Iowa.

Power of Removal

The general rule is that you have the power to remove from office or employment any official or employee you have the power to appoint. However, if the person removed is covered by civil service or has soldiers' preference, special rules and procedures must be followed to prohibit arbitrary dismissal.

No Civil Service, No Soldiers' Preference—To dismiss this person, you simply file a written order of removal with the city or town clerk. This order must specify the reasons for which you are removing the person. (Sec. 363.40) You may remove him even though he is not guilty of misconduct. Also, apparently you may remove him yourself even though the appointment required approval of the council; however, neither the legislature nor the Supreme Court has clarified this point.

No Civil Service, with Soldiers' Preference—To remove this person, it is necessary to hold a hearing on stated charges of incompetency or misconduct. Due notice of the hearing must be given to him, and the burden of proof at such a hearing would be yours. Even after the hearing, the person dismissed can appeal this to the courts. A hearing is not required, though, for dismissal of an official or employee who has a confidential relationship to you.

No Soldiers' Preference, with Civil Service—You may peremptorily discipline or remove this official or employee, but because he is covered by the civil service law, he can appeal his suspension, demotion, or dismissal to the civil service commission. (Sec. 365.20)

With Civil Service and Soldiers' Preference—The Supreme Court of Iowa has said that this person may be removed, too, without prior hearing, because as a civil service employee he has the right to appeal to the civil service commission.³

³ Andreano v. Gunter, 252 Iowa 1330, 110 N.W.2d 649 (1961)

Policemen and Firemen in Cities with Civil Service—Somewhat different rules apply for the suspension, demotion, or discharge of these employees.

The chief of the fire department is covered by civil service regulations, and you can remove him only for cause. Reasons for removal are neglect of duty, disobedience, misconduct, or failure to perform his duties properly. (Sec. 368.18) The police chief, as chief, is not under civil service, so he can be removed from office without regard to civil service rules. However, the police chief retains his previous civil service ranking when he is appointed chief. So if he is removed from the office of police chief, he reverts to his previous civil service rank. To be removed from that position, it must be for cause. (Sec. 365.14)

If the chief of the fire or police department suspends, demotes, or discharges a member of the department, he must make a written report to you. You may either affirm or revoke his action according to the facts and merits of the case. (Sec. 365.19) An officer who has been suspended, demoted, or discharged can appeal to the civil service commission. (Sec. 365.20)

Supervisory Duties

One of your duties as mayor is to supervise the conduct of all municipal officers. If you find any neglect or violation of duty by an official you should see that it is corrected. You should investigate all charges of misconduct by these officers. (Sec. 368A.2(1)) You are responsible for supervising the officers you have appointed and also those appointed by the council. If a council-appointed officer is not performing his job properly you should present the situation to the council for its action. If an officer you have appointed is neglecting his duties you may take action to correct the matter; you can even go as far as to remove him from office.

Supervision of Non-Civil Service Police—The effectiveness of your supervision of any department depends to some

extent on your power to control the personnel. If your government does not have civil service, you have the power to appoint and remove the marshal and other police officers. (Sec. 363A.3(1)) Through use of this power you supervise law enforcement in your city or town. You can insist that the officers carry out your policies and perform their duties according to your orders. If they fail to do so, you can remove them and appoint persons who will carry out your orders. The responsibility rests on you to see that state and local laws are enforced within your community. (Sec. 368A.2(1))

Supervision of Non-Civil Service Fire Department—Towns and smaller cities that do not have civil service usually rely upon a volunteer fire department and may have only a few or no full-time paid firemen. The ordinance establishing the volunteer department may give you the power to appoint and remove the officers and firemen of the department. If the council gives you this appointive power you can remove men you have appointed. Through this power of appointment and removal you can control and guide the operations of the department. In practice, many volunteer departments require and receive little supervision from the mayor. They very often conduct their own affairs, quite independent of the city officials.

If your fire department is not a paid one and your city or town does not have a building inspector, you have the job of inspecting fire escapes. You must inspect all fire escapes in town except those on buildings that must be inspected by others. You are to make these inspections as often as necessary and whenever complaints are made. (Secs. 103.13-14) If you find that the fire escapes do not meet the requirements of state law, you must give written notice to the owner or lessee. (Sec. 103.15)

If your town has no fire department you are required to investigate all fires that result in property damage or bodily injury to any person. (Sec. 100.2) You should look for the cause and circumstances of the fire and try to find

out if it was started intentionally, through carelessness, or by natural causes. After your investigation, and within a week of the fire, you are to make a report of your findings in writing to the state fire marshal if you suspect arson or if the fire results in bodily injury or property damage of \$50 or more. (Sec. 100.3) The fire marshal will send you forms on which to make your report. The state fire marshal may assist in your investigation if he thinks it is necessary. If you fail to make the investigation and report you can be fined up to \$100. (Sec. 100.4)

Supervision of Civil Service Fire and Police Departments—In cities that have civil service your power of supervision is somewhat different because your power to appoint and remove officers is more restricted. Civil service procedures must be followed. However, you do appoint the chiefs of the police and fire departments. (Sec. 365.13) With these powers you have control enough to enable you to perform proper supervision.

Supervision of Health Officers—You, the council, and the health physician or officer, constitute the local board of health. (Sec. 137.1) Upon request of the board you appoint a sanitation and quarantine officer, who usually is a member of the police force. (Sec. 137.5) Public health nurses may be employed by the council. (Sec. 143.1)

You serve as chairman of the board of health. When the board is not in session you are responsible for enforcing the public health regulations. (Sec. 137.2) These regulations include the state statutes, the rules of the state department of health, and the rules of the local board. Through your position as chairman of the board and your law enforcement powers you are able to control public health conditions in your community. You and the local board are authorized to enforce the public health laws and rules. (Secs. 137.13-.19)

You have several duties of supervision which are closely related to public health. The duty of enforcing the state health and safety appliance laws falls upon you and your

chief of police. (Sec. 88.1) It is also your duty to work with your city or town marshal and police officers to enforce the state child labor laws. If any violation of these laws comes to your attention you are to report it to the state labor commissioner. You have authority to enter certain establishments to investigate and question persons regarding violations of child labor laws. (Sec. 92.16)

Supervision of Public Utilities—Municipally owned utilities, such as a waterworks, sewage disposal plants, heating plants, gasworks, or electric light or electric power plants, are often managed by a board of trustees. These public utilities are operated by the council unless the creation of a board of trustees has been approved by the voters at an election. (Sec. 397.29) Where any or all utilities are managed by a board of trustees, the mayor appoints three trustees, subject to council approval. You might also have the authority to appoint or nominate trustees for the waterworks and sewage works. (Secs. 368.26(3), 397.32, 398.8, 399.14) It is through the power of appointment that you can control, at least to some extent, the efficiency and economy of service to the community by municipally owned utilities. The boards of trustees, who are appointed, will supervise the day-to-day activities of these departments.

Election Duties

Your election duties are few and may seem rather routine. However, they must be performed in strict accordance with the state law or the validity of an election can be contested.

Pre-Election Duties—There are two conflicting provisions in the Code dealing with the providing of polling places. Chapter 363 provides that the voting places are fixed by the council. Chapter 49 places the duty upon you and the clerk to set the places within your municipality in which to hold all elections except the school elections. Under Chapter 49 the choice of the places is up to you; the Code requires only that they be heated and lighted. (Secs. 49.21-.22, 363.8) If your city uses the temporary—not the per-

manent—form of voters' registration, you have charge of publishing the notice of times and places of registration. (Sec. 47.10)

Nominations—The mayor has a part to play in conducting municipal elections under the procedure followed in most Iowa communities—the non-partisan nomination-by-petition-and-municipal-primary-election procedure (Chapter 363 of the Code). Under this plan, nomination papers are filed with the city clerk; then the mayor and the clerk go over all the petitions to see that they are properly made out. In towns and cities under 10,000 population, all candidates who have filed proper papers are declared nominated. (Sec. 363.15) In larger cities the clerk and the mayor have the responsibility for checking nomination papers to see whether the number of nominees for any office will require a primary election, and if so, file a written report with the council. (Sec. 363.16)

You also may have other election duties if your city or town follows the nomination-by-petition or nomination-by-nonparty-political-organization procedures (Chapters 44 and 45 of the Code). Under these plans, objections can be filed to the nominations. The mayor, the clerk, and one member of the council hear these objections; a majority vote of this group is final. If it's your own nomination that is subject to objection, another member of the council takes your place on the hearing board. (Secs. 44.5, .8, 45.4)

Post Election Duties—If there are two or more precincts in your city, you and the clerk must canvass the returns. (Sec. 50.20) The canvass is made the day after the election and includes all of the votes cast for officers to be elected by the city or ward. In case you are a candidate at the election a justice of the peace replaces you in the canvassing. (Sec. 50.21) If no contest is made within six months after the election, the ballots are burned in the presence of two witnesses, one representing each of the two leading political parties. You are to select these witnesses. (Sec. 50.13)

When the election of a municipal official is contested, a trial is held to settle the matter. You are the presiding officer at this trial unless it is your own election that is being contested. In that case the council elects one of its own members to preside. The same procedures are followed as in contesting the election of a county official, and usual court proceedings are followed, so far as practicable, in the hearing. (Sec. 363.22)

Ex Officio Offices

By virtue of your position you hold several ex officio offices, such as chairman of the local board of health. (Sec. 137.2) Also, if your city or town erects a memorial hall or building, you may be a member of the memorial building commission. (Sec. 37.15) You also serve on the board of trustees of the policemen's pension fund in the place of the marshal if he is a member individually interested in a matter which requires the action of the board. (Sec. 410.17) Mayors of cities that have a bridge commission are members of that group. (Sec. 383.14) You are also a member of the county conference board—the group that appoints the assessor—if the property in your city or town is assessed by the county assessor. You and the mayors of all other incorporated cities and towns together constitute one voting unit. Majority vote among the mayors determines how your one vote is cast.⁴ (Sec. 441.2)

Miscellaneous Executive Duties

Order for Tax Money—The county treasurer must give monthly written notice to the clerk of each municipality of the amount of municipal taxes and special assessments for public improvements that have been collected. The clerk is then to draw an order on the county treasurer in favor of the municipal treasurer for the amount collected. Either

⁴It should be noted that cities of 10,000 to 125,000 population may provide by ordinance for the selection of a city assessor. (Sec. 441.51)

you or the auditor of your city or town must countersign this order. (Sec. 404.20)

Licensing—Your city or town has the power to license various activities and businesses. (Secs. 368.6, .8, 388.1) The council is given this power, but the council may provide by ordinance that you can issue and revoke licenses. No matter who grants the licenses in your city or town you are to sign them. (Sec. 368A.2(3)) Persons who want to have a parade on the streets of your city or town may be required to get a permit from you. This permit is issued without charge and must state the time, manner, and condition of the parade. (Sec. 368.5) You also have authority to issue permits to sell weapons and firearms. The sheriff and chief of police also may issue these permits. You are to keep a list of the persons to whom you issue permits and give the county recorder a copy of each permit. (Sec. 695.20)

Oath and Bond of Municipal Officials—Most municipal officials are required to give bonds. The amount of each bond is usually set either by the Code or by local ordinances. You are to approve these bonds unless the council has provided that they be approved in some other manner. Of course, you do not approve your own bond: it is approved by the city or town council. (Sec. 64.19(5,6)) If the amount of a bond is not set by the Code or the council you, as the approving officer, are to fix the amount as the public interest may require. (Sec. 64.7) In case both a bond and oath are required, you are to keep possession of them if you are the approving officer. If an ordinance requires the council to approve bonds, the bonds are filed in the office of the clerk. (Sec. 64.23(6))

When a bond is required, the oath taken by the officer is written on the back of the bond or on a sheet attached to the bond. (Sec. 63.11) If the oath is certified by you, it is filed in your office. When no bond is required the oaths of municipal officers must be given and filed in your office. (Sec. 64.23(6,7)) The oaths are to be like the one you gave

when you took office; this is set out in the first chapter of this publication.

Labor Disputes—In certain situations involving labor disputes, you can make a written application to the governor for the appointment of a board of arbitration and conciliation. The dispute must involve at least ten wage earners not engaged in interstate commerce. You may make this application if the dispute has or is likely to cause a strike or lockout, interferes with the ordinary course of business, menaces the public peace, or jeopardizes the welfare of the community. (Sec. 90.1)

Cooperative Library Services—As chief executive of your municipality, you are authorized to enter into agreements with local governments outside the State of Iowa for cooperative library services. You will have to work closely with the director of the Iowa State Traveling Library in doing this. (Laws 1965, Chapter 256)

Service of Notice—The notice of a court action against your municipality may be served either on you or the clerk. (R.C.P. 56(h)) If such a notice is served on you, you should notify the town or city attorney immediately.

Auditing Accounts of Dock Commission—The books of your municipal dock commission—if you have one—must be audited from time to time. The municipal auditor is to make the audit under your direction. You are to prescribe the times and manner of the audits. (Sec. 384.3(12))

Marriages—You are invested with authority to perform marriage ceremonies. (Sec. 595.10)

Signature of the Mayor—You are to sign all commissions, licenses, and permits which are granted by the authority of the council. (Sec. 368A.2(3)) You may sign or veto ordinances and resolutions. (Sec. 366.5) In addition, the Code requires your signature on bonds issued by your municipality for sewers and street improvements. (Sec. 396.11) You are also to sign bonds issued to adjust, renew, or extend your municipality's indebtedness. (Sec. 408.3) The council

may by ordinance require your signature in other matters. When the mayor pro tempore is presiding over the council in your absence he may sign ordinances and resolutions and execute contracts and other documents finally adopted and approved at the meeting. (Sec. 368A.2(7))

Street Name Change—When the name of one of your streets is changed by ordinance, you and the city or town clerk must certify and file this ordinance with the county recorder and county auditor. (Sec. 409.17)

Your Relations with the Council

It is important for you to get along with the elected council in your city or town. Much of the success of your administration may hinge on how well you and the council are able to operate together. Perhaps it helps in building a harmonious teamwork if both you and the council keep your separate tasks clearly in mind: they operate as the legislative body, while your chief responsibility is as chief executive. The council passes ordinances; you enforce them. They certify taxes and appropriate funds; you see to it that the funds are used economically and effectively, and in a manner consistent with the policy expressed by the council. Obviously for the effective operation of your municipal government, a high degree of voluntary cooperation will be necessary between the council, individual councilmen, and the mayor.

Both as presiding officer of the council and as chief executive of the municipal government you will have many opportunities to make proposals and suggest ideas or plans for council action. Of course you have no power to dictate to the council, but you are in a position to exert leadership. Members of the council as well as citizens of your municipality will probably both expect and welcome your leadership.

Presiding Officer

The state legislature has made you the presiding officer of your city or town council. (Sec. 368A.2(6)) Your main job in presiding over the council is to conduct the meetings in accordance with the procedural rules adopted by the council. Your responsibility is to see that the meetings go smoothly and in an orderly manner. The council makes its own rules for conducting business at its meetings. (Sec.

368A.1(4)) If your council is not satisfied with the present procedure you might suggest that they change it. It is a good idea to follow the rules of parliamentary procedure so that the council will handle its business quickly and thoroughly. It would be useful for you to have a good book on parliamentary procedure.¹

Mayor Pro Tempore

You are to designate a member of your council as mayor pro tempore to serve as mayor temporarily in your absence. Your choice for this position must be approved by a majority of the council. The mayor pro tempore serves as vice-president of the council. He must post a \$500 bond. The mayor pro tem acts as presiding officer when you are not at a council meeting. When presiding, he does not lose his right to vote as a member of the council. He can sign all resolutions and ordinances that are passed by the council in your absence. The mayor pro tem cannot appoint or remove officers and employees of the municipality as you do. However, in case of your absence or inability to act, the mayor pro tempore may hold mayor's court to try ordinance violation cases. (Sec. 368A.2(7)) If both you and the mayor pro tem are absent from the meeting, the council appoints another of its members as chairman. If the clerk is absent, the council appoints a temporary clerk from among its members. However, there must be a majority of the council members present to conduct business. (Sec. 368A.1(2))

If the mayor pro tem performs the duties of mayor for a continuous period of fifteen days or more, he is to be paid adequate compensation, as determined by the council, based upon his performance of duties and on the mayor's salary. (Sec. 363A.4(2))

Do You Have a Right to Vote?

Even though you are its presiding officer, you are not a

¹ *Robert's Rules of Order* is the best known book on this subject.

member of the council and you normally have no right to vote on matters that come before the council. One section of the Code does indicate that the mayor has the right to vote in case of ties (Sec. 368A.2(6)), but other legislation says that all ordinances and resolutions must be approved by a majority of all members elected to the council. (Sec. 366.4) The Attorney General has ruled that this means that a mayor possesses no power to break a tie vote on the adoption of any resolution or ordinance in cities or towns, unless there is other specific authorization. (Op. Atty. Gen., 1958, p. 29) Since then, new legislation has been passed which does specifically give the mayor a right to vote when the council is tied, but only in mayor-council cities and towns which have only four-member councils.²

Power to Veto

If you are opposed to any resolution or ordinance that the council has passed, you have the power to veto it. If you decide to veto a measure, you must call a meeting of the council within fourteen days after the council has passed the ordinance or resolution. At this meeting you must return the ordinance or resolution and present your reasons for vetoing or not signing it. The council may then pass the legislation over your objections and veto. However, to pass it over your veto there must be a two-thirds vote of all the members of the council. (Sec. 366.5) So your veto power is very important when the council is almost evenly divided on an issue. In these instances your veto will often stand. All ordinances require a majority vote of all members of the council for passage, but there must be a two-thirds majority for a passage over a veto. For example, when a council of five members is divided three for and two against an ordinance, you have great influence with your veto. You have a choice: you can approve the position of the three councilmen, or you can oppose their stand and

² Laws 1963, Chapter 234

veto the measure; the votes of the other two councilmen would be enough to sustain your veto.

If for any reason you do not want to take any position on an ordinance you may simply do nothing. You are not required either to approve or veto the legislation. If you take no action within fourteen days after its passage, the ordinance becomes effective anyway. After the fourteen-day period the clerk simply records the ordinance with the statement that you have failed or refused to act on the ordinance. (Sec. 366.5)

Council Meetings

It is up to the council to decide when and where to hold its regular meetings. (Sec. 368A.1(2)) As mayor you may call a special meeting of the council at any time you think a special meeting is needed. A majority of the councilmen may also call a special meeting. When a special meeting is called, each member of the council must be given notice. This notice may be given by informing each councilman personally or by leaving the notice at his usual place of residence. The person who gives this notice should report to the clerk how it was given. The clerk makes this report a part of the minutes of the special meeting. (Sec. 368A.1(3)) All council meetings must be open to the public. (Sec. 368A.1(2))

Council Committees

The Code is silent on the matter of council committees. The council can have as many committees as it chooses, or it can operate without them. It can create and abolish committees as it wishes. It is also up to the council to decide who will appoint the committees. A common procedure is for the council to provide that you, as mayor and presiding officer, should appoint the committees and divide the committee assignments.

Ordinance Authentication

The ordinances and resolutions passed by your council are supposed to be authenticated, that is, officially recorded in a special book. After the council has passed an ordinance, the clerk records it in the book and you and he sign it; this is the official authentication. (Sec. 366.6) Before you sign the book you should check to make sure that the ordinance has been recorded exactly as it was passed by the council. However, if you or the clerk slip up, or make a mistake, and the ordinance is not recorded properly, it is probably legal anyway.³

An ordinance must be published in a newspaper of general circulation as required by law before it becomes legally effective. However, if a newspaper is not published in your city or town, publication requirements may be met by posting in three public places. (Sec. 366.7)

³ *Swiger v. Eden*, 238 Iowa 44, 24 N.W.2d 793 (1947)

Your Mayor's Court

If your city or town does not have a superior, municipal, or police court, you must hold mayor's court. (Sec. 367.5) Cases that involve violations of your city or town ordinances begin in your court; your decision can be appealed to the district court. You can try persons who are accused of minor violations of state laws and hold preliminary hearings on serious crimes. You also have the power to hear minor civil actions at law, that is, disputes between persons in your city or town that involve relatively small amounts of money or property.

While your powers in some of these areas are quite limited, your judicial functions are very important. Your responsibilities in these matters, the scope of your powers, and the procedures you must follow, are spelled out in detail in state law. It is necessary for you to study the law closely, and look up each point as new problems arise. It will be helpful for you to talk over certain matters with your city or town attorney, or some other attorney you know. Probably you should keep a copy of the latest Iowa Code in your office so you can refer to it when you need to.

Other Local Courts

Cities that have more than 15,000 population must have a superior, municipal, or police court. (Sec. 367.1) A city that has 4,000 or more population can set up a superior court, and a city that has 5,000 or more population can have a municipal court. (Secs. 602.1, 603.1) Cities under 15,000 population can set up police courts, and cities over that figure must have a police court if they do not have a superior or municipal court. If you have a police court, you serve as judge when the office of police judge is vacant. (Sec. 367.12) Municipal and superior courts must be

authorized by an election, but police courts can be created by municipal ordinance. In the absence of these other courts, your mayor's court exists by statutory authority. (Sec. 367.5)

Of course, if a city or town creates a superior, municipal, or police court, the mayor's court is abolished. However, your court is not abolished until the officers of the new court have qualified. (Op. Atty. Gen., 1959, p. 79) If a municipal court is set up in another city in your county, your mayor's court would still handle all cases arising from violations of your municipal ordinances. (Sec. 682.15)

In a lot of respects your court is like a justice of the peace court: you have much the same powers, handle some of the same types of cases, and follow similar procedures. In some instances you might want to transfer a case to a justice of the peace; a justice can hold mayor's court for you in your absence, and handle certain matters that you normally would handle.

Your Powers as a Magistrate and Judge

Your powers as magistrate extend throughout your county. These powers include the right to hear complaints or preliminary informations, issue warrants, order arrests, require security to keep the peace, make commitments, and take bail. (Secs. 748.2, 760.1, 761.1) As a judge you have the power to set and take bail, try cases, pass sentences, order commitments, and perform other judicial functions. (Sec. 367.5; Chs. 601, 762)

General Procedures in Your Court

In general, actions in your court follow the same steps as similar actions in justice of the peace courts. These procedures are listed in detail in the Code. (Sec. 367.8; Chs. 601, 761, 762; R.C.P. 354-362)

All cases that are brought before your court, and all official actions that you take in those cases, must be recorded in your court docket. You don't need to put down what was

said during the trial, but you must make a record of all official actions and the date of each: when various papers were filed, what papers you issued, what disposition was made of the matter, etc. (Sec. 601.16) Your docket is helpful in figuring out what costs should be charged, what fees you can collect, and it will be useful when you write certain reports that you have to make.

The marshal, or his deputy, should be present when you hold court; he serves as your bailiff. (Sec. 367.14) You serve as your own clerk of court. (Sec. 601.123)

You can be disqualified from acting as judge in certain cases, as, for example, when you are closely related to one of the persons involved. (Sec. 605.17)

You can hold court and take official actions on weekdays and Saturdays. (Sec. 605.18) To some extent you can act officially even on Sunday in matters involving crimes under state law or violations of local ordinances. However, you cannot cause a person to answer or appear for the first time in any action on a legal holiday. (Secs. 605.18(3), 617.8) In certain civil cases—disputes between private persons—you can perform certain official acts on Sunday. (Secs. 626.6, 643.3, 667.3; R.C.P. 57) You should check the Code or with your city or town attorney before taking action on Sunday or a legal holiday.

Proceedings in your court are open to the public, although there are certain instances when the public might be kept out. (Sec. 605.16)

Actions in your court can be appealed to the district court in your county. You may be notified that a case will be appealed to the district court when you make your final decision; in any event, the appeal must be filed within twenty days. When a case is appealed, you turn over all papers in the case to the district court, and also give that court a copy of your docket entries relating to the case. (Secs. 367.8, 601.97, 762.48)

Violations of Municipal Ordinances

A person who is accused of violating an ordinance of your city or town must be brought before your court; your court is the only one that can, in the absence of superior, municipal, and police courts, handle such prosecutions. (Sec. 367.5) Let's go through the steps that you probably would follow in an ordinary case of this kind. With certain exceptions, these procedures follow those outlined in Chapter 762 of the Code.

Arrest—As chief executive, charged with the duty to enforce the law, you can arrest anybody you see violating a municipal ordinance, you can issue an order for the arrest of a person accused of violating an ordinance. (Sec. 768A.2(1)) Whenever possible, you should have somebody else make the arrest—usually the marshal, a deputy, or a policeman. If you believe somebody has violated an ordinance, you may order the arrest of a person, even if someone hasn't filed an information. Of course, in most instances arrests will probably be made by the marshal, a deputy, or a policeman.

The accused can be brought before you in an informal manner. The purpose of an arrest is to make sure the accused person will appear in court and answer the charges that have been made against him. Many times all this means is that the arresting officer, who may be you, the mayor, and the accused person agree on a time for the hearing. When it is necessary, you can take formal, legal steps to make sure the accused person will appear in court at the time you set for his trial. You can order the person to put up bail as security that he will appear. (Secs. 754.3, .6)

Information—This is the formal statement of charges. It states the particular ordinance the person is accused of violating. Then the information sets forth the particular acts that the person did that constitute the violation, and the time and place of these acts. This statement of the facts of

the case should be brief and concise. The information must be signed and sworn to by the person who made the charges. (Sec. 762.2-4)

You file the information and mark on it the time when it was filed. (Sec. 762.5) Prosecutions for violations of ordinances must be started within one year of the violation. (Sec. 752.4)

Transferring the Case—If you feel that you should not hear a particular ordinance violation case, you can transfer it to a justice of the peace court in your city or town. This is a matter of your own discretion; you can't be forced to transfer a case. Defendants in such cases have no right to change the place of trial. If you do transfer a case, the justice has full power to hear it, and he collects the fees for trying the case. (Sec. 367.7)

The Trial—First, you must tell the accused person of his right to an attorney, read the charges that have been filed against him, and then you ask him to plead guilty or innocent to the charges. You record his plea in the docket. (Secs. 762.9-11) If he pleads guilty, you proceed to pass judgment, that is, state the amount of the fine he must pay or the time he must spend in jail. But if he pleads innocent, you then hear both sides of the case and the witnesses each side may call in before making your decision. The defendant has no right to trial by jury in cases of ordinance violations; you, the judge, make the decisions yourself. If the case is appealed to the district court, then he may have a trial by jury. (Sec. 367.8)

If the prosecuting witness—the person who signed the information—fails to appear, you can dismiss the case and assess the costs against him. (Secs. 762.34-35)

Forfeiting Bail—If the defendant has put up bail and then fails to show up at the time of the trial, you must order bail forfeited. (Sec. 766.1) You then file a copy of the forfeiture, and a copy of all official entries in the case, with the clerk of the district court in your county. (Sec. 766.4)

Judgment—The maximum penalty for conviction of vio-

lating an ordinance is a \$100 fine or thirty days in jail. (Sec. 366.1) You collect the fine—and the costs—and turn the fine over to the city or town treasurer. (Secs. 367.9, 368A.4(1))

If you state in your official judgment that the offender is to serve time in jail if he does not pay the fine, the days in jail cannot exceed one day for each three and one-third dollars of the fine per day, nor a total of thirty days. (Secs. 789.17, 367.10)

When a fine is paid, you make out duplicate receipts, one of which you give to the defendant and the other you file with the city or town treasurer. Money from fines should be turned over to the treasurer within thirty days from the time you collected it. (Secs. 762.40-.42)

All details of the judgment—the amount of the fine and costs, the date when the fine was collected, etc.—should be recorded in your docket.

Appeals—At the time you pass judgment, you must inform the defendant of his right to appeal to the district court. He can tell you at that time if he decides to appeal, or he can give you written notice within twenty days. When you are notified that an appeal will be filed, you must set bail. Also, you must see to it that all material witnesses in the case agree to testify when the case comes up in district court. Then you file a certified copy of the pertinent entries on your docket, and all papers filed with you, in the office of the clerk of the district court at least ten days before the opening day of the next term of court. (Secs. 762.43-.44, .47)

Minor State Criminal Offenses

Your court can try persons accused of minor state criminal offenses that were committed anywhere in your county. (Sec. 367.5) These minor crimes are referred to in the law as “non-indictable offenses”; the maximum penalty for these crimes is a \$100 fine, or imprisonment for thirty days. (Sec. 762.1)

You follow the same procedures that justices of the peace do in such cases; these steps are detailed in Chapter 762 of the Code. These procedures differ somewhat from the ones you follow in dealing with ordinance violations; here we'll point out just some of the major differences.

Information—The formal statement of charges against the accused person is in the name of the state, not the municipality as in cases of ordinance violations. (Secs. 762.2-4) The charges must be filed within one year of the crime. (Sec. 752.4)

Change of Venue—A person charged with a minor state offense can request that the charges be heard by another court rather than by you. If he wants to change the place of his trial, he files with you a formal affidavit asking for a change of venue. This request must state the proper grounds—that you are prejudiced against him, that you are a near relation of the prosecutor or a party injured or interested in the case, or that he, the defendant, cannot obtain justice from you. (Sec. 762.13) This request must be filed before any evidence is heard.

If such a request is filed stating the proper grounds, you must grant the change of venue; you have no choice in the matter. You must transfer the case to the nearest justice of the peace in your township or county. (Sec. 762.14)

Trial by Jury—The defendant may ask for a trial by jury any time before any evidence is heard. You must grant such a request, and proceed to call prospective jurors and select a jury of six persons to hear the case. These procedures are outlined in detail in the Code. (Secs. 762.15-30) When the jury decides whether the defendant is guilty or not guilty, you either discharge him or pass judgment.

Fines and Commitment—The money you receive in fines in cases of this sort must be paid to the county treasurer within thirty days. When you receive money to pay a fine, you make out duplicate receipts, give one copy to the defendant and file the second copy with the county auditor. You can require in the judgment that the defendant be

sent to the county jail if he fails to pay the fine. (Secs. 762.39-40, .42)

Appeals—As in ordinance cases, your judgment can be appealed to the district court. When you state your judgment to the defendant, you must tell him of his right to appeal, and record in your docket the fact that you have given him this notice. If the defendant decides to appeal, you proceed to set bail and send all the papers to the clerk of the district court. (Secs. 762.43-.44, .47)

Major State Criminal Offenses

As part of your functions as a magistrate, you will sometimes have a part to play in the prosecutions of persons charged with major state criminal offenses. These offenses are referred to in the law as "indictable offenses," or "felonies." These crimes are punishable by fines larger than \$100 or imprisonment for more than thirty days. You do not try these cases; you merely hold an examination to determine whether a crime has been committed that can be tried in the district court.

When a person is arrested and charged with committing a crime, he must be taken before a magistrate. If you, as a magistrate, had issued a warrant for the arrest of the accused person, he probably would be brought before you. (Ch. 754; Secs. 757.2-.3, .8) When peace officers, or private citizens, arrest persons without warrants, they also must bring them before a magistrate. (Sec. 758.1)

When a person accused of a serious crime appears before you, you may decide to transfer the case to another magistrate in certain instances. (Secs. 758.3, .5), or the defendant may by affidavit request a change of venue. (Sec. 761.2) If he states the proper reasons in his request you must grant a change in venue, and proceed to transfer the case to another magistrate. The reasons or grounds are that you are prejudiced against him, that you are a material witness, or that he cannot obtain justice before you. (Secs. 761.2-.3)

At this stage of the prosecution, the proceedings are based

on a preliminary information. The information was filed with you at the time you issued the arrest warrant. (Ch. 754) Or, if the arrest was made without a warrant, an affidavit similar to a preliminary information will be filed. (Sec. 758.1)

You must inform the accused person of his right to have an attorney, and delay proceedings long enough for his attorney to arrive. (Sec. 761.1) After the defendant has heard the charges against him, as stated in the information, he may decide to waive preliminary examination. This is often called "waiving to the grand jury." If this happens, you proceed to set bail in bailable offenses or order that he be held in the county jail until bail is posted. You send all the papers in the case to the clerk of the district court, who turns them over to the next grand jury.

If the defendant does not waive, you proceed under Code Chapter 761 to conduct the preliminary examination. You must subpoena witnesses or allow depositions to be taken on request of either party. The purpose of the examination is to find out whether a crime has been committed that can be tried in the district court of your county, and whether or not there is reasonable grounds for believing that the defendant is guilty. (Sec. 761.18) You are the one who makes this important decision.

If you find there is not sufficient reason for holding the defendant, you must order him to be discharged. You enter a written order of discharge in the minutes of the examination and sign it. (Sec. 761.17) This does not prevent the grand jury from looking into the matter, or the county attorney from filing an information in district court.

If you find there is sufficient grounds for holding the prisoner to answer the charges in district court, you proceed to set bail in bailable offenses or order him to be held in the county jail. (Secs. 761.18-20)

Whether you discharge the defendant or order him to be held to answer the charges, you must report all your

actions in the matter to the clerk of the district court. (Secs. 761.16, .25)

Perhaps you will decide that a serious crime was not committed, but that a minor offense was. Under such circumstances, you can order that an information be filed on the lesser charge and proceed to try the case. The person who arrested the defendant, or who made out the preliminary information against him, should file the less serious charge. (Sec. 761.26) If the less serious crime was committed in another county, you should transfer the case to a justice of the peace or another magistrate in that county for trial. (Sec. 761.27)

Juvenile Cases

Under Iowa law, juveniles who are accused of crimes are not tried in the regular courts; instead, they are tried in special juvenile courts. (Chs. 231, 232) This applies to persons who are not feeble-minded and who are under eighteen years of age and not inmates of any state institution, and to all offenses except motor vehicle violations and serious crimes for which the punishment is life imprisonment. (Secs. 232.1, 321.482) So when a boy or girl under eighteen is brought before you and charged with any crime other than those exceptions, you must transfer the case at once to the juvenile court in your county. (Sec. 232.18)

In cases of motor vehicle violations, you can proceed to try the case in the usual manner, and in cases involving felonies punishable by life imprisonment, you can proceed to conduct the usual preliminary examination. But you must transfer all other cases in which persons under eighteen are accused to the juvenile court.

Motor Vehicle Violations

The procedures you follow in handling motor vehicle violations are pretty much the same as other crimes against

the state, but there are a few alternative procedures. You can try cases where the maximum penalty is not more than a \$100 fine or imprisonment for thirty days; in more serious matters, such as operating a motor vehicle while intoxicated, you cannot try the case but can hold a preliminary examination.

Remember, you can try juveniles for motor vehicle violations in the same manner as adults.

Where minor violations are involved, such as speeding or running a stop sign, a peace officer can bring an accused person before you without a warrant—either in person or by issuing a summons. You can set bail, or merely ask the accused person to sign a statement in which he promises to appear in court at a certain time. (Secs. 321.485-.488)

You must keep a complete record of all these cases. In all cases where you convict the offender or forfeit his bond, you must report the case to the State Department of Public Safety within ten days. (Sec. 321.491) The department provides special forms for you to use in making these reports.

Civil Actions

Although your mayor's court has limited jurisdiction in certain types of civil action, very seldom are these matters handled by mayors' courts. Usually civil actions are handled by the district courts. However, within closely defined limits, you can decide certain actions involving disputes between private individuals over matters of money or property. You have the same jurisdiction in your city or town as a justice of the peace has in his township. (Sec. 367.5)

In order for you to be able to handle a civil case in which recovery of money is involved, the case must meet these requirements:

1. The defendant, or one of them, must be a resident of your city or town, or notice must be served on one of the defendants in your municipality. (Secs. 601.3-4)

2. If the defendant has promised by a written contract to make payment within your municipality, he does not have to be a resident or be served notice in your city or town. (Sec. 601.8)

3. The amount of money claimed must not be more than \$100 unless the parties have agreed in writing to give you jurisdiction over a larger amount up to \$300 but not more than that. (Sec. 601.2)

4. The action must be a proceeding in law and not one in equity. (Sec. 601.2) This excludes such equitable actions as specific performance of a contract, injunction, and reformation of a contract.

If the case involves an attempt to recover property and not money, you may judge it under these conditions:

1. If the property involved is land, the title must not be in dispute; if it is, you must transfer the case to the district court. (Sec. 601.37)

2. If the action is one of replevin for the recovery of property, the property must be located within your county. (Sec. 601.5)

3. If the action is one in which there is an attachment of property located in your county, and if the defendant is not a resident of the state, notice must be served on him in your county. (Secs. 601.6-.7)

The procedures you must follow in civil actions are quite complicated. They are discussed in general in Chapter 601 of the Code, but if you should have to handle such a case, it would be a good idea to discuss the proper procedures with an attorney or an experienced justice of the peace.

Fees for Holding Court

In addition to your regular salary as mayor, you receive extra compensation for your work as judge and magistrate. Your council, by ordinance, sets the amount of additional salary or fees that you get for handling cases involving violations of municipal ordinances. For handling civil and criminal actions under state law, you receive the statutory

fees, the same as a justice of the peace. If your city or town has a police court and you act as judge in the event the office of police judge is vacant, you receive the regular fees or salary for that office. (Secs. 767.12-.13)

Your fees for handling ordinance cases are either paid by the defendant or come out of the municipal treasury, depending on your local ordinances; in state criminal cases, the defendant, if convicted, should pay your fees, and in civil actions, the fees are paid by the parties involved. If the prosecution fails in a criminal case under state law, or if no costs are paid, your fees are paid out of the county treasury. (Secs. 367.15, 601.128, .130)

Remember, your fees are included in the costs you assess in any action; they are a part of the judgment. In criminal cases, you collect the fine, if any, and turn it over to the city or county treasurer.

For your convenience, here is a list of the fees you are allowed under state law: (Sec. 601.128)

1. For docketing each case in any action, except in garnishment proceedings, one dollar.
2. For issuing each original notice, one dollar.
3. For issuing attachment or order for the delivery of property, fifty cents.
4. For drawing and approving bond when required in any case, one dollar.
5. For entering judgment by confession after action brought, one dollar.
6. For entering judgment by confession before action brought, two dollars.
7. For entering judgment by default, or on a plea of guilty, one dollar.
8. For entering judgment when contested, one dollar.
9. For additional fee when a jury is called, two dollars.
10. For issuing venire (a writ summoning the jury) for jury, fifty cents.
11. For each subpoena in civil action, when demanded, fifty cents.

12. For each oath or affirmation, except in proceedings connected with actions before him, ten cents.

13. For each continuance at the request of either party, one dollar.

14. For setting aside each judgment by default, one dollar.

15. For each information and affidavit, one dollar.

16. For each execution, renewal of execution, or warrant of any kind, one dollar.

17. For each bond or recognition, one dollar.

18. For each mittimus (an order of commitment to jail) or order of discharge, one dollar.

19. For each official certificate or acknowledgment, fifty cents.

20. For making and certifying transcript or abstract, one dollar.

21. For trial of all actions, civil or criminal, for each six hours or fraction thereof, two dollars.

22. For all money collected and paid over without action, 5 per cent; for all money collected and paid over after action brought without judgment, 2 per cent, which shall be added to the costs.

Reports Regarding Court Actions

You must report the essential facts in certain cases that you handle to the proper authorities. Here are the reports you must make:

Reports to City or Town Officials—How you report on cases involving violations of local ordinances is a matter that is governed by municipal ordinance. Your council may pass an ordinance setting when you must report, to whom, what the report should contain, and so on. But of course, if there is no ordinance on the subject, you do not need to report.

Annual Report to County Supervisors—You must make a report concerning all the cases you handle that arise under state law. This report is made to the county board of super-

visors, and must be filed on the first Monday in January each year. Please note, this report is to include only cases arising under state law; you do not need to include ordinance violations.

Your annual report on state cases must include a list of all cash bonds forfeited, and all fines, penalties, and forfeitures imposed by your court that go into the county treasury. For each of these items listed, you must state the cause of proceeding, when held and for what purpose, against whom the judgment or forfeiture was rendered, and for what amount. Also include whether the fines, penalties, forfeitures, and cash bonds have been paid, remitted, canceled, or otherwise satisfied, and in what manner these items were satisfied. If any item has not been paid, you must tell what steps are being taken to collect it.

This report must be true, give complete details as required by statute, and must be subscribed under oath. Failure to make this report is a misdemeanor, punishable by fine, imprisonment, or both. (Secs. 666.6, 687.7)

Report to State Liquor Commission—All cases in which violations of the state's liquor laws are involved must be reported to the state liquor commission. This report must be made annually, during the month of July. In this report you include all cases dealing with a violation of the state liquor control act or any other state law pertaining to alcoholic liquors. For each case give a complete report of the matter, including the result or disposition of the case. (Sec. 123.53)

Reports to State Public Safety Department—As mentioned earlier, you must report all convictions and forfeitures of bail in cases involving violations of the state motor vehicle law or other laws regarding the operation of vehicles on the highways. You must report each such conviction or forfeiture within ten days. These reports are made to the state public safety department on special forms provided by the department. (Sec. 321.491)

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