JUVENILE LAW: Disposition of child found to have committed a delinquent act. Iowa Code § 232.52(2)(e)(4)(1999). Section 232.52(2)(e)(4) provides two criteria for placement in a state training school: 1) the child must have been previously placed in a treatment facility outside the home, or 2) the child must have previously been placed in a supervised community treatment program as the result of a prior delinquency adjudication. The placement in a treatment facility outside the home need not have been because of a delinquency adjudication. (Phillips to Bozwell, Appanoose County Attorney, 1-18-00) #00-1-1(L)

January 18, 2000

Mr. Robert F. Bozwell, Jr.
Appanoose County Attorney
Appanoose County Courthouse
Centerville, IA 52544

Dear Mr. Bozwell:

You have requested an opinion of the Attorney General relating to Iowa Code section 232.52 (2)(e)(1999). This section sets forth the conditions that must exist before the juvenile court may place a child in the "state training school or other facility." Under this section the court may make a placement if any three of the four listed conditions are found to exist. Prior to 1997, Iowa Code section 232.52(2)(e)(4) read as follows:

> (4) The child has previously been placed in a treatment facility outside the child's home.

In 1997, the section was amended to provide:

> (4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

Iowa Code § 232.52(2)(e)(4)(1997) *amended by* 1997 Iowa Acts, ch. 51, section 1 (amended language underlined).

Your inquiry focuses on the first part of the condition, the part allowing placement if the child has previously been placed in a treatment facility. You have inquired whether the meaning of that part has been changed by the addition of the second part allowing placement at the training school if the child has been previously placed "in a supervised community treatment program established pursuant to section 232.191,

subsection 4, as a result of a prior delinquency adjudication." Specifically, you have inquired, whether "the placement in a treatment facility outside the child's home" must have been "because of a prior delinquency adjudication," or may have been "for some other reason, such as a Child In Need of Assistance or mental health proceeding?"

Resolution of this issue affects standards for admission to the training school. If the delinquency adjudication language is read to modify the first, original condition, then, to some extent, the amended language tightens standards for admission to the training school by requiring a delinquency adjudication prior to placement in a treatment facility, when an adjudication was not previously required as a condition precedent. If the language is not read to modify the original condition, then the amendment serves to expand admission standards by adding an additional or alternative condition justifying the placement of a juvenile at the state training school.

In our opinion the second interpretation described above is the more sound. Under this interpretation the amended language was intended to expand admission standards by providing a new alternative condition justifying admission to the training school and should not be viewed as modifying the original placement criteria.

On its face the amended statute can be read as either requiring or not requiring a child's placement in a treatment facility to have been the result of a prior delinquency adjudication. The language of the amendment may fairly be said to have created an ambiguity in the statute. See State v. Rodgers 560 N.W.2d 585, 586 (Iowa 1997) (providing that a statute is ambiguous if it is susceptible to more than one meaning).

Because of this ambiguity, recourse may be had to the rules of statutory construction in interpreting the statute. Iowa Code § 4.6 (1999); Rodgers, supra, 560 N.W.2d at 586. These rules suggest that the phrase, "as a result of a prior delinquency adjudication" was meant to qualify only the phrase, "supervised community treatment program" and not to qualify, "a treatment facility outside the child's home." According to the "doctrine of the last preceding antecedent", qualifying words and phrases, "ordinarily refer only to the immediately preceding antecedent." State v. Kluesner, 389 N.W.2d 370, 371 (Iowa 1986). This doctrine suggests that the phrase, "as a result of a prior delinquency adjudication," should be read to refer only to the immediately preceding antecedent, "a supervised community treatment program established pursuant to section 232.191, subsection 4," and not to the first antecedent, "in a treatment facility outside the child's home". Thus, the type of placement described in that first antecedent need not have been the result of a prior delinquency adjudication.

Another rule of statutory construction supports this interpretation. The word "or" was placed between the existing condition and the language of the amendment. "When the word 'or' is used in a statute, it is presumed to be disjunctive unless a contrary legislative intent appears." Kearney v. Ahmann, 264 N.W.2d 768, 769 (Iowa 1978). A contrary intent does not appear in this statute. Accordingly, the amendment should not be construed as altering the first phrase of the subsection.

We must acknowledge that at least one rule of statutory construction may suggest a different conclusion. Some courts have found that where a qualifying phrase is separated from its antecedents by a comma, that comma is evidence that the legislature intended all the preceding antecedents to be qualified by the phrase, not merely the immediately preceding one. State v. Lohr, 266 N.W.2d 1, 3-4 (Iowa 1978). Applying this rule to the statute, the amended statute would be read as requiring all the placements referenced therein to have been the result of a delinquent act. However, we believe it would be unwise to conclude that the amendment had the affect of changing the existing criteria based simply on the placement of a comma. "[P]unctuation is seldom a highly persuasive factor in statutory construction and will not defeat evident legislative intent." State v. Guardsmark, Inc., 190 N.W.2d 397, 400 (Iowa 1971). Additionally, the qualifying phrase in Iowa Code section 232.52(2)(e)(4) is separated from the antecedent phrase by not one, but two commas:

> (4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

(emphasis added). The inclusion of the second comma after the phrase, "subsection 4," suggests that the commas were included to set off the phrase, "subsection 4," and not to mean that both antecedents should be qualified. This supports the conclusion that the amendment did not alter the existing law, but merely added an additional, separate criteria for admission.

Another helpful tool in statutory construction is the examination of legislative history. State v. Crone, 545 N.W.2d 267, 273 (Iowa 1996). The use of that tool has been endorsed by the legislature and by the courts. See Iowa Code section 4.6(3) (1999) (providing that the courts may consider the legislative history in determining the legislature's intent); see also Rathmann v. Board of Directors, 580 N.W.2d 773, 782-783 (Iowa 1998) (considering explanation given for an amendment by the Senate Judiciary Committee); Goodell v. Humboldt County, 575 N.W.2d 486, 494 (Iowa 1998) (considering comments and explanation to a House File recorded in the House Journal). According to the explanation written by the Iowa House Human Resource Committee in relation to the bill amending section 232.52(2)(e)(4):

> This bill adds an alternative to the criteria which are currently used by the Court to determine whether a delinquent child may be placed in the state training school or other facility. Previous placement in a highly structured delinquency day program is added in the bill as an alternative to the current requirement that a delinquent

> child must have been previously placed in a treatment facility outside the child's home.

House File 545, 77th G.A., 1st Sess. (Iowa 1997). This indicates that the amendment to Iowa Code section 232.52(2)(e)(4) was meant as an alternative to the criteria already in use by the juvenile courts in determining whether a delinquent may be placed in a state training school. It was not meant to change the nature of the existing criteria.

The bill explanation is significant because changes made by revision of a statute will not be construed as altering the law unless the legislature's intent to accomplish a change in its meaning is clear and unmistakable. State v. Osborn, 368 N.W.2d 68, 69-70 (Iowa 1985). It is clear that the legislature intended to *expand* the law by adding the alternative criteria that the child have been placed "in a supervised community treatment program...as a result of a prior delinquency adjudication." The bill explanation provides that this alternative is in addition to "the criteria currently being used." (emphasis added).

To construe the amended statute as a qualification of the existing criteria would change the meaning of the original portion of the statute. The consequence of construing the amendment in this manner would be to change the law without clear evidence that the legislature intended that construction. "In construing statutes, our ultimate goal is to effectuate the intent of the legislature." Iowa Southern Utilities Co. v. Iowa State Commerce Com'n, 372 N.W.2d 274, 277-278 (Iowa 1985). The construction that most reflects the legislative intent set forth in the explanation of the bill is one where the amendment is construed as merely adding an additional criteria for the Juvenile Courts to use in determining the disposition of a delinquent child. This additional criteria, and it alone, is modified by the phrase, "as a result of a prior delinquency adjudication." The consequences of this construction are the addition of another alternative condition and the persistence of the existing condition in its original form.

Accordingly, we conclude that under Iowa Code section 232.52(2)(e)(4), a child's previous placement in a treatment facility outside the home need not have been because of a prior delinquency adjudication. The 1997 amendment merely added the option that the child have been previously placed in a "supervised community treatment program...as a result of a prior delinquency adjudication." .We believe the legislature did not intend to change the existing criteria.

Sincerely,

Charles K. Phillips

CHARLES K. PHILLIPS
Assistant Attorney General

AGOPIN-3

COUNTY AND COUNTY OFFICERS: Imposition of comprehensive hiring policy upon all county offices. Iowa Code §§ 331.903, 331.904 (1999). County supervisors lack authority to require another elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve any appointments made by other elected county officers. (Kempkes to Mullin, Woodbury County Attorney, 2-15-00) #00-2-3(L)

February 15, 2000

Mr. Thomas S. Mullin
Woodbury County Attorney
300 Courthouse
Sioux City, Iowa 51101

Dear Mr. Mullin:

You have requested an opinion on the authority of county supervisors over the personnel policies of other elected county officers. You ask whether county supervisors may require another elected county officer to comply with their comprehensive hiring policy and, if so, whether they may withhold approval of any appointments made by other elected county officers who do not comply with that policy. You also ask about the meanings of "deputies, assistants, and clerks" and "extra help and clerks," which elected county officers may appoint pursuant to statute.

These questions primarily implicate Iowa Code chapter 331 (1999). After reviewing chapter 331, we conclude that county supervisors may not require another elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve appointments made by other elected county officers. We cannot, however, provide any definite meanings for "deputies, assistants, and clerks" and "extra help and clerks," as used in chapter 331; whether a particular position would fall within any of these job titles would likely require a determination of facts, which we cannot do in the opinion process.

I.

Chapter 331 is entitled County Home Rule Implementation. It provides for the principal county officers who take office by election: supervisor, auditor, treasurer, recorder, sheriff, and attorney. It also provides for the appointment of various county personnel.

Chapter 331 sets forth the duties of the supervisors regarding personnel. Section 331.321(1) provides that the supervisors shall make appointments to various county positions, and section 331.322(3) provides that they "shall . . . [f]ill vacancies in county offices . . . and make appointments" in accordance with state law. See generally Iowa Code §§ 331.322(2), 331.323.

Chapter 331 also sets forth the duties of the other elected county officers regarding personnel. Section 331.904(4) authorizes the county auditor, treasurer, recorder, sheriff, and attorney to appoint "extra help and clerks" and places with the county supervisors the duty to determine the compensation for these persons. See generally Iowa Code §§ 341.7, 341.8. In addition to this authority, section 331.903 provides in part:

> (1). The auditor, treasurer, recorder, sheriff, and county attorney may each appoint, with the approval of the board, one or more deputies, assistants, or clerks . . . . The number of deputies, assistants, and clerks for each office shall be determined by the board . . . .
>
> (2). When an appointment has been approved by the board, the principal officer making the appointment shall issue a written certificate of appointment . . . .

(emphasis added). Accord Iowa Code §§ 331.503(1), 331.553(2), 331.603(2), 331.652(7), 331.758(2). See Iowa Code § 331.321(3) ("[e]xcept as otherwise provided by state law, a person appointed to a county office may be removed by the officer or body making the appointment"), § 331.323(2)(g) (county supervisors "may . . . [e]stablish the number of deputies, assistants, and clerks" for the offices of county auditor, treasurer, recorder, sheriff, and attorney). See generally Iowa Code § 4.1(30) (unless otherwise defined, "shall" in statutes imposes a duty and "may" confers a power).

II.

(A)

You have asked whether county supervisors may require another elected county officer to comply with their hiring policy and, if so, whether they may withhold approval of any appointments made by elected county officers who do not comply with that policy.

Prior case law and opinions have answered these related questions. In McMurry v. Lee County Board of Supervisors, 261 N.W.2d 688, 689-90 (Iowa 1978), the Supreme Court of Iowa held that county supervisors lacked authority to require all persons serving as deputies in any county office to have two years' experience. In a 1984 opinion, this office explained:

> [Chapter 331] establishes a statutory scheme whereby elected county officials, such as the treasurer, auditor, and county attorney, have been delegated jurisdiction over their offices which is generally separate and independent of the general supervisory authority over other county matters to be exercised by the board of supervisors. . . .
>
> The Supreme Court [of Iowa recently] affirmed the principle that for the most part elected county officials are to exercise their statutory duties independently of the board of supervisors. In [McMurry v. Lee County Board of Supervisors, which involved] the validity of board resolutions concerning personnel matters in another elective county office, the Court began its opinion with the following statement:
>
> > The board [of supervisors] appears to have proceeded as though our system of county government consisted of central management with subsidiary departments. With few exceptions, however, our statutes establish autonomous county offices, under an elected head.
>
> 261 N.W.2d at 690. [See 1984 Op. Att'y Gen. 94 (#83-11-4(L))] (board of supervisors does not have authority to initiate discipline against employees of elected county officials).

1984 Op. Att'y Gen. 167, 169-70. We then concluded that county supervisors, without the county sheriff's permission, may not enter into intergovernmental agreements to share a radio receiving set or to employ persons to perform the duties of jailers: the county supervisors have a statutory duty to provide a radio receiving set to the county sheriff, and the county sheriff has the primary responsibility for hiring and supervising jailers. Id. at 168, 170.

In view of McMurry v. Lee County Board of Supervisors and our prior opinions, we must conclude that county supervisors lack authority to require another elected county officer to comply with their comprehensive hiring policy. See Polk County Conference Board v. Sarcone, 516 N.W.2d 817, 819 (Iowa 1994) ("no dispute that the county attorney has broad powers over his regular staff"); 1986 Op. Att'y Gen. 29, 30 ("Iowa law vests elected county officers with considerable autonomy, and holds those officers accountable to the electorate rather than to the board of supervisors"); 1984 Op. Att'y Gen. 94 (#83-11-4(L)) (county supervisors may not initiate discipline against employees of elected county officers).

In view of other opinions and case law, we also conclude that county supervisors may not unreasonably refuse to approve appointments made by other elected county officers by relying upon frivolous, trivial, minimal, arbitrary, or capricious grounds. See, e.g., Smith v. Newell, 254 Iowa 496, 117 N.W.2d 883, 887 (1962) (county supervisors may not unreasonably refuse to approve appointments of bailiffs and deputy made by county sheriff by relying upon frivolous, trivial, minimal, arbitrary, or capricious grounds; legislature intended that "common sense would be used by [them] in approving appointments made by other elected officers); 1992 Op. Att'y Gen. 37 (#91-7-3(L)); 1990 Op. Att'y Gen. 81 (#90-8-1(L)) (county supervisors should recognize and approve any reasonable and proper appointment made by an elected county officer and may not terminate the employment of any person so appointed); 1986 Op. Att'y Gen. 29, 32 ("even when the supervisors are given a certain degree of statutory approval authority over elected county officers' functions, that authority must be exercised in a limited and reasonable manner"); see also 1980 Op. Att'y Gen. 495, 496 (county supervisors may not "terminate any employment as a method of controlling department size" or "set employment prerequisites that are beyond [their] authority"; however, they may adopt a resolution "that freezes the hiring of new full-time personnel which would increase the size of any department").

(B)

Pointing to section 331.903(1), you have asked about the meaning of "deputies, assistants, and clerks": Which of these job titles properly encompasses such positions as secretary, office manager, cashier, administrative assistant, and bookkeeper? Similarly, you have asked about the meaning of "extra help and clerks" as used in section 331.904(4). Nothing in chapter 331 defines any of these titles or their corresponding duties and powers.

At the outset, we perceive a distinction between the positions mentioned in section 331.903(1) and those mentioned in section 331.904(4). See 1980 Op. Att'y Gen. 495, 496. See generally 3 E. McQuillin, The Law of Municipal Corporations § 12.27, at 189 (1990). The adjective "extra" in section 331.904(4) presumably modifies both "help" and "clerks" and suggests that an elected county officer can appoint a person or persons for relatively short duration to help handle unexpected increases in workload or other office emergencies. See Fullerton v. City of Des Moines, 115 N.W. 607, 611 (Iowa 1908) ("extra" commonly expresses an idea of something beyond, in addition to, or in excess of what is due, usual, or necessary); Webster's Ninth New Collegiate Dictionary 403 (1979) ("extra," probably short for "extraordinary," means more than is usual); see also Crabb's English Synonyms 330 (1917) ("extraordinary" signifies that which is out of the ordinary course and is not normally expected). In contrast, nothing in section 331.903(1) necessarily suggests that an elected county officer's deputies, assistants, and clerks serve on a temporary basis; at the same time, such personnel serve at the pleasure of the elected officers, 1990 Op. Att'y Gen. 97 (#90-12-5(L)).

Your question presumes that the positions mentioned in sections 331.903(1) and 331.904(4) have precise boundaries. See generally 3 McQuillin, supra, § 12.27, at 188-89.

Nothing in their common definitions, however, necessarily signifies separate and distinct job responsibilities. See Webster's Ninth New Collegiate Dictionary 67, 206, 303 (1979). Indeed, depending on the particular elected county officer, these subordinate positions may have overlapping responsibilities in certain areas.

Ordinarily, "deputies" have been authorized by principal officers to exercise their office or rights that they possess, for and in their place; as seconds-in-command, deputies may possess all the powers held by their principal officers. 3 McQuillin, supra, § 12.33, at 217-18; see Brown v. Overturf, 229 Iowa 329, 294 N.W. 568, 570 (1940). Ordinarily, "assistants" have been authorized, in part, to perform the duties and exercise the powers of their principal officers and rank higher than clerks. 3 McQuillin, supra, § 12.32, at 215-16; see Carson v. Chicago, M. & St. P. Ry., 181 Iowa 310, 164 N.W. 747, 749 (1937); State ex rel. City of Cincinnati, 70 N.E.2d 881, 883 (Ohio 1947). Ordinarily, "clerks" have duties primarily clerical and lack any authority to exercise judgment and discretion of an administrative or executive character; however, they do not normally engage in manual labor. 3 McQuillin, supra, § 12.34, at 221-22; see First Jackson Sec. Corp. v. B.F. Goodrich Co., 176 So.2d 272, 278 (Miss. 1965); State ex rel. Edgerly v. Currie, 55 N.W. 858, 860 (N.D. 1893); Amyot v. Caron, 190 A. 134, 136 (N.H. 1937); State ex rel. City of Cincinnati, 70 N.E.2d 881, 883 (Ohio 1947); In re Walker, 144 A. 288, 289 (Pa. 1928).

In general, then, a deputy has greater job responsibilities than an assistant who, in turn, has greater job responsibilities than a clerk. Nevertheless, the broadly worded titles used in sections 331.903(1) and 331.904(4) simply do not lend themselves to the creation of neat classifications of the kind commonly used by business and government for such purposes as compensation, chain-of-command, and responsibility. Such classification would likely require a determination of facts, which we cannot do in the opinion process. See 1994 Op. Att'y Gen. 46, 47; see also 61 IAC 1.5(3)(c). It might, for example, involve a consideration of such matters as the type and number of duties and powers, the form of compensation, custom, and comparable positions within private business and government. See generally 7 C.J.S. Assistant 15-16 (1980); 26A C.J.S. Deputy 496 (1956).

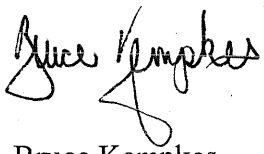
We thus cannot say what the phrase "deputies, assistants, and clerks" means as a matter of law. Rather, the question which title attaches to a specific employee depends upon his or her specific job duties and "must be determined from the relation of the particular situation to the office or department with which it is connected." 3 McQuillin, supra, § 12.32, at 216. The responsibility to make that determination belongs within the province of the elected county officer. See 1998 Op. Att'y Gen. ___ (#98-2-2(L)). In this vein, we point out that all persons appointed by an elected county officer pursuant to sections 331.903(1) and 331.904(4) must necessarily serve as some type of deputy, assistant, or clerk, regardless of what other title (e.g., secretary, bookkeeper, or office manager) may attach to his or her job as a matter of custom or practice. A person can wear many hats, and an employee can have many titles. Stated otherwise, the common use of other titles within a particular office does not mean that county supervisors

may subject these persons to a comprehensive hiring policy on the ground that they do not fall within the rubric of "deputies, assistants, and clerks." This rule also applies to persons appointed by elected county officers pursuant to other statutes; those appointees remain subject to the authority of the elected county officer, not the county supervisors. See, e.g., 1984 Op. Att'y Gen. 167, 168 (county sheriff has duty to hire and supervise "jailer").

III.

In summary: County supervisors may not require another elected county officer to comply with their comprehensive hiring policy and may not unreasonably refuse to approve appointments made by other elected county officers. This office cannot provide any definite meanings for the phrase "deputies, assistants, and clerks" and "extra help and clerks," as used in Iowa Code sections 331.903(1) and 331.904(4) (1999); whether a particular position would fall within any of these job titles would likely require a determination of facts, which we cannot do in the opinion process.

Sincerely,



Bruce Kempkes
Assistant Attorney General

SCHOOLS: Exculsive vendor contracts; competitive bidding. Iowa Code §§ 274.7, 279.8, 279.12, 297.7 (1999). The board of directors of a public school district may enter into exclusive contracts with vendors for the purchase of products sold on school premises or at school functions. Vendor contracts for non-educational goods are proprietary in nature and may extend beyond the term of current board members. A marketing firm may be employed to assist with the negotiation and oversight of vendor contracts. While statutory public bidding requirements are not applicable to school district contracts for the purchase of goods and services, public policy supports use of competitive bidding procedures for such contracts. (Scase to Chapman, 2-15-00) #00-2-4(L)

February 15, 2000

The Honorable Kay Chapman, Administrator
Professional Licensing & Regulation Division
Iowa Department of Commerce
1918 SE Hulsizer Road
Ankeny, Iowa 50021

Dear Ms. Chapman:

During your tenure as a State Representative, you requested an opinion of the Attorney General addressing a number of questions concerning the ability of public school districts to enter into exclusive long-term contracts with vendors for products sold on school premises or at school functions. In your request letter, you indicate that school districts may obtain certain goods at a reduced cost and may, in some cases, generate funding by entering into exclusive vendor contracts. In light of this potential, you present a number of inquiries regarding the propriety and methodology for such contracting.

Initially, you ask whether public school corporations have the authority to enter into arrangements with vendors, including soft drink vendors, whereby the vendor is given the exclusive right to provide products at the school and at school sponsored activities and to display its advertising logo on school property in exchange for cash or other payments. Public school districts, as creatures of statute, are not vested with home rule authority. Rather, the Iowa courts have consistently held that schools are subject to "Dillon's Rule." The only powers which may be exercised by a school board are those expressly conferred upon them by statute or necessarily implied from those express powers. See Sioux City Comm. School Dist. v. Bd. of Public Instruction, 402 N.W.2d 739, 741 (Iowa 1987); Barnett v. Durant Community School Dist., 249 N.W.2d 626, 627 (Iowa 1978); Silver Lake Consol. School Dist. v. Parker, 238 Iowa 984, 990, 29 N.W.2d 214, 217-18 (1947). Therefore, our analysis must begin with consideration of relevant statutory provisions relating to contracting by school districts and setting forth the powers and duties of boards of directors of public schools.

Iowa Code section 274.1 (1999) provides the following general description of the powers of school districts:

> Each school district shall continue a body politic as a school corporation, unless changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained.

The governing body of each school district is an elected board of directors. Iowa Code § 274.7 (1999). In addition to its other functions, the board of directors is authorized to

> . . . make rules for its own government and that of the directors, officers, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and aid in the enforcement of the same, and require the performance of duties by said persons imposed by law and the rules.

Iowa Code § 279.8 (1999). The board is specifically charged with the duty to "make all contracts necessary and proper for exercising the powers granted and performing the duties required by law . . .." Iowa Code § 279.12 (1999).

The Iowa Supreme Court and this office have previously characterized these statutory provisions as granting public school boards of directors "broad discretion in the management of school affairs." 1980 Op. Att'y Gen. 114 [#79-4-32(L)], citing Kinzer v. Directors of Independent School Dist. of Marion, 129 Iowa 441, 444-45, 105 N.W. 686, 687 (1906) and Security Nat'l Bank of Mason City v. Bagley, 202 Iowa 701, 210 N.W. 947 (1926). As the Court indicated in Kinzer, "[i]t was plainly intended . . . that the management of school affairs should be left to the discretion of the board of directors, and not to the courts, and we ought not to interfere with the exercise of discretion on the part of a school board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred." 129 Iowa at 445, 105 N.W. at 687.

Within the scope of the general contracting authority of schools, the Iowa courts have held that public school boards may adopt a student savings plan, Security Nat'l Bank of Mason City v. Bagley, 202 Iowa 701, 201 N.W. 947 (1926); include in teacher contracts provisions for reimbursement of tuition expended on approved graduate courses, Barnett v. Durant Community School Dist., 249 N.W.2d at 630; and contract with teachers for payment of accrued sick leave benefits, Bettendorf Education Assn. v. Bettendorf Community School Dist., 262 N.W.2d 550, 552 (Iowa 1978). This office has previously concluded that this statutory authority empowers a school board to allow use of school facilities by music instrument retailers to display their wares and disseminate information to students and parents, 1980 Op. Att'y Gen. 580; and to engage a commercial photographer to take pictures of students at the school, 1980 Op. Att'y Gen. 114. We have also acknowledged that a public benefit may be derived from commercial use of school facilities, favorably citing a decision of the Ohio Supreme Court which held that the sale of

advertising space on the scoreboard of a publicly owned stadium served a public purpose. 1980 Op. Att'y Gen. 114, citing Bazell v. City of Cincinnati, 233 N.E.2d 864, 870 (Ohio 1968).

Review of the above-cited cases and opinions leads us to conclude that a school board may enter a contract by which the board agrees to limit the sale of products in vending machines or concession stands at school facilities to one manufacturer's product. In doing so, we recognize that these arrangements are not free of controversy. See Lawrence Hardy, "The Lure of School Marketing," American School Board Journal, October 1999, at 23; Chris Suellentrop, "This Government Brought to You By . . .," Governing, November 1998, at 43; Kathleen Vail, "Insert Coins in Slot," The American School Board Journal, February1999, at 28; Robert L. Zorn, "The Great Cola Wars," The American School Board Journal, February 1999, at 31. We limit our analysis to the legality of the proposed undertaking. The advisability of entering these contracts will depend upon the specific circumstances of each district and is a matter for local school board determination.[1]

Having answered your first question affirmatively, we proceed to address your second inquiry: whether there is a limitation on the length of time that such a contract may remain in force.

> [T]he general rule of law as set forth by the Iowa Supreme Court is that, absent an express statutory provision to the contrary, a local governmental body . . . may not bind its successors in matters that are essentially legislative or governmental in nature, as opposed to business or proprietary in nature.

1984 Op. Att'y Gen. 56 [#83-6-4(L) at p. 1] (citations omitted); see Board of Education in and for Delaware County v. Bremen Tp. Rural Independent School Dist., 260 Iowa 400, 408, 148 N.W.2d 419, 424 (1967) ("No citation of authority is needed for the proposition that one legislature cannot bind future legislatures upon . . . policy matters."). The general prohibition against one governing board binding its successors applies only to matters involving governmental policy decisions and is not applicable to business contracts. See Sampson v. City of Cedar Falls, 231 N.W.2d 609, 613 (Iowa 1975) (city council may contract to bind future councils with respect to procurement of an adequate supply of electricity for municipal electric

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[1] A school district considering an exclusive vendor agreement which will include payments from the vendor to the district should be aware that this partnership with a private entity could have an impact upon the tax-free status of outstanding bonds and that payments received by the school under the agreement could be considered income to the district. It is also possible that an exclusive vendor contract could be structured so as to raise antitrust or restraint of trade concerns. Bond counsel and the school district's attorney should be consulted regarding these issues before the terms of an agreement are accepted.

utility); City of Des Moines v. City of West Des Moines, 239 Iowa 1, 9-11, 30 N.W.2d 500, 507 (1948) (city council authorized to enter into twenty-year contract for use of sewage disposal system).

A contract with a vendor for the supply of non-educational goods to the school is a business contract which may extend beyond the term of the board entering the contract. V. L. Dodds Co. v. Consolidated School Dist. of Lamont, 220 Iowa 812, 263 N.W. 522 (1935) (successor school board bound by contract for the purchase of paper products executed by prior board). We find no general limitation upon the length of time for which a school board could approve an exclusive vendor contract for soft drinks or other non-educational goods for sale on school premises or at school functions.[2]

Next you ask whether a school could contract with a for-profit corporation for assistance in developing requests for proposals, considering proposals, negotiating contracts, and auditing the contracts in return for a percentage of the revenue the district receives from the underlying contract. You have provided a sample agreement for our consideration. Under the agreement provided, a school district would employ a marketing firm to advise and assist the board in evaluating, structuring, negotiating, auditing and overseeing management of the contract. In exchange for these services, the district would pay the firm a commission between fifteen percent and twenty-five percent of the revenue received under the contract, based upon the amount of per pupil funding generated. Although we do not use the opinion process to review the propriety of the specific terms of an agreement, we can provide advice in general terms.

As set forth above, Code sections 279.8 and 279.12 afford school boards broad discretion to enter contracts for the efficient operation of the school. We believe that this general contracting power, which provides a basis for school boards to enter into exclusive distribution contracts with vendors, would also allow a school board to contract with a for-profit corporation to negotiate and oversee the vendor contract. Some school boards may conclude that they, or school administrators and legal counsel, can directly provide the services offered, thereby avoiding the expense of engaging a marketing firm to represent the district. See Robert L. Zorn. "The Great Cola Wars," The American School Board Journal, February 1999, at 31 (detailing one superintendent's successful negotiation of an exclusive soft drink vendor contract). Other boards may conclude that the services which can be provided by an experienced marketing firm

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[2] A different issue would be presented if an exclusive vendor contract were proposed for the purchase of textbooks or other educational items by the school. The selection of such items is a policy-related function of the board of directors. See Iowa Code §§ 278.1 (voters at regular school election have the power to "[d]irect a change of textbooks regularly adopted), 301.1 (board of directors authorized to adopt textbooks) (1999); 1982 Op. Att'y Gen. 527 (addressing application of Code sections 278.1 and 301.1). Long-term exclusive vendor contracts for such items would appear to be inconsistent with these statutory provisions.

will give the district a sufficient advantage to justify the costs involved. As with the vendor contracts, although we believe that a school board may legally enter into a contract of this type, the wisdom of doing so is an issue which will depend upon the specific circumstances of each district and is a matter for local board determination.

You ask whether the duration of a management contract is limited by law. The analysis applied in response to your second inquiry is equally applicable here. A contract management agreement, similar to the one provided for our review, would constitute a proprietary or business contract. Because the contract does not involve legislative or governmental functions, a current school board could bind future school boards for whatever term they deem appropriate.

Finally, you ask whether there are any statutory or other requirements for receiving proposals from vendors or marketing firms hired to assist a school district. The public bidding requirements placed upon school districts by statute are applicable to the construction of public improvements. See Iowa Code §§ 73A.2, 73A.18, 297.7 (1999). Under these provisions, a school district must administer and use competitive bidding procedures and award to the lowest responsive bidder contracts for school building construction and repair projects exceeding twenty-five thousand dollars. No statutory requirement for competitive bidding prior to contracting for the purchase of goods and services is in place. The absence of a statute requiring use of a competitive process prior to the award of a contract does not negate the benefit which may be derived from use of a competitive bidding procedure and districts would be well-advised to consider such measures before entering into an exclusive vendor or marketing contract. See 1994 Op. Att'y Gen. 141 [#94-9-3(L) at p. 3] ("all public entities participating in the energy bank program would be wise to administer and use competitive-bidding procedures for implementing such energy conservation measures"); 1978 Op. Att'y Gen. 171, 171-72 ("this office has recommended that governing bodies of municipalities obtain bids on purchases as a matter of public policy, even when there is no statutory requirement that they do so in order to avoid purchasing procedures which might be questionable as capricious, arbitrary or fraudulent").

In summary, we conclude that the board of directors of a public school district may enter into exclusive contracts with vendors for the purchase of products sold on school premises or at school functions. Vendor contracts for non-educational goods are proprietary in nature and may extend beyond the term of current board members. A marketing firm may be employed to assist with the negotiation and oversight of vendor contracts. While statutory public bidding requirements are not applicable to school district contracts for the purchase of goods and services, public policy supports use of competitive bidding procedures for such contracts.

Sincerely,

Christie J. Scase
Assistant Attorney General

CONSTITUTIONAL LAW: Constitutional Amendment. Iowa Const. art. X, § 1. Proposed constitutional amendments which failed to pass may not be resubmitted to the voters without compliance with constitutional requirements that the amendments again pass both houses of two succeeding General Assemblies. (Pottorff to Blodgett, State Representative, 4-3-00) #00-4-1(L)

April 3, 2000

The Honorable Gary Blodgett
State Representative
State Capitol
L-O-C-A-L

Dear Representative Blodgett:

You have requested an opinion of our office concerning the legal requirements for submission of constitutional amendments to the voters of Iowa. Last year two constitutional amendments addressing state budget and accounting practices were submitted to the voters for approval. Prior to submission to the voters, these amendments passed both houses of two succeeding General Assemblies. At a special election called for that purpose in June, 1999, both amendments failed to pass.

You now ask our office whether these amendments may be resubmitted to the voters this year, before expiration of the current General Assembly and without requiring these amendments once more pass both houses of two succeeding General Assemblies. It is our opinion that these amendments may not be resubmitted to the voters, unless they are again presented to and passed by both houses of two succeeding General Assemblies.

The Iowa Constitution provides a very specific procedure for amendments. The Constitution may only be amended by a vote of the electorate. The following procedure must be followed in order to place amendments on an election ballot for consideration by the voters:

> Any amendment or amendments to this constitution may be proposed in either house of the general assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be

> entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the general assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the general assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the general assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this state. [Iowa Const. art. X, § 1]

Under this language only when proposed amendments have been passed by both houses of two succeeding General Assemblies "*then* it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people. . . ." Iowa Const. art. X, § 1(emphasis added). Your question asks us to determine whether these procedural steps, once completed, may justify repeated submission of the same amendments to the voters.

Although we find no case that has addressed precisely the question which you pose, the Iowa Supreme Court has required strict adherence to the procedural steps set forth in the Constitution. In Koehler v. Hill, 60 Iowa 543, 15 N.W. 609, 624 (1883), the Court considered whether the constitutional obligation to enter proposed amendments on the journals of each house was satisfied where the journals set out the text of the proposed amendment that passed the House, but thereafter showed only that the Senate substituted an amendment and that the House concurred in the Senate substitute amendment. The Court ruled that the procedure was constitutionally flawed:

> The constitution makes three steps necessary for the adoption of an amendment, viz.: The proposal of an amendment in one general assembly, and its entry upon the journals; the agreement thereto by the next general assembly; and its submission to the people, and the approval and ratification thereof by the people. These steps are distinct, independent,

and essential. No one of them can be dispensed with.

This language suggests that the procedural steps are sequential requirements. To resubmit failed amendments to the voters without repeating the first two steps, i.e., proposal and agreement by two succeeding General Assemblies, therefore, would be "dispensing with" constitutional requirements. See Koehler v. Hill, 60 Iowa 543, 14 N.W. 738, 744, *rehearing granted*, 60 Iowa 543, 15 N.W. 609 (1883)("We deem it sufficient to say that if there is any provision of the constitution which should be regarded as mandatory, it is where the constitution provides for its own amendment otherwise than by means of a convention called for that purpose."). Accord Blair v. Cayetano, 73 Haw. 536, 836 P.2d 1066 (1992)(strict compliance with procedures for amending the state constitution required); Coleman v. Pross, 219 Va. 143, 246 S.E.2d 613 (1978)(strict compliance with procedures for amending the state constitution required).

At least one jurisdiction has rejected efforts to resubmit a constitutional amendment to the voters without repetition of the full procedural steps required by the state constitution. In State ex rel. Montanans for the Preservation of Citizens' Rights et al. v. Waltermire, 231 Mont. 406, 757 P.2d 746 (1988), the Montana Supreme Court faced a somewhat analogous situation in which an amendment had been defeated by the electorate by the time officials discovered that constitutional requirements concerning publication of the proposed amendment had not been followed. Rebuffing the argument that the remedy for these errors was simply to resubmit the proposed amendment to the voters, the Court determined that "to permit the resubmission of constitutional initiatives to the electorate 'at succeeding elections'. . . would be inserting in the constitutional provisions language not otherwise to be found there." Id. at 411, 757 P.2d at 750. Accordingly, the Court concluded that the full procedural steps to amend the state constitution must be repeated.[1] Id. at 412, 757 P.2d at 750-51.

This result is consistent with state statutes that govern the resubmission of failed ballot issues to the voters. Special election statutes do not preclude resubmission of a failed ballot issues to the voters, except where a limitation is expressly provided by statute. Iowa Power & Light Co. v. Hicks, 228 Iowa 1085, 1090, 292 N.W. 826, 828 (1940). See, e.g., 1994 Op. Att'y Gen. 115, 118 (state law not a bar to resubmission of

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[1] In Montana a constitutional amendment may be initiated by petition. State ex rel. Montanans for the Preservation of Citizens' Rights et al. v. Waltermire, 231 Mont. at 407 - 411, 757 P.2d at 747-750.

failed gambling proposition to the county electorate). For this reason, state statutes frequently specify a period of time within which a proposition may not be resubmitted to the voters. See, e.g., Iowa Code § 257.27 (1999) ("If the voters do not approve adoption of the instructional support program, the board shall wait at least one hundred twenty days following the election before taking action to adopt the program or resubmit the proposition."); Iowa Code § 331.207(5) (1999) ("A supervisor representation plan adopted at a special election shall remain in effect for at least six years."). In addition to compliance with any statutory waiting period, however, an effort to resubmit a failed ballot issue to the voters would necessitate renewed compliance with all statutory requirements to place the issue on the ballot. We are not aware of a statutory analog where initial compliance with requirements to place an issue on the ballot carries authorization to resubmit the issue more than one time if necessary to secure passage.

In summary, based on our analysis of case law in Iowa and other jurisdictions, we conclude that proposed constitutional amendments which failed to pass last year may not be resubmitted to the voters without compliance with constitutional requirements that the amendments again pass both houses of two succeeding General Assemblies.

Sincerely,

Julie F. Pottorff

JULIE F. POTTORFF
Deputy Attorney General

TAXATION: Local Option Ballot Proposition. Iowa Code §§ 422B.1(5); 422B.1(6) (1999). The Board of Supervisors is allowed to paraphrase the language found in a "use change" petition prior to having the "use change" petition issue placed on the ballot in a local option tax election. The Board of Supervisors can, and in some instances must, paraphrase and supplement the language of the petition prior to having the issue placed on the ballot in a local option tax election. (McCown to Skilling, Kossuth County Attorney, 4-24-00) #00-4-2(L)

April 24, 2000

David C. Skilling
Kossuth County Attorney
111 S. Harlan Street
Algona, Iowa 50511

Dear Mr. Skilling:

You have requested an opinion of the Attorney General with respect to the local option tax law in Iowa Code chapter 422B. Specifically, you ask whether the Board of Supervisors is allowed to paraphrase the language found in a "use change" petition prior to having the "use change" petition issue placed on the ballot in a local option tax election. As explained below, we conclude that the Board of Supervisors can, and in some instances must, paraphrase and supplement the language of the petition prior to having the issue placed on the ballot in a local option tax election.

You state that the petition in question requested a "re-vote" on the local option sales tax referendum for the purpose of a change of use of the local option tax revenue for the unincorporated area. With your request, you enclose a copy of the petition. The language of the petition reads:

> We the eligible electors of Kossuth county petition the Board of Supervisors to call for a Referendum concerning the disbursement of the revenue collected from the 1% local option sales tax in the unincorporated area of Kossuth County and, if passed, to be changed from the current language, where only 20% is property tax relief to; 100% tax relief in the unincorporated areas.

As you indicate in your request, Iowa Code section 422B.1(6) provides that "The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax." Subsection 6 imposes a mandatory duty upon the board of supervisors to call an election when the conditions of the statute are met. Ordinarily the use of the term "shall" is mandatory and imposes a legal duty. Iowa Code § 4.1(30)(a) (1993); Willett v. Cerro Gordo County Board of Adjustment, 490 N.W.2d 556, 559 (Iowa 1992).

In this instance, the Board was required to submit the question of use change upon receipt of a petition. The "question of use change" of a local sales and services tax must be presented to the electors upon receipt of a petition calling for such referendums in the same manner as is provided in subsection 4. Iowa Code §§ 422B.1(3)(a) and (b), 422B.1(4). See also 1990 Op. Att'y Gen. 93 and 1986 Op. Att'y Gen. 127. Section 422B.1(4)(a) requires that the Board direct the county commissioner of elections to submit the "question of imposition" of the local option tax to the electors upon receipt of a petition. Upon receiving direction from the Board, the county commissioner of elections submits the question of imposition in a ballot proposition according to the requirements of Iowa Code section 422B.1(5). Therefore, the question in this matter becomes what information is the board required, permitted or obligated to provide when it directs that the commissioner of elections submit the question of the use change of the local option tax to the electors.

Iowa Code section 422B.1(5) sets out what must be specified in the ballot proposition. Under section 422B.1(5) the proposition is required to be in a form prescribed by rules which are established by the state commissioner of elections. The ballot proposition presented to the voters must specify the type and rate of proposed local option tax, the date it will be imposed, the approximate amount of revenues from the tax that will be used for property tax relief and the purpose or purposes for which the remainder of the revenues will be used. Iowa Code § 422B.1(5); Op. Att'y Gen. #97-9-2(L); 1991 Op. Att'y Gen. 50 and 1990 Op. Att'y Gen. 93. Additionally, with respect to the question of use change, Iowa Code section 422B.1(6) requires that the ballot proposition "shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use."

Plainly, the petition in this matter does not contain all the required information required to be placed in the ballot proposition by sections 422B.1(5) and (6). Section 422B.1 does not impose requirements concerning the contents of the petition or specific information to be included in petitions requesting that a local option tax be repealed, increased, decreased or the use changed. Nor does section 422B.1 directly or implicitly impose any criteria on the governing body as to information that should be included in the submission of the question of the use change other than the approximate amount of revenue that will be used for property tax relief and the

purpose(s) for which the revenue otherwise will be expended.[1] We have found nothing in chapter 422B that prohibits governing authorities from determining the wording of a proposition.

It is reasonable to conclude that without the information required to be placed in the ballot proposition the commissioner of elections has no guidance as to how the ballot proposition is to be drafted. It is also reasonable to conclude that for the Board of Supervisors to fulfill its duty to notify the county commissioner of elections, it must provide the information necessary to introduce the proposition to the electorate. "Assuming the sufficiency of the petition, there then is imposed upon the county supervisors the same sacred duty to act legally as in meeting any other official requirement made of them by law. When performing this function, the supervisors should not evade or equivocate. Likewise their action in this regard must not be arbitrary or captious." O'Keefe v. Hopp, 230 N.W. 876, 878 (Iowa 1930).

It is the opinion of this office that the Board has discretion to determine the language that it includes in its directions to the commissioner of elections to submit the question of use change of a local option tax. However, that discretion is limited by its obligation to accurately identify the nature of the proposed use change of the local option tax. The subject matter for the ballot is obtained from the petition. O'Keefe v. Hopp, 230 N.W. 876, 878 (Iowa 1930). "[W]hile the governing body has discretion in determining the wording of a proposition; the proposition should constitute a fair portrayal of the chief features." See Blum v. Lanier, 997 S.W.2d 259, 261 (Tex. 1999). "[I]t is mandatory that 'the language of the ballot [be] so plain that there could have been no mistake as to the proposition submitted.'" O'Keefe v. Hopp, 230 N.W. 876, 878 (Iowa 1930) citing Lee Electric Co. v. City of Corning, 199 Iowa 680, 202 N.W. 585, 586. Such is true even though under the circumstances it shall not be necessary to submit the question "in haec verba." Enough should appear, at least, to indicate the proposition. O'Keefe v. Hopp, 202 N.W. 876, 879.

In summary, it is the opinion of this office that the Board of Supervisors is not quired to place on the ballot in a local option election the proposition as stated in the ition. The Board can word the ballot issue. However, while the Board has

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les promulgated by the Secretary of State implementing 422B require the body to provide the county commissioner (1) the rate of the tax, (2) the date wh e imposed, (3) the amount of local option tax revenues that will be used for elief and (4) the specific purposes of the tax revenues other than property IAC 21.801(1).

discretion to determine the language, that discretion is limited by its obligation to accurately identify the nature of the proposed use change as stated in the petition.

Sincerely,

Valencia Voyd McCown

VALENCIA VOYD McCOWN
Assistant Attorney General

VVM:cml

LAW ENFORCEMENT; STATE OFFICERS AND DEPARTMENTS: Certification of Iowa State Fair Board's appointees as law enforcement officers. Iowa Code §§ 80B.11, 173.14 (1999). Security personnel appointed by the Fair Board would typically perform different duties than those performed by peace officers appointed by the Fair Board. All persons appointed to either position must undergo timely certification by the Iowa Law Enforcement Academy if the Iowa Law Enforcement Academy Council determines they constitute "law enforcement officers." The Fair Board's authority to adopt the standards it deems necessary or appropriate for the appointment of security personnel and peace officers does not conflict with the Academy's authority to impose minimum standards and training requirements for all law enforcement officers. (Kempkes to Shepard, Director, Iowa Law Enforcement Academy, 4-24-00) #00-4-3(L)

April 24, 2000

Mr. Gene W. Shepard
Director, Iowa Law Enforcement Academy
P.O. Box 130
Johnston, IA 50131

Dear Mr. Shepard:

You have requested an opinion on the authority of the Iowa Law Enforcement Academy and the Iowa Law Enforcement Academy Council as it relates to the Iowa State Fair Board's appointment of "security personnel" and "peace officers." You ask (1) whether a distinction exists between these two job positions, (2) whether persons serving in them must undergo timely certification by meeting the Academy's minimum standards and training requirements, and (3) whether the Academy's authority to impose minimum standards and training requirements conflicts with the Fair Board's authority to adopt standards for the appointment of security personnel and peace officers. After reviewing Iowa Code chapters 80B and 173 (1999), we conclude that security personnel would typically perform different duties than those performed by peace officers, that all persons appointed to either position must undergo timely certification if the Council determines they constitute "law enforcement officers," and that the Fair Board's authority to adopt the standards it deems necessary or appropriate for their appointment does not conflict with the Academy's authority to impose minimum standards and training requirements for law enforcement officers.

I.

Chapter 80B is entitled Law Enforcement Academy. It generally pertains to the training and regulation of persons within the law enforcement community. By passing chapter 80B in 1967, the General Assembly intended to "maximize training opportunities for law enforcement officers, to co-ordinate training and to set standards for the law enforcement service, all of which are imperative to upgrading law enforcement to professional status." Iowa Code § 80B.2. Accord 501 IAC 1.2. See generally I Standards for Criminal Justice: The Urban Police Function ch.1, pt. 7 (1980).

Chapter 80B created the Academy, which serves as a central law enforcement training facility, and the Council, which consists of three state residents, a county sheriff, two police officers, a member of the Iowa Department of Public Safety, a state senator, and a state representative. See Iowa Code §§ 80B.4, 80B.6. See generally 1996 Op. Att'y Gen. 24 (#95-6-6(L)) (Academy performs crucial role in establishing uniform, minimum physical, educational, mental, moral, and training standards for law enforcement officers); 1980 Op. Att'y Gen. 882 (#80-12-4(L)). The Director of the Academy administers it on a day-to-day basis. See Iowa Code § 80B.5.

Chapter 80B authorizes the Director, subject to the Council's approval, to promulgate rules regarding such matters as (1) minimum entrance requirements, courses, attendance requirements, and equipment and facilities at law enforcement training schools; (2) minimum basic training requirements for law enforcement officers; (3) minimum standards of physical, educational, moral, and mental fitness; and (4) grounds for revoking law enforcement officer certification. See Iowa Code § 80B.11. See generally 501 IAC 2.1 et seq. Chapter 80B also authorizes the Council to issue certificates to law enforcement officers fulfilling various statutory requirements and to revoke their certificates. See Iowa Code § 80B.13.

Chapter 173 is entitled State Fair. It provides that the Iowa State Fair Authority "is a public instrumentality of the state," but adds that it "is not an agency of state government" except for the purposes of specified statutes. See Iowa Code § 173.1. With its powers vested in the Fair Board, the Authority "is established to conduct an annual state fair and exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules." Iowa Code § 173.1. The Fair Board -- comprised of state officials and elected members -- elects one of its elected members to serve as president. Iowa Code § 173.1(3). Section 173.14(4) provides that the Fair Board

> has custody and control of the state fairgrounds, including the buildings and equipment on it belonging to the state, and may:
>
> . . . .
>
> Appoint, as the president deems necessary, security personnel and peace officers qualified according to standards adopted by the [Fair Board].

See generally Iowa Code § 4.1(30)(c) (if undefined, "may" in statutes confers a power).

II.

(A)

You have asked whether a distinction exists between security personnel and peace officers appointed by the Fair Board. Chapter 173 does not define "peace officers" or "security personnel" and does not identify the scope of their statutory duties and powers.

The phrase "peace officers" has no single, well-defined meaning, 1994 Op. Att'y Gen. 141 (#94-9-2(L)), and the General Assembly has defined it in different ways for different purposes, see, e.g., Iowa Code §§ 80B.3(3), 321.1(50), 321J.1(7). In general, the phrase means "sheriffs and deputies, constables, marshals, city police officers, and other officers [such as state troopers] `whose duties require enforcement and preservation of the public peace'. . . ." 1994 Op. Att'y Gen. 141 (#94-9-2(L)). See generally Iowa Code § 4.1(31). Thus, among other things, peace officers may prevent and detect crimes as well as apprehend those persons allegedly responsible for committing them. In addition to issuing citations and executing search warrants, the special authority of peace officers includes the authority to arrest with a warrant, more expansive power to arrest without a warrant, and a different authority to use force. See Iowa Code chs. 804-06. See generally 29 CFR § 553.211; I Standards for Criminal Justice: The Urban Police Function §1-2.2 (1980).

The phrase "security personnel" also appears to have no single, well-defined meaning. The adjective "security" commonly suggests measures taken to protect, defend, or guard against crime, attack, or escape, and the noun "personnel" commonly suggests a body of persons usually employed by an organization. See Webster's Ninth New Collegiate Dictionary 849, 1037 (1979); Webster's Third New International Dictionary 2053-54 (1961). See generally Iowa Code § 4.1(30). Thus, in general, "security personnel" denotes persons who detect and defend against crimes. See, e.g., Gamerdinger v. Schaefer, 603 N.W.2d 590, 595 (Iowa 1999) (security personnel photographed accident scene); State v. Ortega, 418 N.W.2d 57, 58 (Iowa 1988) (security personnel confronted student on university grounds and seized contraband); State v. Jordan, 409 N.W.2d 184, 185 (Iowa 1987) (security personnel followed and apprehended

suspected criminal in mall); Martinko v. H-N-W Assoc., 393 N.W.2d 320, 321 (Iowa 1986) (security personnel patrolled parking lot of mall); Zohn v. Menard, Inc., 598 N.W.2d 323, 325 (Iowa App.1999) (security personnel detained, questioned, and searched customers and automobiles on store grounds); State v. Knudsen, 500 N.W.2d 84, 85 (Iowa App. 1993) (security personnel detained customers and assisted police in investigating alleged crime on store grounds). Depending upon industry practice and the terms of their employment contract, security personnel may perform a variety of functions. For example, they may inspect doors, windows, gates, fences, and other plant and equipment to ascertain if tampering has occurred; warn violators of infractions; watch for and report irregularities and incidents; sound alarms or call for law enforcement officers in case of fire or the presence of unauthorized persons; control traffic; and provide information. See generally Kolman v. Sullivan, 925 F.2d 212, 213 (7th Cir. 1991); U.S. Dep't of Labor, Dictionary of Occupational Titles § 372.667-034 (1991). Security personnel at the State Fairgrounds thus might function as guards on patrol or as gatekeepers or watchmen stationed at various entrances, parking areas, grandstands, and other places where either admission is charged or access by the public is restricted.

By using both "peace officers" and "security personnel" in section 173.14(4) and linking them with a conjunctive, the General Assembly presumably intended some difference in meaning for them. Legislative history supports that presumption: before an amendment in 1991, section 173.14(4) only provided for the appointment of security personnel by the Fair Board. See Iowa Code § 173.14(4) (1991). The amendment permitted the Fair Board to appoint peace officers in addition to security personnel. See 1991 Iowa Acts, 74th G.A., ch. 248. As a result, it seems clear that "security personnel" do not constitute "peace officers." See generally Iowa Code §§ 4.4(2), 4.6(4); State v. Ahitow, 544 N.W.2d 270, 273 (Iowa 1996) ("[w]e will not interpret a statute that renders a part of it irrelevant or redundant"); Civil Service Comm'n v. Iowa Civil Rights Comm'n, 522 N.W.2d 82, 86 (Iowa 1995) ("a statute [will not be construed] to make any part of it superfluous unless no other construction is reasonably possible").

(B)

You have asked whether the persons appointed by the Fair Board as security personnel and peace officers must undergo timely certification under chapter 80B.

Chapter 80B specially defines the phrase "law enforcement officer" to include "all individuals, as determined by the [C]ouncil, who by the nature of their duties may be required to perform the duties of a peace officer." Iowa Code § 80B.3(3). Those persons classified as "law enforcement officers" under chapter 80B must, inter alia, meet minimum entrance requirements, satisfy minimum physical and mental fitness requirements, undergo basic course training, and complete certain in-service training. Iowa Code § 80B.11. Law enforcement officers are certified and may have their certification revoked following a hearing before the Council.

A recent opinion addresses the scope of chapter 80B. See 2000 Op. Att'y Gen. ___ (#00-2-5). We therein acknowledged that the General Assembly has granted discretion to the Council to determine whether persons need to meet the standards, training, and certification requirements of chapter 80B by virtue of their status as "law enforcement officers." Id. In view of this opinion, we conclude that the Fair Board's peace officers and security personnel need to undergo timely certification if, pursuant to the terms of their employment contract, they may be required to perform the duties of a peace officer.

(C)

Section 80B.11 essentially requires the promulgation of rules by the Academy setting forth minimum standards and training requirements for certifying persons as law enforcement officers. Section 173.14(4) provides for the adoption of standards by the Fair Board for appointing qualified persons as security personnel and peace officers. We see no conflict in these two provisions.

Section 173.14(4) simply permits the Fair Board to determine the qualifications it deems necessary or appropriate for persons serving as its security personnel and peace officers, who may or may not constitute "law enforcement officers" for purposes of chapter 80B. Ante, Division II(B). As such, it does not restrict or otherwise affect the Academy's authority under section 80B.11 to set minimum standards and training requirements for all law enforcement officers. See generally Net Midwest, Inc. v. Iowa St. Hygienics Laboratory, 526 N.W.2d 313, 315 (Iowa 1995) (court must try to harmonize statutes to avoid any conflict); 1998 Op. Att'y Gen. ___ (#97-7-2(L)).

III.

In summary: "Security personnel" appointed by the Iowa State Fair Board would typically perform different duties than those performed by "peace officers" appointed by the Fair Board. All persons appointed to either position must undergo timely certification by the Iowa Law Enforcement Academy if the Iowa Law Enforcement Academy Council determines they constitute "law enforcement officers" for purposes of chapter 80B. The Fair Board's authority to adopt the standards it deems necessary or appropriate for their appointment does not conflict with the Academy's authority to impose minimum standards and training requirements for all law enforcement officers.

Sincerely,

Bruce Kempkes

Bruce Kempkes
Assistant Attorney General

COUNTIES; TAXATION: Authorized Expenditures of School Infrastructure Tax Proceeds. Iowa Code § 422E.1(3) (1999). Section 422E.1(3) does not prohibit per se a school district from expending school infrastructure tax proceeds for salaries and benefits of school district employees who are engaged in school infrastructure activities authorized under chapter 422E. (Miller to Rants, State Representative, 4-24-00) #00-4-4(L)

April 24, 2000

The Honorable Christopher Rants
State Representative
Statehouse
L O C A L

Dear Representative Rants:

You have requested an opinion of the Attorney General concerning whether funds received by a school district from the sales and services tax under Iowa Code chapter 422E (1999) can be used to pay the salary and benefits of a school district employee who represents the school district in relations between the district, and the architects and contractors engaged by the district, for school infrastructure activities.

Iowa Code section 422E.1(1) provides that "a local sales and services tax for school infrastructure purposes may be imposed by a county on behalf of school districts as provided in this chapter." Under the specific situation outlined in this opinion request, the voters of Woodbury County approved the sales and services infrastructure tax on August 12, 1998. As a result, the Sioux City Community School District (District) will be embarking on a ten-year plan involving the construction of three new schools and extensive expanding and remodeling of between three and seven additional schools.

The District determined that the size and scope of the infrastructure plan necessitates the need for a full-time employee to serve as a "construction liaison." This person would serve as the District's representative in relations between the District and

the architects and contractors engaged in the various construction projects.[1] This person will report to the District's Board of Education, the Superintendent and the Building Oversight Committee. The District anticipates that the position will be in existence until the infrastructure plan is completed.

Iowa Code section 422E.1(3) provides that "[l]ocal sales and services tax moneys received by a county for school infrastructure purposes pursuant to this chapter shall be utilized solely for school infrastructure needs." (Emphasis added). Section 422E.1(3) defines "school infrastructure" as:

> those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements. Additionally, *"school infrastructure"* includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under section 422E.4.

The legislature provided that the Director of the Iowa Department of Revenue and Finance is to remit ninety-five percent of the estimated tax receipts to each school district within the county on or before August 31 of the fiscal year and on or before the last day of each following month. See Iowa Code § 422E.3(5)(b). Final payment of the tax money due the districts for the current fiscal year is due before November 10 of the next fiscal year. See Iowa Code § 422E.3(5)(c). The legislature, through section

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[1]According to the opinion request, the construction liaison's duties would include: reviewing all project plans and specifications and maintaining a working copy of the drawings for each construction site; maintaining a working relationship with the architects and contractors for each project; visiting the job sites daily to observe the work being done; keep the Director of Physical Operations informed of weekly progress and status of projects; meet with the Director of Physical Operations and the Building Oversight Committee as scheduled; prepare weekly reports on the progress of each construction project; create and maintain a file for each construction project, and maintain copies of all documents, video and still pictures for building archives and records; be available for reporting to the Board of Education and the public when needed; and perform any other duties assigned to that position.

422E.1(3), clearly imposes a duty upon each school district to utilize the tax receipts it receives exclusively on school infrastructure needs.

The question raised by your opinion request is whether chapter 422E allows for the tax moneys received by a school district to be spent on salaries and benefits paid to that district's employees who are engaged in school infrastructure activities defined under section 422E.1(3). When interpreting a statute, "what the legislature did not say may be just as important as what the legislature did say; legislative intent is expressed by omission as well as by inclusion." Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 556 (Iowa 1999). The legislature specified the type of activities which a school district may undertake, but it did not restrict the school district as to how it could accomplish those activities. Accordingly, chapter 422E does not prevent a school district from making a determination that district employees should carry out some or all of the activities allowed under section 422E.1(3). Once that determination is made, the school district is allowed to expend the tax receipts available to it on the salaries and benefits of those employees who are dedicated to work on the school infrastructure activities just as it would if those individuals were independent contractors or working for independent contractors.

This situation is analogous to a municipal corporation being allowed to use its own work force in performing public improvements. As stated in McQuillin on Municipal Corporations:

> In the absence of restrictions, the municipal corporation may itself do the work or have it done under its supervision, or let out the work by contract. But unless required by charter or statute, a municipal corporation is not bound to let out the work to be done on improvements to contractors.

13 E. McQuillin, The Law of Municipal Corporations, § 37.31, at 108 (3rd ed. 1997).

An example of legislative restrictions already in place involve the use of the school physical plant and equipment levy authorized under Iowa Code section 298.2 (1999). There, Iowa Code section 298.3 details the manner in which the funds raised from that levy may be expended and specifically prohibits expenditures for school district employee salaries. Section 298.3(11) specifically states, in part, that:

> Revenue from the regular and voter-approved physical plant and equipment levies shall not be expended for school district employee salaries or travel expenses, supplies, printing costs or media services, or for any other purpose not expressly authorized in this section.

(Emphasis added). The legislature in chapter 422E could have similarly prohibited the expenditure of the school infrastructure money from being used for school district employee salaries. However, up to this point in time, it has chosen not to do so.

We cannot determine in an opinion whether any particular employee or the activities of that employee are either necessary or cost effective in carrying out the various school infrastructure activities planned by a school district. However, from the description in footnote 1, the duties would certainly pertain to the school infrastructure activities outlined in section 422E.1(3). As such, chapter 422E does not per se prohibit the salaries and benefits of a school district employee whose activities are solely related to the infrastructure activities outlined in section 422E.1(3) from being paid with the tax proceeds received under chapter 422E.

Sincerely,

James D. Miller

JAMES D. MILLER
Assistant Attorney General

JDM:cml

CITIES; CONFLICT OF INTERESTS: Council member also serving as chief of volunteer fire department. Iowa Code § 372.13(10) (1999). Section 372.13(10), which permits a city council to appoint one of its members as chief of its volunteer fire department "if the fire department serves an area with a population of not more than two thousand," contemplates that the city council may employ any reasonable method for estimating an area's population in the absence of definitive data from the last preceding certified federal census. (Kempkes to Lievens, Butler County Attorney, 8/9/00) #00-8-1(L)

August 9, 2000

Mr. Gregory M. Lievens
Butler County Attorney
Courthouse
P.O. Box 307
Allison, IA 50602

Dear Mr. Lievens:

You have requested an opinion on a statute prohibiting a person from simultaneously serving a city in two capacities -- as a council member and as chief of the volunteer fire department -- except under certain circumstances. One circumstance requires that the volunteer fire department serve an area of not more than two thousand in population.

You ask how a city with a known population of less than two thousand must proceed when it desires to appoint a council member as chief of its volunteer fire department that serves, in addition to the city, a rural area with an unknown population. We conclude that the city council may employ any reasonable method for estimating that area's population in the absence of definitive data from the last preceding certified federal census.

I.

Iowa Code chapter 372 (1999) is entitled Organization of City Government. Section 372.13 governs city councils. Section 372.13(10) provides:

> A council member, during the term for which that member is elected, is not precluded from holding the office of chief of the volunteer fire department if the fire department serves an area with a population of not more than two thousand, and if no other candidate

> who is not a city council member is available to hold the office of chief of the volunteer fire department.

(emphasis added). See generally 1990 Iowa Acts, 73rd G.A., ch. 1106, § 1; 1978 Op. Att'y Gen. 325, 326; 1972 Op. Att'y Gen. 594, 595.

II.

Cities and townships -- governmental subdivisions of counties required to provide fire protection services, Iowa Code §§ 359.42, 364.16; 1976 Op. Att'y Gen. 774, 775 -- may contract with volunteer fire departments to provide them. 1998 Op. Att'y Gen. ___ (#97-6-2(L)); 1978 Op. Att'y Gen. 791, 791; see Iowa Code § 357B.7; see also Iowa Code § 364.16. Indeed, volunteer fire departments constitute ninety percent of the firefighting units in this state. Fire Service Inst., Iowa State Univ. Extension, "A Profile of Iowa's Fire Service" 1 (December 1997).

Volunteer fire departments from multiple cities often serve a single county township, and in such instances section lines often define the boundaries of their respective service areas. Fire Service Inst., Iowa State Univ. Extension, "The Role of Townships in Iowa's Fire and Emergency Medical Services" 11, 14 (January 1998); see 1976 Op. Att'y Gen. 441, 442 ("trustees may divide [a] township into areas in order to contract with more than one agency for fire protection"); see also Iowa Code § 359.43. See generally Black's Law Dictionary 1214 (1979) ("section" of land is "[a] division or parcel of land, on the government survey, comprising one square mile or 640 acres," and each "township" is "[six miles square and] divided by straight lines into thirty-six sections"). Thus, the boundaries of an area served by a city's volunteer fire department may not be coterminous with the boundaries of a county, township, or other political subdivision covered by a census.

Pointing to this reality, you have asked how a city with a known population of less than two thousand must proceed when it desires to appoint a council member as chief of its volunteer fire department that serves, in addition to the city, a rural area with an unknown population.

(A)

Section 372.13(10) permits a member of a city council to serve as chief of the city's volunteer fire department if it serves "an area with a population of not more than two thousand." Statutes limiting their application to political subdivisions of a certain population size often refer to a census as the means for measuring the population. See, e.g., Iowa Code §§ 9F.6, 15E.192(2), 24.48(1), 42.2(2); see also Iowa Const. art. III, § 34 (1857). See generally 2 E. McQuillin, Municipal Corporations § 4.76, at 170 (1996). A "census" signifies an official count or finding. See Bisbee v. Williams, 317 P.2d 567, 568 (Az. 1957); State ex rel. Reynolds v. Jost, 175 S.W. 591, 596 (Mo. 1915); 1993 La. Op. Att'y Gen. 249; Black's Law Dictionary 203 (1979); Webster's Ninth New Collegiate Dictionary 178 (1979). An "enumeration" -- another word sometimes used for

demographical purposes, see, e.g., Iowa Code §§ 312.3(3)-(5), 405A.1(c) -- also suggests an official count or finding. Webster's, supra, at 378.

Section 372.13(10) does not refer to a census or enumeration for determining the population of an area served by a city's volunteer fire department; however, it does refer to an area having a "population" of not more than two thousand. Throughout the Iowa Code this word, if undefined, means "the population in the last preceding certified federal census . . . ." Iowa Code § 4.1(22). Section 372.13(10) thus requires use of the most recent certified federal census to determine the population of an area served by a city's volunteer fire department. See 1982 Op. Att'y Gen. 463, 467-68. See generally Hornby v. State, 559 N.W.2d 23, 25 (Iowa 1997) (legislature may act as its own lexicographer).

Nevertheless, the federal census may have limited utility for determining the population of rural areas served by a city's volunteer fire department. The federal census provides data for the population of Iowa's townships, but not for sections within those townships. See U.S. Dep't of Commerce, Economic and Statistics Admin., Bureau of the Census, 1990 Census of Population -- Iowa Table 76, at 251-69 (June 1992); see also Iowa Census Bd., Census of Iowa for 1856 (1857). Moreover, the smallest data product typically available from the federal census -- the block -- relies upon geographical features (e.g., roads and streams), which are visible, instead of section lines, which are not. See U.S. Dep't of Commerce, Bureau of the Census, "Census ABCs" 5-6 (1991); U.S. Dep't of Commerce, Bureau of the Census, "1990 Census of Population and Housing, Tabulation and Publication Program" 11, 49 (1989); D. Myers, Analysis with Local Census Data 64-65 (1992); see also Iowa Code § 42.4(4)(a)(1); Askew v. City of Rome, 127 F.3d 1355, 1363 (11th Cir. 1997).

To the extent a city's volunteer fire department serves rural areas defined by such boundaries as section lines, data from the federal census simply cannot determine the population of those areas for purposes of section 372.13(10). We therefore conclude that section 372.13(10) necessarily permits an estimate of population in instances where the federal census does not provide an official count of the population within a given geographical area. See generally Iowa Code § 4.4(3) (legislature presumably intended just and reasonable result in passing statute); Stanley v. Fitzgerald, 580 N.W.2d 742, 747 (Iowa 1998) (statutory construction takes into account spirit of statute as well as text and tries to achieve a "sensible, workable, practical, and logical construction").

(C)

Section 372.13(10) expressly prohibits a city council member from simultaneously serving as chief of the city's volunteer fire department "if the fire department serves an area with a population of not more than two thousand." In arguing that section 372.13(10) allows such service as long as the population of the city itself does not exceed two thousand, you proffer practical reasons why the General Assembly must have intended this result.

We focus first and foremost, however, upon the statutory text. See United States v. Alvarez-Sanchez, 511 U.S. 350, 356, 114 S. Ct. 1599, 128 L. Ed. 2d 319 (1994). See generally 1976 Op. Att'y Gen. 774, 775 ("[t]he legislature is not as concerned with the simplicity of providing fire protection as with the necessity thereof"). In doing so, we can neither ignore the plain import of the phrase "serves an area" nor substitute the word "city" for "area" under the guise of statutory construction. See State v. Byers, 456 N.W.2d 917, 919 (Iowa 1990). See generally Iowa Code § 4.1(38) (words and phrases shall be construed according to approved English usage).

Either viewed in isolation or within chapter 372 as a whole, section 372.13(10) has no ambiguity for purposes of your question. See State ex rel. Hilfiker v. Seaton, 191 Iowa 81, 181 N.W. 796, 797-98 (1921); see also Farmers Co-op Co. v. DeCoster, 528 N.W.2d 536, 537 (Iowa 1995). In turn, no opportunity arises to examine whether the General Assembly may have intended some special meaning for the language it employed in section 372.13(10): only an ambiguous statute implicates resort to principles of statutory construction to determine legislative meaning, State v. Wagner, 596 N.W.2d 83, 87 (Iowa 1999); Farmers Co-op Co. v. DeCoster, 528 N.W.2d at 537; see also Iowa Code § 4.6.

(D)

A statute, however, may suffer from other defects in drafting besides ambiguity. Here, the drafters of section 372.13(10) wrongly assumed that the federal census could always determine the population of an area served by a city's volunteer fire department and, given this assumption, did not specify any method to supplement the federal census or the public entity or officer authorized to choose the method (or combination of methods) for supplementing it. See 1979 Neb. Op. Att'y Gen. 113 (#76). Cf. 1996 Op. Att'y Gen. 83 (#96-3-1(L)) (in enacting statute that allocates property tax revenues for county library services, legislature did not anticipate that multiple libraries could serve county and thus provided no formula for allocating revenues among them). We must fill in those statutory gaps in order to effect legislative intent. See generally 2A Sutherland's Statutory Construction § 47.38, at 290-91 (1992).

Courts have commonly held that, when necessary, any "satisfactory," "competent," or "material" evidence may be used for supplementing a statutorily prescribed method of determining population. See, e.g., Pelzer v. City of Bellevue, 264 N.W.2d 653, 655 (Neb. 1978) ("[w]here the boundary lines between voting districts differ from the boundary lines of census enumeration districts, the census figures cannot be applied directly, but must be applied indirectly by interpretation or supplemented by other evidence"); 1985 Miss. Op. Att'y Gen. (July 2, 1985); Annot., "Use of Census Data," 56 A.L.R.5th 171, 203, 236-41 (1998).

We therefore believe that, when necessary, any reasonable method may be used to supplement the last preceding certified federal census for estimating rural populations served by a city's volunteer fire department. Cf. 1992 Op. Att'y Gen. 130, 131 ("[w]hen notice is [statutorily] required but no method is prescribed, the notice must only be a reasonable one under the circumstances"). The

method chosen must amount to something more than mere guesswork and represent an honest and good-faith effort to arrive at an accurate estimate. Pelzer v. City of Bellevue, 264 N.W.2d at 657; 1983-84 Mich. Op. Att'y Gen. 113 (#6153); see Reynolds v. Sims, 377 U.S. 533, 577, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); Mandicino v. Kelly, 158 N.W.2d 754, 763 (Iowa 1968).

"Mathematical precision and exactness are impossible as a practical matter, and can be approached only within flexible limits." Pelzer v. City of Bellevue, 264 N.W.2d at 658. "There are a variety of population projections, a variety of census data, and any number of statistical approaches that may be utilized [for estimating population]." 1979 Neb. Op. Att'y Gen. 113 (#76). See State ex rel. Reynolds v. Jost, 175 S.W. 591, 596 (Mo. 1915) (population may be estimated from school and election returns, utility records, and other similar data sources); 11 Okla. Op. Att'y Gen. 425 (#79-270); H. Alterman, Counting People: The Census in History (1969); M. Andersen, The American Census: A Social History (1988); F. Yates, Sampling Methods for Censuses and Surveys (1981); Nat'l Research Council, Modernizing the U.S. Census (D. Edmonston & C. Schultze, eds., 1995); see also U.S. Dep't of Commerce v. House of Representatives, ___ U.S. ___, 119 S. Ct. 765, 782, 142 L. Ed. 2d 797 (1999) (discussing methods of estimating population); Brown v. Iowa Legislative Council, 490 N.W.2d 551, 552-53 (Iowa 1992) (describing computer software for estimating population); Pelzer v. City of Bellevue, 264 N.W.2d at 655 (discussing methods of estimating population). Ultimately, the validity of any method would depend upon the weight accorded to it upon judicial review. E.g., Pelzer v. City of Bellevue, 264 N.W.2d at 655-56.

The General Assembly, we note, has supplied a starting point for determining populations within township sections. In the chapter governing voter registration, it has required each voter registration form to include a space "for a rural resident to provide township and section number, and such additional information as may be necessary to describe the location of the rural resident's home." Iowa Code § 48A.11(1)(k). See generally Iowa Code § 256.55 (establishing State Data Center in State Library).

We also believe that the city council in such instances should establish the method for estimating the population of rural areas served by its volunteer fire department. Such discretion falls within its broad mandate under section 372.13(4) to prescribe the "powers, duties, compensation and terms" of appointed city officers and employees. See generally In re Sale of Intoxicating Liquors, 108 Iowa 368, 79 N.W. 260, 261 (1899); 1985 Miss. Op. Att'y Gen. (July 2, 1985); Annot., supra, 56 A.L.R.5th at 203, 236-41. As indicated, however, the city council only has the discretion to choose a reasonable method; we therefore suggest that the city council seek legal advice before making its selection. See 1998 Op. Att'y Gen. ___ (#98-5-3); 1994 Op. Att'y Gen. 86 (#94-1-6(L)).

III.

In summary: Iowa Code section 372.13(10) (1999), which permits a city council to appoint one of its members as chief of its volunteer fire department "if the fire department serves an area with a population of not more than two thousand," contemplates that the city council may employ any

reasonable method for estimating a rural area's population in the absence of definitive data from the last preceding certified federal census.

Sincerely,

Bruce Kempkes
Assistant Attorney General

COUNTIES; COUNTY OFFICERS; PUBLIC FUNDS: Creation of advisory board; acceptance of gifts by advisory board; transfer of county-owned funds to nonprofit corporation for expenditure and investment. Iowa Code §§ 12B.10, 12C.1, 28E.4, 331.401, 331.555, 350.4, 350.6, 350.7 (1999). A county conservation board has authority to create an advisory board for such tasks as finding facts, offering counsel, or making recommendations. An advisory board receiving gifts of money from private donors for general or specific conservation purposes must transfer them in a timely manner to the county conservation board. (Kempkes to Bjornstad, Dickinson County Attorney, 8/9/00) #00-8-2(L)

August 9, 2000

Mr. Edward W. Bjornstad
Dickinson County Attorney
832 Lake St.
Spirit Lake, IA 51360

Dear Mr. Bjornstad:

You have requested an opinion about money given by private donors for conservation purposes to an advisory board established by a county conservation board. The advisory board apparently accepted the gifts on behalf of the county, and the county treasurer placed the money in a separate account. You ask whether the county board of supervisors can directly transfer the money to a nonprofit organization, not yet created, which would bear substantially the same name as the advisory board, perform the same functions, perhaps share some or all of the same members, and invest the money in ways the county could not lawfully invest it.

Your question implicates Iowa Code chapters 12B, 12C, 331, and 350 (1999). Our examination of those chapters leads us to conclude that a court might void such a transfer.

I.

Chapter 350 is entitled County Conservation Boards. It provides for their establishment and authorizes counties to acquire public conservation areas and to provide adequate programs of public recreation. See Iowa Code §§ 350.1, 350.11; see also Iowa Code §§ 306.4(5), 331.321(1)(c), 350.2, 350.3, 350.7, 350.9. Section 350.4 "authorize[s] and empower[s]" conservation boards to accept gifts and bequests for conservation purposes. Upon their acceptance, gifts and bequests of money become public funds under the stewardship of the county. See generally 10 E. McQuillin, The Law of Municipal Corporations § 28.15, at 39-40 (1999).

Section 350.6 concerns the finances of conservation boards. See generally Iowa Code § 331.427(2)(d); 1990 Op. Att'y Gen. 3 (#89-1-3(L)). Section 350.6 provides that a county shall establish a reserve account for conservation land acquisition and capital improvement projects upon request by its conservation board. It further provides that money "credited to the reserve account shall remain in the reserve" until expended for projects and that interest "earned on moneys received from bequests and donations in the reserve account which are invested pursuant to [chapter 12C] shall be credited to the reserve account." See generally Iowa Code § 4.1(30)(c) (word "shall" in statutes imposes a duty unless otherwise defined).

Chapters 12C is entitled Deposit of Public Funds. It governs the investment of county-owned funds. See 1992 Op. Att'y Gen. 86, 87, 89-91; see also Iowa Code § 12B.10. Counties do not have unlimited options for investing their funds: section 12C.1 provides that they may be deposited only in certain types of investments.

Chapter 331 is entitled County Home Rule Implementation. It generally governs the office of county treasurer, the county's chief financial officer. Section 331.555(1) charges the county treasurer with overseeing the county's separate accounts. Section 331.555(6) provides that a county treasurer may jointly invest county-owned funds with specified public entities and that "[a]ll investment of funds shall be subject to [chapter 12B] and other applicable law."

Chapter 12B is entitled Security of the Revenue. Under section 12B.10(1), county treasurers must invest unneeded county-owned funds pursuant to statutory requirements. Those requirements include section 12B.10(5), which restricts investments to eight specific types. See generally Iowa Code § 12B.10(2) (requiring investment of public funds to take into account safety of principal first, liquidity second, and rate of return third), § 12B.10(3) (prohibiting trading of securities, in which public funds invested, for purpose of speculation and realization of short-term trading profits), § 12B.10(5) (paragraph following "h") (prohibiting futures and options contracts).

II.

You have asked whether the county supervisors may directly transfer county-owned funds to the proposed nonprofit organization, which, instead of the county conservation board, would apparently invest them as well as expend the proceeds and perhaps the principal for conservation purposes. You indicate this transfer rests upon a belief that nonprofit organizations would not be subject to the statutory restrictions imposed on the investment of county-owned funds. It is the investment of these public funds, then, and not their expenditure for a legitimate public purpose, which requires analysis.

(A)

Conservation boards have authority under section 350.7 to "do any and all things necessary or convenient" for the implementation of chapter 350. We believe that this broad charter

encompasses the creation of advisory boards for such purposes as finding facts, offering counsel, or making recommendations. Cf. 1996 Op. Att'y Gen. 96 (#96-5-1(L)) (county hospital trustees, authorized by statute to do "all things necessary" to further operations of county hospital, have authority approaching county home-rule authority).

We understand that the resolution establishing the advisory board provides it "shall act in an advisory capacity" on matters "relating to the construction, operation and improvement" of the county trail system. This enabling act appears to limit the advisory board's functions to such tasks as finding facts, offering counsel, and making recommendations about that system. See Donahue v. State, 474 N.W.2d 537, 539 (Iowa 1991) ("advisory boards" exercise no policy-making power and none of their factfindings bind parent agencies); 1994 Op. Att'y Gen. 1 (#93-1-3(L)); Webster's Ninth New Collegiate Dictionary 17 (1979) (verb "advise" means to give information or notice, to inform, or to take counsel; noun "advice" means a recommendation regarding a decision or course of conduct, counsel, or information or notice given). It does not appear to include the power to decide whether to accept gifts of money for conservation purposes -- a decision that may require an exercise of discretion when conditions attach to such gifts.

Obviously, private donors could choose to leave gifts of money on an advisory board's doorstep for general or specific conservation purposes. We point out that the advisory board in such instances would have the role of a mere conduit and the responsibility of delivering the money in a timely manner to the county conversation board for its acceptance or rejection.

(B)

"[A] long-standing state scheme restrict[s] the investment authority of [counties and other] political subdivisions." 1988 Op. Att'y Gen. 87, 88. The investment options available under this state scheme can be fairly described as conservative in nature and protective of principal. See generally Iowa Code chs. 12B, 12C. Although these investments normally generate a relatively low rate of return, they further a presumably more important legislative purpose: guarding against a loss, great or small, of public funds.

Regarding the investment as well as the expenditure of money privately donated for county conservation projects, chapters 12C and 350 in particular outline the duties of three public offices: county supervisors, county treasurers, and county conservation boards.

Under chapter 350, money credited to a conservation board's reserve account shall remain there until expended by the conservation board for conservation projects; and interest earned on donated money, placed in the reserve account and invested pursuant to chapter 12C, shall be credited to that account. Iowa Code § 350.6. Under chapter 12C, county treasurers have exclusive authority over the investment of county-owned funds; although county supervisors designate the depositories for these funds, they cannot create investment advisory committees to assist county treasurers in

making investments. 1992 Op. Att'y Gen. 86, 91. County supervisors, like county treasurers, must comply with chapter 12C in the management of county-owned funds. Iowa Code § 331.401(1)(n).

If the county supervisors cannot instruct the county treasurer on investing county-owned funds, and if the county treasurer cannot invest such funds inconsistent with chapter 12C, then a court might void the county supervisors' direct transfer of county-owned funds to a nonprofit organization that would invest them in ways inconsistent with chapter 12C. To paraphrase an earlier opinion, "What cannot be lawfully done by a public agency cannot be delegated to a private entity." 1988 Op. Att'y Gen. 112 (#88-10-2(L)). Cf. 15 E. McQuillin, The Law of Municipal Corporations § 39.47, at 164 (1995) (legislature may regulate the holding of public funds, and local ordinance cannot change such regulation).

Investment of public funds must strictly follow legislative commands, 63C Am. Jur. 2d Public Funds § 5, at 229 (1997), and a court, mindful of the public protections underlying chapter 12C, would likely scrutinize such a direct transfer to a county's apparent alter ego, see 1998 Op. Att'y Gen. ___ (#98-1-3); see also 1980 Op. Att'y Gen. 317 (#79-8-2(L)) (quasi-state agencies "may often find themselves bound by restrictions prescribed in laws affecting state agencies"). Cf. Dyer v. City of Des Moines, 230 Iowa 1246, 300 N.W. 562, 566 (1941) (city forced to take custody of funds possessed by private entity, who, on city's behalf, collected fees for automobile testing and placed them in bank of its own choice: such city-owned funds must be "handled in the same manner as in which all other funds of the city are handled"). We point out that public funds do not necessarily lose their public character merely because a private entity happens to possess them. See 1994 Op. Att'y Gen. 71 (#93-12-3(L)); see also 1998 Op. Att'y Gen. ___ (#98-1-3).

A court will construe legislative acts so as to effect, rather than defeat, their underlying purposes. Iowa Fed. of Labor v. Iowa Dep't of Job Serv., 427 N.W.2d 443, 445 (Iowa 1988); 1996 Op. Att'y Gen. 83 (#96-3-2(L)). Chapter 12C obviously seeks to protect the integrity of public treasuries; accordingly, the General Assembly has instructed that ambiguities in applying section 12C.1 will "be resolved in favor of preventing the loss of public funds on deposit." Iowa Code § 12C.1(4). Although counties may cooperate with private entities, e.g., 1999 Iowa Acts, 78th. G.A., S.F. 51 (county conservation boards), and, under certain conditions, properly delegate the performance of statutory duties and powers to private entities, see 1992 Op. Att'y Gen. 104, 107-08; see also Iowa Code §§ 12B.10(5), 28E.5(2), such delegations cannot effectively defeat statutory prohibitions. In this vein, a court will consider the spirit as well as the text of a prohibition in determining a possible violation. E.g., Goodell v. Humboldt County, 575 N.W.2d 486, 515 (Iowa 1998); Kane v. City of Cedar Rapids, 537 N.W.2d 718, 721 (Iowa 1995); Hahn v. Clayton County, 218 Iowa 543, 255 N.W. 695, 697 (1934).

III.

In summary: A county conservation board has authority to create an advisory board for such tasks as finding facts, offering counsel, or making recommendations. An advisory board receiving

gifts of money from private donors for general or specific conservation purposes must transfer them in a timely manner to the county conservation board. A court might void a county's direct transfer of county-owned funds to a nonprofit organization that, in addition to expending them on the county's behalf, would invest them in ways the county could not lawfully invest them.

Sincerely,

Bruce Kempkes
Assistant Attorney General

COUNTY AND COUNTY OFFICERS; MUNICIPALITIES; SCHOOL DISTRICTS: Mileage reimbursement for conference board. Iowa Code §§ 279.32, 331.215, 331.401, 372.13, 441.2 (1999). County supervisors who serve as members on county conference boards have a statutory right to receive mileage reimbursement from the county for travel between their homes and conference board meetings. Other members who serve on conference boards may seek mileage reimbursement, to the extent provided by statute, from their respective governmental entities for travel between their homes and conference board meetings. (Kempkes to Bonnett, Taylor County Attorney, 8/9/00) #00-8-3(L)

August 9, 2000

Mr. Ronald D. Bonnett
Taylor County Attorney
402 Main St.
Bedford, IA 50833

Dear Mr. Bonnett:

You have requested an opinion on mileage reimbursement for travel incurred in the performance of official duties. You ask whether members of county conference boards may receive reimbursement for travel between their homes and conference board meetings. After reviewing Iowa Code chapters 279, 331, 372, and 441 (1999), we conclude that only county supervisors serving on conference boards have a right to reimbursement from the county and that other members serving on conference boards may seek reimbursement from their respective governmental entities.

I.

Chapter 441 is entitled Assessment and Valuation of Property. Section 441.1 establishes the office of the county assessor. Section 441.2 establishes conference boards, which, among other things, review the proposed budgets of county assessors. See Iowa Code § 441.16; 1998 Op. Att'y Gen. ___ (#97-7-3(L)). Section 441.2 also provides for the composition of each conference board: it "shall consist of the mayors of all incorporated cities in the county whose property is assessed by the county assessor, one representative from the board of directors of each high school district of the county, . . . and members of the board of supervisors."

Chapter 331 is entitled County Home Rule Implementation. Section 331.215(2) generally provides that a county supervisor "is entitled to reimbursement for mileage expenses incurred while engaged in the performance of official duties." See generally Iowa Code § 331.324(1)(b) (county supervisors shall grant claims for mileage and expenses). Section 331.401(1)(j) requires that county supervisors serve on conference boards.

Chapter 372 is entitled Organization of City Government. Under section 372.13(8), an elected city officer "is not entitled to receive any other compensation for any other city office or city employment during that officer's tenure in office, but may be reimbursed for actual expenses incurred." See generally Iowa Code § 4.1(30)(c) (use of "may" in statutes confers a power unless otherwise defined).

Governing school corporations, chapter 279 is entitled Directors -- Powers and Duties. Section 279.32 provides that "[a]ctual and necessary expenses, including travel, [incurred by individual members of a school corporations' board of directors] in the performance of official duties may be paid or reimbursed."

II.

You have asked whether members of a county conference board may receive mileage reimbursement for travel between their homes and conference board meetings.

Although creating conference boards, chapter 441 does not expressly authorize or otherwise mention mileage reimbursement for their various members. We cannot imply such a statutory right. See 1980 Op. Att'y Gen. 814 (#80-9-6(L)) (legislature must "expressly and explicitly" authorize public officers and employees to collect mileage reimbursement). Moreover, other chapters establishing other governmental bodies expressly require such reimbursement. See, e.g., Iowa Code § 161A.6 (soil and water conservation district commissioners "[are] entitled to" reimbursement for mileage), § 257.48 (area education agency members "shall be reimbursed for" mileage incurred in the performance of their duties). Such circumstances suggest a legislative intent against creating a right to reimbursement within chapter 441. See 1998 Op. Att'y Gen. ___ (#98-1-3). Any such right, then, must lie outside chapter 441.

County supervisors have that right pursuant to section 331.215(2), which specifically authorizes this group of county officers "to be reimbursed for mileage incurred in traveling between home and the courthouse on county business." 1988 Op. Att'y Gen. 24, 24. Under chapter 331, then, the county must reimburse county supervisors for travel between their homes and conference board meetings. See generally 1986 Op. Att'y Gen. 125 (#86-11-1(L)) (prior opinions withstand subsequent review as long as they are not "clearly erroneous"); 1982 Op. Att'y Gen. 197, 198 (opinions should be relied upon as law until they are overruled, revised, withdrawn, or upset by court decision).

Even assuming they amount to "county officers or employees," see 1990 Op. Att'y Gen. 7 (#89-2-2(L)), other members serving on conference boards would not have the same right in chapter 331 to mileage reimbursement, see 1988 Op. Att'y Gen. 24, 24. They may, however, seek reimbursement from their respective governmental entities: in their use of the word "may," chapters 279 and 372 both permit cities and school corporations to provide for reimbursement if the travel arises out of the performance of official duties. See generally Iowa Code § 4.1(30)(c).

This discretionary power has historical precedent. See, e.g., 1932 Op. Att'y Gen. 43, 44 (schools); 1926 Op. Att'y Gen. 241, 243 (cities). Accordingly, such members may seek mileage reimbursement, to the extent provided, from their respective governmental entities for travel between their homes and conference board meetings.

III.

In summary: County supervisors who serve as members on county conference boards have a right to receive mileage reimbursement from the county for travel between their homes and conference board meetings. Other members who serve on conference boards may seek mileage reimbursement, to the extent provided, from their respective governmental entities for travel between their homes and conference board meetings.

Sincerely,

Bruce Kempkes
Assistant Attorney General

MUNICIPALITIES; ZONING: Initiation of zoning amendments and moratorium on re-filing petitions. Iowa Code §§ 335.8, 414.4, 414.5, 414.6 (1999). Chapter 414 neither prohibits a city council from proposing amendments to city zoning ordinances nor prohibits it from imposing a one-year moratorium on re-filing petitions for zoning changes, while imposing no such limitation on proposals initiated by the city council on its own motion or by the zoning commission. (Kempkes to May, State Representative, 8/22/00) #00-8-5(L)

August 22, 2000

The Honorable Dennis May
State Representative
3994 Thrush Ave.
Kensett, IA 50448

Dear Representative May:

In requesting an opinion on the process for amending city zoning ordinances, you have enclosed a copy of two ordinances from the Mason City Code:

> The City Council may, from time to time on its own motion, on petition or on the recommendation of the Planning and Zoning Commission . . . amend, supplement, or change boundaries or regulations [on zoning].
>
> . . . .
>
> Whenever any petition for an amendment, supplement or change of [zoning regulations] shall have been denied by the City Council, then no new petition covering the same property or the same and additional property shall be filed or considered by the City Council until one year shall have elapsed from the date of the filing of the petition.

Mason City Code §§ 12-31-1, 12-31-1(c).

Focusing upon the second ordinance, you ask about "the legality and ramifications of a city council's recommendation to initiate a proposed amendment to a zoning ordinance that would re-zone property that had been included in an unsuccessful petition filed by the property owner within the past year." We understand that the city council initiated the proposed amendment on its own motion and that the proposed amendment would undergo the same legal procedures that all other proposed amendments must undergo before the city council votes on its adoption.

Your question encompasses the interpretation of the city ordinance imposing the one-year moratorium on petitions. Our office does not provide opinions on the interpretation of city ordinances, which properly falls within the bailiwick of city attorneys. See 1994 Op. Att'y Gen. 7 (#93-1-7(L)); see also 61 IAC 1.5(3)(d). We thus proceed to determine only whether provisions in Iowa Code chapter 414 (1999) prohibit city councils from proposing amendments to city zoning ordinances on motion or from imposing a one-year moratorium on the re-filing of petitions for zoning changes by private parties while imposing no such limitation on proposals initiated by city councils or zoning commissions.

I. Applicable Law

Chapter 414 empowers any city

> to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Iowa Code § 414.1.

Section 414.2 allocates the ultimate authority over zoning matters to the city council, which may divide the city into districts and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within these districts. Under section 414.4, the city council "shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, enforced, and from time to time amended, supplemented, or changed." Section 414.5 also provides that "the regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed."

Similar to section 335.8, which governs counties, section 414.6 provides:

> In order to avail itself of the powers conferred by this chapter, the [city] council shall appoint a . . . zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. . . . After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the council amendments, supplements, changes, or modifications.

II. Analysis

(A)

Chapter 414 does not expressly authorize city councils to propose amendments to zoning ordinances. Nevertheless, under statutory home rule, a city may -- "if not inconsistent with the laws of the general assembly" -- exercise any power and perform any function it deems appropriate to further a public purpose. Iowa Code § 364.1; see Iowa Const. amend. 25 (1968) (establishing municipal home rule).

> The broad scope of power given the cities by . . . home rule, if in no way limited, would in effect give the cities full power to conduct their affairs. . . . "[T]he enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law." [Iowa Code § 364.2(2) (emphasis added)].

1980 Op. Att'y Gen. 591, 593.

Under chapter 414, "[t]he governing body of a city, the council, may amend its zoning ordinances at any time it deems circumstances justify such action. . . ." Kane v. City of Cedar Rapids, 537 N.W.2d 718, 721 (Iowa 1995). "[S]uch an amendment is valid if statutory procedural requirements are followed, and the amendment is not unreasonable or capricious, nor inconsistent with the spirit of the zoning statute." Id. (citation omitted). The narrow question, then, is whether any procedural requirement in chapter 414 expressly precludes city councils from proposing amendments to city zoning ordinances.

Although section 414.6 authorizes zoning commissions to recommend amendments to city councils, we do not interpret that authorization as excluding city councils from also proposing amendments on their own initiative. Section 414.6 does not provide that zoning commissions shall constitute the sole public entity for initiating the amending process. Section 414.6 simply provides that zoning commissions "may" initiate the amending process by recommendation; it does not provide that zoning commissions "must" initiate the amending process.

The power of city councils to propose amendments certainly complements their power to reject amendments proposed or recommended by others. It coincides with their authority to propose amendments to ordinances in general, see Iowa Code ch. 380, and with the language in section 414.4 that city councils "shall provide for the manner in which [zoning ordinances undergo amendment,]"see Aurora Nat'l Bank v. City of Aurora, 402 N.E.2d 365, 368 (Ill. App. 1980) (proposing zoning amendment, unlike adopting it, "is strictly an internal administrative or parliamentary procedure").

We therefore believe that city councils, operating under the broad shadow of home rule, may propose amendments to city zoning ordinances. At least one well-known commentator agrees:

> Despite the fact that petitions for rezoning are usually filed . . . by interested or affected property owners . . . , there is, in general, no bar against any citizen or group -- at least so long as they are municipal residents or property owners -- seeking a particular [zoning] change. This is because citizens have an undoubted right to petition their [city council] by any means available -- whether by public petition, correspondence, public appearances, and communications of all kinds -- and [the city council], upon learning of such a concern, has the undoubted prerogative to entertain the petition, or, alternatively, to itself take the initiative in adopting the rezoning.

3 Rathkopf's Law of Zoning and Planning § 27.03, at 10-11 (1999) (emphasis added).

(B)

The one city ordinance sets forth three ways in which a zoning amendment can be initiated: by "petition," by "a recommendation of the [zoning commission]," and by the city council "on motion." See Mason City Code § 12-31-1. The ordinance easily falls within the scope of section 414.4, which expressly authorizes city councils to "provide for the manner" in which zoning ordinances undergo amendment. This conclusion coincides with the "strong presumption of validity [that] accompanies zoning ordinances." F.H. Uelner Precision Tools & Dies, Inc. v. City of Dubuque, 190 N.W.2d 465, 469 (Iowa 1971) (citation omitted).

The other city ordinance places a one-year limitation on the reconsideration of a "petition" proposing to amend a zoning ordinance, see Mason City Code §12-31-1(c), but does not place a similar limitation upon a proposal by the zoning commission or by the city council. This ordinance, too, easily falls within the scope of section 414.4. Its differentiation in procedure purportedly gives the city council some control over its agenda and city resources by prohibiting persons whose initial petitions did not result in zoning changes from repeatedly re-filing their petitions within a one-year period, while ensuring that the city council and the zoning commission remain free to propose amendments as they see fit. See Seaboard System R.R., Inc. v. City of Atlanta, 330 S.E.2d 700, 704 (Ga. 1985) (recognizing purpose and validity of similar ordinance).

III. Summary

Chapter 414 does not prohibit a city council from proposing amendments to city zoning ordinances. It also does not prohibit a city council from imposing a one-year moratorium on the re-filing of petitions for zoning changes, while imposing no such limitation on proposals initiated by the city council on its own motion or by the zoning commission.

Please note that this opinion does not purport to interpret or apply city ordinances to any particular factual situation and that it does not attempt to provide advice on the merits of any proposed zoning amendments or their effect upon the rights of particular property owners.

Sincerely,

Bruce Kempkes
Assistant Attorney General

CLERK OF COURT: Duties and powers in civil commitment cases. Iowa Code §§ 229.6, 229.7, § 229.44, 602.8102 (1999). District court clerks, by themselves, have no authority under either chapter 229 or chapter 602 to impose conditions upon a county that, pursuant to court order, has transferred civil commitment cases to their counties. (Kempkes to Vander Hart, Buchanan County Attorney, 8-31-00) #00-8-6(L)

August 31, 2000

Mr. Allan W. Vander Hart
Buchanan County Attorney
P.O. Box 68
Independence, IA 50644

Dear Mr. Vander Hart:

You have requested an opinion about the duties and powers of district court clerks regarding the civil commitment of indigent persons who suffer from mental illness. The clerk in a neighboring county has written that "we will not be doing [commitment cases transferred from your county]" unless your county agrees to the following:

> Any cases initiated or having residency in your county that have not been determined to be legally settled in [our] county at a prior time will be paid for by your [county]. Your county will be responsible for the commitment bills, research of legal settlement, and getting reimbursements from the appropriate county. Any state cases from your county will be paid by your county even if they do not go to [a state mental health institute after] hearing. Cases faxed to our clerk for hearing or transported for services from your county will be your responsibility, along with all legally settled individuals.
>
> . . . .
>
> It is not our first choice, but we will consider not continuing to do your hearings . . . if we are unable to reach a workable agreement. That would mean you send individuals to the hospitals in your region and you have your local sheriff transport them back

> to your county for hearing and make arrangements with your attorneys for payment.

The clerk explains that in the past transferring counties had sometimes refused to pay the attorneys appointed by the court after transfer and that, as a result, the neighboring county had experienced difficulty in retaining attorneys on its appointment list for commitment cases.

You ask one narrow question: "If the court in a mental health commitment case orders a change of venue to another county . . . , is the clerk of court in the receiving county able to impose conditions, fulfillment of which is a prerequisite before the receiving county will permit the case to go forward?" This question requires an examination of Iowa Code chapters 229 and 602 (1999).

Chapter 602 is entitled Judicial Branch. It encompasses the general duties of clerks. Dwyer v. Scott County Clerk, 404 N.W.2d 167, 169 (Iowa 1987). Section 602.8102(41) requires them to "[c]arry out duties relating to the involuntary commitment of persons with mental impairments as provided in chapter 229."

Chapter 229 is entitled "Hospitalization of Persons with Mental Illness." It sets forth detailed procedures for involuntary commitments. See Credit Bureau Enterprises, Inc. v. Pelo, 608 N.W.2d 20, 23-24 (Iowa 2000); In re Oseing, 296 N.W.2d 797, 799-00 (Iowa 1980). Adult commitment cases begin with the filing of verified applications with the clerks of the counties where the allegedly ill persons are presently located or their counties of residence. Iowa Code § 229.6; Rule 1, Iowa S. Ct. R. for Involuntary Hospitalization of Mentally Ill. The clerks shall assist the persons making the applications; obtain and reduce to writing any corroborative information, if necessary; and immediately notify the court of the applications after docketing the cases. Iowa Code §§ 229.6, 229.7. At the direction of the court, the clerks shall send copies of the necessary documents to sheriffs for immediate service upon the allegedly ill persons, to their counsel, and to the appropriate county mental health advocates. Iowa Code §§ 229.7, 229.9, 229.9A. If cases undergo transfer to other counties, the transferring court shall forward the necessary documents to the clerks of the receiving courts. Iowa Code § 229.44(3).

Section 602.8102(41) requires clerks to carry out the duties set forth in chapter 229. Nothing in chapter 229, however, expressly or impliedly authorizes clerks to impose terms or conditions upon counties of origin before processing commitment cases. Rather, their duties in commitment cases involve such tasks as receiving, copying, and sending various filings on behalf of the court. See, e.g, Iowa Code §§ 229.6, 229.7, 229.9, 229.9A, 229.10(2), 229.11(3), 229.44(3); Rules 26-27, Iowa S. Ct. R. for Involuntary Hospitalization of Mentally Ill. Clerks normally perform ministerial duties. 1982 Op. Att'y Gen. 126, 128. Accord 15A Am. Jur. 2d Clerks of Court § 1, at 139, § 21, at 155-56 (1976). They normally do not address or otherwise determine questions of financial responsibility involving public entities.

We therefore conclude that district court clerks, by themselves, have no authority under either chapter 229 or chapter 602 to impose conditions upon a county that, pursuant to court order, has transferred civil commitment cases to their counties.

Sincerely,

Bruce Kempkes
Assistant Attorney General

COUNTIES; EMERGENCY MANAGEMENT: County's relationship to local emergency management commission. Iowa Code §§ 29C.9, 29C.17, 331.381 (1999). County supervisors lack statutory authority to place a local emergency management commission, comprised of representatives from the county as well as from cities within the county, under the control of the county sheriff or some other county office. (Kempkes to Wolf, Clinton County Attorney, 9-21-00) #00-9-2(L)

Mr. Michael L. Wolf
Clinton County Attorney
P.O. Box 2957
Clinton, IA 52733

Dear Mr. Wolf:

You have requested an opinion on local emergency management commissions. You ask whether the county board of supervisors may place such a commission under the control of the county sheriff or some other county office. Upon reviewing Iowa Code chapters 29C and 331 (1999 & Supp. 1999), we conclude that the county supervisors lack authority to do so.

Entitled County Home Rule Implementation, chapter 331 generally governs county government. Section 331.381(2) provides that the county supervisors "shall . . . [p]rovide for emergency management planning in accordance with sections 29C.9 through 29C.13."

Entitled Emergency Management, chapter 29C establishes the Iowa Emergency Management Division, which has responsibility "for the administration of emergency planning matters" in this state. Iowa Code § 29C.5. It provides support to local emergency management commissions, which oversee local emergency management agencies. See Iowa Code § 29C.9(1).

A local commission "shall be composed of a member of the board of supervisors or its appointed representative, the sheriff or the sheriff's representative, and the mayor or the mayor's representative from each city within the county." Iowa Code §§ 29C.9(2); see Iowa Code § 331.653(5). It governs itself through the passage of bylaws. Iowa Code § 29C.9(5).

A local commission shall (1) develop, adopt, "and submit for approval by local governments within the county" a comprehensive countywide emergency operations plan, Iowa Code § 29C.9(8); (2) adopt, certify, and submit an annual budget "to the county board of supervisors and the cities," Iowa Code § 29C.17(5); and (3) appoint an emergency management coordinator, who serves at its pleasure and has responsibility for developing the countywide emergency management plan, Iowa Code § 29C.10(1). A local commission may levy a special tax

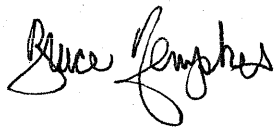
for funding its services after receiving approval from the county supervisors. 1998 Op. Att'y Gen. ___ (#98-7-1(L)).

A local commission constitutes a county-municipal hybrid, similar to some voluntarily created entities jointly exercising governmental powers, Iowa Code ch. 28E; a local emergency planning commission, Iowa Code ch. 30; a joint 911 service board, Iowa Code ch. 34A; or a conference board, Iowa Code ch. 441. Cf. Iowa Code § 29C.2(2) (local emergency management agency is a "countywide joint county-municipal public agency" that administers chapter 29C). Its members come from the county as well as from cities within the county; in any county with more than two cities, mayors will constitute a majority of the members.

Chapter 29C clearly places control of local emergency management with local emergency management commissions. Chapter 331 does not conflict with chapter 29C on this issue. Indeed, section 331.381(2) provides that the county supervisors "shall . . . [p]rovide for emergency management planning in accordance with sections 29C.9 through 29C.13." (emphasis added). See generally Iowa Code § 4.1(30)(a) (unless otherwise defined, "shall" in statutes imposes a duty). County supervisors have a duty to follow sections 29C.9 through 29C.13, which vests control of emergency management in local emergency management commissions and their coordinators.

We therefore conclude that the county supervisors cannot place a local emergency management commission under the control of the county sheriff or any other county office.

Sincerely,



Bruce Kempkes
Assistant Attorney General

COUNTIES; PURCHASE OF SERVICE PROVIDERS; REIMBURSEMENT RATES: Obligations of counties to pay reimbursement rate increases to purchase of service providers negotiated by host counties. House File 2555, 78th G.A., 2nd Sess., § 3(2)(c) (Iowa 2000); Senate File 2452, 78th G.A., 2nd Sess., § 4 (Iowa 2000). Non-host county must pay reimbursement rate increase, up to five percent, negotiated by host county, unless provider exempts self from statute. (Johnson to Redwine, State Senator, 9-26-00) #00-9-4(L)

September 26, 2000

The Honorable John Redwine
State Senator
33533 S. Ridge Road
Sioux City, IA 51108

Dear Senator Redwine:

You have requested an opinion of the Attorney General on the requirements that are imposed on a county by House File 2555, 78th G.A., 2d Sess., § 3(2)(c) (Iowa 2000). Specifically, you ask if a county where a provider is located (host county) negotiates a rate increase for that provider which is not more than five percent, does this legislation require another county (non-host county) to reimburse that provider for services to its clients at the same rate that the host county negotiated? You also ask if the legislation controls whether a non-host county can avoid paying a higher rate to a provider by refusing to pay for a client in a facility located in another county.

ANALYSIS

I

H. F. 2555, as amended by Senate File 2452, 78th G.A., 2d Sess., § 4 (Iowa 2000), appropriated money to assist counties with limited funds available for mental health, mental retardation, and developmental disabilities services. The legislation identifies when a county must pay a purchase-of-service (POS) provider a higher rate for certain services and also identifies when a county is eligible for reimbursement from the risk pool created by the legislation for the costs of paying the provider the higher rate. A POS provider is one that provides sheltered workshop, work activity, supported employment, job placement, enclave services, adult day, transportation, supported community living services, or adult residential services paid for by the county mental health, mental

retardation, and developmental disabilities services fund. H. F. 2555, § 3 (1)(c); Iowa Code § 331.424A.

The legislation provides for a reimbursement rate increase for eligible providers. H. F. 2555, § 3(2)(a). To be eligible for the increased rate, the POS provider must demonstrate that its actual cost of providing a service for the fiscal year beginning July 1, 2000 is in excess of the reimbursement rate paid by the host county in the fiscal year ending June 30, 2000. The provider additionally must be able to show that this increase is at least partially attributable to service staff compensation. H. F. 2555, § 3(2)(b).

If the POS provider demonstrates an adjusted actual cost of providing the service that is in excess of the reimbursement rate paid by the host county as of June 30, 2000, the statute mandates that the "host county shall increase the POS provider's reimbursement rate to the POS provider's adjusted actual cost, subject to a maximum of five percent over the reimbursement rates paid by the host county to that POS provider as of June 30, 2000." H. F. 2555, § 3(2)(c) (emphasis added); see Iowa Code § 4.1(30) (1999) ("unless otherwise specifically provided by the general assembly...[t]he word "shall" imposes a duty.") The statute does not give discretion to the host county regarding whether to pay this increase to an eligible POS provider, only the right to limit the increase to a maximum of five percent.

Your question specifically asks whether the reimbursement rate agreed to by the host county must be paid to the provider by non-host counties. We do not believe that the Act's language on this issue "is susceptible to more than one meaning." *State v. Rodgers*, 560 N.W.2d 585, 586 (Iowa 1997). The legislation states "[t]he reimbursement rate increase approved by the host county shall be accepted by all other counties that have an arrangement with the POS provider for provision of the program or service." H. F. 2555, § 3(2)(c). As explained in *State v. Rodenburg*, 562 N.W.2d 186, 189 (Iowa 1997), "[W]hen statutory language is not ambiguous, or when a statute is plain and its meaning clear, this court need not search for legislative intent or a meaning beyond the expressed language." See also *In re R.L.D.*, 456 N.W.2d 919, 920 (Iowa 1990). The language is clear that all non-host counties that have an arrangement with the POS provider for provision of the program or service shall pay the same reimbursement rate increase approved by the host county.

If an eligible provider had negotiated a reimbursement rate increase with a host county as of July 1, 2000, the legislation allows the POS provider the option of exempting itself from the provisions of the legislation. S. F. 2452, § 4. A host county is only required to provide a reimbursement rate increase, subject to the five percent limitation, to eligible providers. H. F. 2555, § 3(2)(a). If a provider exempts itself from these provisions, the provider would not be an eligible POS provider. The legislation does

not mandate that a host county or non-host counties pay a reimbursement rate increase to a provider that is not an eligible provider as identified in the legislation.

II

You have asked whether H. F. 2555 allows a county to avoid paying higher reimbursement rates by refusing to enter into any arrangements with a POS provider for anyone living in a non-host county. The legislation does not address this specific issue. The broader issue regarding a county's responsibility for individuals living in facilities in non-host counties would be dependent upon numerous facts which have not been presented to us and which are beyond the scope of an attorney general's opinion. The provisions of H. F. 2555 and its amendments regarding POS providers address only the rate of reimbursement to be paid to eligible providers and the eligibility of counties for reimbursement from the risk pool if these higher reimbursement rates are paid to eligible providers.

CONCLUSION

We conclude that H. F. 2555, as amended by S. F. 2452, requires that if a provider is an eligible POS provider and contracts with a host county for a rate increase of five percent or less, a non-host county must pay that rate to the provider for the services identified by the statute. There are provisions under the amendment allowing a provider to exempt itself from the provisions of the legislation and, if that occurs, neither the host county nor non-host counties must increase the rates paid to the provider for the services identified in the legislation. The statute does not address whether a non-host county may avoid paying higher rates by refusing to pay for anyone living in a facility in another county.

Sincerely,

Dennis W. Johnson
Solicitor General

DWJ/mo

COUNTIES; PUBLIC EMPLOYEES: County contributions to Iowa Public Employment Retirement System (IPERS). Iowa Code §§ 97B.1A, 97B.11, 97B.73B, 229.19 (1999 & Supp. 1999); S.F. 2411, 78th G.A., 2d Sess., § 69 (Iowa 2000). Counties must make IPERS contributions on behalf of their mental health advocates. (Kempkes to Riepe, Henry County Attorney, 11-3-00) #00-11-3(L)

November 1, 2000

Mr. Michael A. Riepe
Henry County Attorney
Courthouse
100 E. Washington
Mt. Pleasant, IA 52641

Dear Mr. Riepe:

You have requested an opinion on the Iowa Public Employment Retirement System (IPERS), which provides pension benefits to public employees. You ask whether counties must make IPERS contributions on behalf of their mental health advocates. After reviewing Iowa Code chapters 97B and 229 (1999 & Supp. 1999), as well as various documents you have provided to us, we conclude that they must make those contributions.

I. Applicable Law

Entitled "Iowa Public Employees' Retirement System (IPERS)," chapter 97B establishes IPERS within the Iowa Department of Personnel. Iowa Code § 97B.4.

> The purpose of [chapter 97B] is to promote economy and efficiency in the public service by providing an orderly means for employees, without hardship or prejudice, to have a retirement system which will provide for the payment of annuities, enabling the employees to care for themselves in retirement, and which will improve public employment within the state, reduce excessive personnel turnover, and offer suitable attraction to high-grade men and women to enter public service in the state.

Iowa Code § 97B.2. Under chapter 97B, each employer shall deduct from the wages of each employee a contribution of a specified percentage until the employee's retirement. Iowa Code § 97B.11. See Iowa Code § 97B.1A(26)(a) ("wages" means "all remuneration for employment").

Section 97B.1A(9) defines "employer" to mean "the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their departments and instrumentalities . . . ." Section 97B.1A(8) generally defines "employee" to mean "an individual who is employed as defined in [chapter 97B] for whom coverage under [chapter 97B] is mandatory." Section 97B.1A(8)(a) specifically defines "employee" to include eleven positions, and section 97B.1A(8)(b) specifically defines "employee" to exclude eight positions.

Chapter 229 is entitled "Hospitalization of Persons with Mental Illness." It governs the involuntary commitment of adults suffering from mental illness. Section 229.19 provides:

> The district court in each county with a population of under three hundred thousand inhabitants and the board of supervisors in each county with a population of three hundred thousand or more inhabitants shall appoint an individual . . . to act as advocate representing the interests of persons involuntarily hospitalized by the court, in any matter relating to the patients' hospitalization or treatment under [provisions of chapter 229].

After itemizing the various duties of an advocate, section 229.19 provides:

> The court or, if the advocate is appointed by the county board of supervisors, the board shall prescribe reasonable compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid by the county in which the court is located, either on order of the court or, if the advocate is appointed by the county board of supervisors, on the direction of the board. If the advocate is appointed by the court, the advocate is an employee of the state for purposes of chapter 669 [which governs tort claims against the State]. If the advocate is appointed by the county board of supervisors, the advocate is an employee of the county for purposes of chapter 670 [which governs tort claims against counties]. If the patient or the person who is legally liable for the patient's support is not indigent, the board shall recover the costs of compensating the advocate from that person. . . .

II. Analysis

You have asked whether counties must make IPERS contributions on behalf of their mental health advocates.

(A)

Chapter 229 neither identifies the "employer" of advocates nor sets forth which public entity may, among other things, review expense and travel claims or subject them to personnel policies. Chapter 229, which establishes a bifurcated system that rests upon county population, provides just three administrative details: (1) depending upon the county, either the district court or the county supervisors may appoint the advocate and shall prescribe the compensation for his or her services; (2) advocates appointed by the district court constitute state employees for purposes of tort liability, while advocates appointed by county supervisors constitute county employees for purposes of tort liability; and (3) counties must pay the compensation of their advocates and recoup, when possible, some or all of that compensation from the patients or the persons legally liable for their support. Iowa Code § 229.19. These provisions suggest that advocates may serve more than one master. See generally 1984 Op. Att'y Gen. 136 (#84-6-9(L)) (advocate "primarily [aids] the district court"); 27 Am. Jur. 2d Employment Relationship § 5, at 557 (1996) (noting possibility of joint or dual employers).

In addition to providing for the appointment of advocates, chapter 229 provides for the appointment of judicial hospitalization referees who assist district courts in hearing involuntary commitment cases. In Loughlin v. Cherokee County, 364 N.W.2d 234 (Iowa 1985), the Supreme Court of Iowa considered the issue whether IPERS at that time encompassed a hospitalization referee. It held in part that the hospitalization referee, as a matter of fact, served as an independent contractor and not as an employee under county control and within IPERS coverage. Id. at 237.

(B)

Your question does not require us to resolve whether IPERS covers advocates, because legislation passed this year makes clear that it does. See S.F. 2411, 78th G.A., 2d Sess., § 69 (Iowa 2000) (amending Iowa Code § 97B.73B to provide for collection of unpaid IPERS contributions "for a person classified as a patient advocate appointed under section 229.19"). As such, they constitute employees, not independent contractors, for purposes of IPERS.

The question in Loughlin v. Cherokee County only involved IPERS coverage and required the court to determine whether, as a matter of fact, the hospitalization referee served as an independent contractor or as a county employee. See 364 N.W.2d at 237. The Supreme Court did not address the significantly different issue which public entity must make IPERS contributions when the General Assembly, as here, mandates IPERS coverage. This issue is a matter of law.

(C)

Chapter 97B places the responsibility for making IPERS contributions upon an "employer." It requires every employer to deduct IPERS contributions from the wages of every covered employee, Iowa Code § 97B.11, and specifically defines "wages" as "all remuneration for employment," Iowa Code § 97B.1A(26)(a). These statutory definitions indicate that counties constitute the employers of advocates for purposes of IPERS, because only counties have the statutory obligation to remunerate advocates for their services. See Iowa Code § 229.19 ("compensation [of an advocate] shall be paid by the county"); Loughlin v. Cherokee County, 364 N.W.2d at 236. In other words, chapter 97B specifically links the making of IPERS contributions with the payment of remuneration. Cf. Boone County v. County Employees' Retirement Fund, 26 S.W.3d 257, 260-61 (Mo. App. 2000) ("source of salary" test determines which retirement fund court personnel can join).

Chapter 229 certainly does not suggest anything to the contrary by requiring counties to pay compensation to advocates. Although context often determines the precise meaning of a word, "compensation" in general denotes

> [r]emuneration and other benefits received in return for services rendered; esp., salary or wages.
>
> > "*Compensation* consists of wages and benefits in return for services. It is payment for work. . . . [*Compensation*] includes wages, stock option plans, profit sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement." Kurt H. Decker & H. Thomas Felix II, Drafting and Revising Employment Contracts § 3.17, at 68 (1991).

Black's Law Dictionary 277 (7th ed. 1999) (emphasis added). See 27 Am. Jur. 2d Employment Relationship § 52, at 597-98 (1996) (although "most commonly thought of in terms of monetary consideration given for work performed, the term [`compensation'] is also broad enough to include a range of employee benefits"); 63C Am. Jur. 2d Public Officers & Employees § 278, at 721-22 (1997) (fringe benefits "are as much a part of the compensation of office as a weekly pay check," and pension benefits received by public employees "constitute compensation in consideration of services rendered"). See generally Iowa Code § 4.1(38) (statutory words and phrases, if undefined, shall be construed according to context and approved English usage).

We see nothing in the context of chapter 229 that would suggest a narrow meaning for "compensation." See generally Thomas v. State, 241 Iowa 1072, 44 N.W.2d 410, 412 (1950)

(statutes having beneficent purpose should be liberally construed). Indeed, we have a duty to construe language in chapter 229 in a way that harmonizes with provisions in chapter 97B. See generally State v. Dann, 591 N.W.2d 635, 638 (Iowa 1999); 3 E. McQuillin, The Law of Municipal Corporations § 12.143, at 691 (1990).

III. Summary

Counties must make IPERS contributions on behalf of their mental health advocates.

Sincerely,

Bruce Kempkes
Assistant Attorney General

COUNTY AND COUNTY OFFICERS; CIVIL SERVICE: Candidate leave of absence for deputy sheriffs. Iowa Code § 341A.18 (1999); 2000 Iowa Acts, 78th G.A., ch. 45, § 1. A request by the affected deputy is necessary to trigger the leave of absence provision contained within Code section 341A.18, as amended by 2000 Iowa Acts, 78th G.A., ch. 45, § 1. Nothing within this statute allows a sheriff to request the leave or require a deputy or civil service employee to take a leave of absence pursuant to this section. (Scase to Swanson, Montgomery County Attorney, 11-1-00) #00-11-4(L)

Mr. Bruce E. Swanson
Montgomery County Attorney
County Courthouse
105 Coolbaugh
Red Oak, Iowa 51566

Dear Mr. Swanson:

You have requested an opinion regarding application of the county civil service candidate leave of absence provision set forth in Iowa Code section 341A.18, as amended during the 2000 legislative session. Specifically, you ask whether the leave of absence contemplated by this section may be requested only by the individual running for office or may be requested by either the affected individual or the county sheriff. As discussed below, we find no basis to conclude that a sheriff may require a deputy or civil service employee to take a leave of absence pursuant to this section.

Prior to the recent amendment unnumbered paragraph eight of Iowa Code section 341A.18 provided that

> An officer or employee subject to civil service and a chief deputy sheriff or second deputy sheriff, who becomes a candidate for a partisan elective office for remuneration, unless running unopposed, shall automatically be given a leave of absence without pay, commencing thirty days before the date of the primary election and continuing until the person is eliminated as a candidate or wins the primary, and commencing thirty days before the date of the general election and continuing until the person is eliminated as a candidate or wins the general election, and during the leave period shall not perform any duties connected with the office or position so held. The officer or employee subject to civil service, or chief deputy sheriff or second deputy sheriff, may, however, use accumulated paid vacation time for part or all of the leave of absence required under this section. The county shall continue to provide health benefit coverages, and may continue to provide other fringe benefits, to any officer or employee subject to civil service, or to any chief deputy sheriff or second deputy sheriff during any leave of absence required under this section.

This provision imposed a mandatory thirty-day unpaid leave of absence upon county civil service employees, as well as chief deputies or second deputies, when running opposed for a partisan elective office carrying remuneration. See 1996 Op. Att'y Gen. 84; 1980 Op. Att'y Gen. 748; 1980 Op. Att'y Gen. 106 (all recognizing the section 341A.18 leave provision as mandatory).

During the past legislative session, section 341A.18 was amended by Senate File 2215, entitled: "An Act striking a mandatory leave of absence for a civil service officer or employee, or a deputy sheriff who is a candidate for partisan public office, and providing an effective date." 2000 Iowa Acts, 78th G.A., ch. 45. Section one of this act revised unnumbered paragraph eight of section 341A.18, as follows:

> An officer or employee subject to civil service and a chief deputy sheriff or second deputy sheriff, who becomes a candidate for a partisan elective office for remuneration, ~~unless running unopposed~~ upon request, shall automatically be given a leave of absence without pay, commencing thirty days before the date of the primary election and continuing until the person is eliminated as a candidate or wins the primary, and commencing thirty days before the date of the general election and continuing until the person is eliminated as a candidate or wins the general election, and during the leave period shall not perform any duties connected with the office or position so held. The officer or employee subject to civil service, or chief deputy sheriff or second deputy sheriff, may, however, use accumulated paid vacation time for part or all of ~~the~~ any leave of absence ~~required~~ under this section. The county shall continue to provide health benefit coverages, and may continue to provide other fringe benefits, to any officer or employee subject to civil service, or to any chief deputy sheriff or second deputy sheriff during any leave of absence ~~required~~ under this section.

2000 Iowa Acts, 78th G.A., ch. 45, § 1. You ask whether under Code section 341A.18, as amended, a county sheriff may make the request triggering the automatic 30-day leave of absence.

Our analysis is guided by familiar principles. The "ultimate goal in interpreting statutes is to determine and give effect to legislative intent." Holiday Inns Franchising, Inc. v. Branstad, 537 N.W.2d 724, 728 (Iowa 1995). Intent is determined "from what the legislature said, not from what it might or should have said." Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Shell Oil Company, 606 N.W.2d 376, 379 (Iowa 2000).

> If the language is clear and unambiguous, we apply a plain and rational meaning in light of the subject matter of the statute.

> However, if reasonable minds could disagree over the meaning of a word or phrase of a statute, the statute is ambiguous and we resort to the rules of statutory construction. When construing the statute, we read the language used, and give effect to every word.

Id. at 379-80 (citations omitted).

We find no ambiguity in section 341A.18, as amended. The statute provides, in relevant part, that a deputy sheriff who becomes a candidate for partisan elective office, "*upon request*, shall automatically be *given* a leave of absence without pay." Clearly, the object of this sentence is the deputy who must, upon request, be given the leave. Although the legislature could have eliminated any doubt on the issue by indicating the leave was to be given "upon request of the deputy," nothing within the terms of the statute provides a basis from which we can infer that the legislature intended for anyone other than the deputy to request the leave. In the absence of any language within the statute indicating that someone other than the affected deputy may request the leave of absence, we cannot find that the sheriff -- or any one other than the affected deputy -- may request the leave. If a sheriff were allowed to make the request triggering the automatic 30-day leave of absence, the sheriff would be in a position of unilaterally requiring the deputy to take the leave. In amending section 341A.18 the legislature twice stuck the term "required" from the statute. This change reinforces our conclusion that, under the plain meaning of this provision, no one may "require" a deputy to take the leave of absence.

We believe that a request by the affected deputy is necessary to trigger the leave of absence provision contained within Code section 341A.18, as amended by 2000 Iowa Acts, 78th G.A., ch. 45, § 1. Nothing within this statute allows a sheriff to request the leave or require a deputy or civil service employee to take a leave of absence pursuant to this section.[1]

Sincerely,

Christie J. Scase
Assistant Attorney General

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1 We note, however, that this conclusion does not lead to a conclusion that a deputy who remains in active service may conduct campaign activities while on duty. Unnumbered paragraph two of section 341A.18 precludes a county civil service employee from soliciting campaign contributions while on duty or engaging in "any political activity that will impair the employee's efficiency during working hours or cause the employee to be tardy or absent from work." In addition, Iowa Code section 55.4 (1999) contains a provision prohibiting any public employee who becomes a candidate for elective public office from campaigning while on duty.

SANITARY DISPOSAL PROJECT: Solid waste transfer station. Iowa Code §§ 455B.301, 455B.305 (1999). Solid waste transfer stations are sanitary disposal projects within the meaning of Iowa Code section 455B.301(18) (1999) for which permits are required pursuant to Iowa Code section 455B.305 (1999). (Dorff to Asell, Interim Director, Iowa Department of Natural Resources, 11-29-00) #00-11-6(L)

November 29, 2000

Lyle W. Asell, Interim Director
Iowa Department of Natural Resources
Wallace State Office Building
L O C A L

Dear Mr. Asell:

You have requested an opinion of the Attorney General concerning the requirements for operation of solid waste transfer stations in Iowa. Specifically, you ask whether solid waste transfer stations are required to obtain permits from the Department of Natural Resources (DNR) pursuant to Iowa Code section 455B.305 as "sanitary disposal projects" as defined in Iowa Code section 455B.301(18).

Iowa Code section 455B.305 provides that "[t]he director[1] shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects." Iowa Code § 455B.305(1) (1999). The term "sanitary disposal project" is defined by statute as "all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director." Iowa Code § 455B.301(18) (1999) (emphasis added).

The term "transfer station" is defined by Department rules as "a fixed or mobile intermediate solid waste disposal facility for transferring loads of solid waste, with or without reduction

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[1] As used in Iowa Code chapter 455B, "'[d]irector' means the director of the department or a designee." Iowa Code § 455B.101(2) (1999). "'Department' means the department of natural resources created under section 455A.2." Iowa Code § 455B.101(1) (1999).

of volume, to another transportation unit." 567 IAC 100.2. You indicate in your letter that transfer stations ordinarily vary from semi-trailers that accept loads directly from other trucks, to permanent facilities that sort waste to remove recyclables, compact the solid waste, and reload it for transportation. The narrow issue then is whether transfer stations are facilities used to facilitate the final disposition of solid waste.

In interpreting statutes, the ultimate goal is to give effect to the legislature's intent. T & K Roofing Co. v. Iowa Department of Education, 593 N.W.2d 159, 162 (Iowa 1999); Bernau v. Iowa Department of Transportation, 580 N.W.2d 757, 761 (Iowa 1998). In the absence of a statutory definition or an established meaning in the law, words in a statute are given their ordinary and common meaning. Iowa Code § 4.1(38); T & K Roofing Co., 593 N.W.2d at 162. The Iowa Supreme Court has further held that environmental statutes should be given a liberal -- not a narrow -- construction. State ex rel. Miller v. DeCoster, 596 N.W.2d 898, 902 (Iowa 1999); State ex rel. Iowa Department of Natural Resources v. Grell, 368 N.W.2d 139, 141 (Iowa 1985).

In common parlance, the term "facilitate" means "to make easier." Matter of Kaster, 454 N.W.2d 876, 879 (Iowa 1990); Webster's Ninth New Collegiate Dictionary 444 (1983). Applying this definition, it seems clear that a fixed or mobile intermediate solid waste disposal facility for transferring loads of solid waste, with or without reduction of volume, to another transportation unit, is a facility which makes easier the final disposition of solid waste. Accordingly, we conclude that solid waste transfer stations are sanitary disposal projects within the meaning of Iowa Code section 455B.301(18), for which permits are required pursuant to Iowa Code section 455B.305.

Sincerely,

DAVID L. DORFF
Assistant Attorney General
Environmental Law Division
(515) 281-5351

DLD/cj
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