MUNICIPALITIES: Building Code Requirements; Condominiums. Iowa Code §§103A.3(3), 103A.3(14), 499B.20 (2003). When the state building code is not applicable, Iowa Code section 499B.20 requires compliance with all local building regulations, not merely those regulations labeled as a local "building code," prior to conversion of existing apartments to condominiums. (Sheridan to Greimann, State Representative, 2-17-04) #04-2-1(L)

February 17, 2004

The Honorable Jane Greimann
State Representative
1518 - 13th Street
Ames, IA 50010

Dear Representative Greimann:

You have requested our opinion regarding whether compliance with all local building regulations, not merely those expressly entitled or referred to as "building code requirements," is a prerequisite to conversion of apartments to condominiums pursuant to Iowa Code section 499B.20. We conclude that, when the state building code is not applicable, all local building regulations must be complied with prior to conversion of preexisting apartments to a condominium.

Iowa Code chapter 499B regulates the establishment of horizontal property regimes, i.e. condominiums. An owner who wishes to convert an existing structure to condominiums must file a declaration with the city in which the regime is located or with the county, if the property is not located within a city, at least sixty days prior to recording the declaration with the county recorder, to enable the city or county to establish that the converted structure meets appropriate building code requirements as provided in Iowa Code section 499B.20. Iowa Code § 499B.3 (2003). If the city or county does not have a building code, then the declaration must be filed with the state building code commissioner to enable the commissioner to establish that the converted structure meets the state building code. Id.

As to property conversion, section 499B.20 provides:

> After April 25, 2000, an existing structure shall not be converted to a horizontal property regime unless the converted structure meets local city or county, as applicable, building code requirements in effect on the date of the conversion or the state building code

> requirements if the local city or county does not have a building code. For purposes of this section, if the structure is located in a city, the city building code applies and if the structure is located in the unincorporated area of the county, the county building code applies.

Iowa Code § 422B.20 (2003) (emphasis added).

Iowa Code chapter 103A governs the establishment, administration and enforcement of the state building code. The state building code commissioner is authorized to formulate, adopt or amend by rule minimum safeguards in the erection and construction of buildings and structures. Iowa Code §§ 103A.7, 103A.11 (2003). The state building code applies in each governmental subdivision which has enacted an ordinance accepting the applicability of the code and filed a certified copy of the ordinance with the commissioner. Iowa Code § 103A.12 (2003). Cities and counties also may, at any time after one year has elapsed since the code became applicable, adopt an ordinance withdrawing from the application of the state building code. Id.

Cities and counties which have not accepted applicability of the state building code or have withdrawn from application of the state building code may adopt by ordinance their own "building code" as well as other regulations relating to the erection and construction of buildings, e.g. plumbing code, mechanical code, electrical code, fire code. See 1982 Iowa Op. Att'y Gen. 331 (#82-1-8(L)); Iowa Code § 103A.22 (2003) (recognizing power of governmental subdivisions to enact building regulations). The question then becomes whether additional local building regulations, not specifically referred to as "building code," must also be complied with as "building code requirements" prior to conversion of a structure to condominiums pursuant to Iowa Code section 499B.20.

The phrase "building code requirements," although used in section 499B.20, is not defined in Iowa Code chapter 499B. For purposes of the state building code, "local building regulations" are defined within Code chapter 103A as "building regulations adopted by a governmental subdivision." Iowa Code § 103A.3(14) (2003). "Building regulations" are defined broadly to include:

> any law, bylaw, rule, resolution, regulation, ordinance, or code or compilation enacted or adopted, by the state or any governmental subdivision, including departments, boards, bureaus, commissions or other agencies, relating to the construction, reconstruction, alteration, conversion, repair or use of buildings and installation of equipment therein. The term shall not include zoning ordinances or subdivision regulations.

Iowa Code § 103A.3(3) (2003).

Building code requirements, and the section 499B.20 requirement that a horizontal building regime must be in compliance with building code requirements prior to condominium conversion, are designed to regulate conduct for the public good and welfare. The articulated public policy behind the promulgation and enforcement of a state building code is to "insure the health, safety, and welfare of [Iowa] citizens." Iowa Code § 103A.2 (2003). The state building code is "designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health safety and welfare of the public." Iowa Code § 103A.7 (2003). Local city or county building codes and regulations, adopted in lieu of the state building code, have the same remedial purpose.

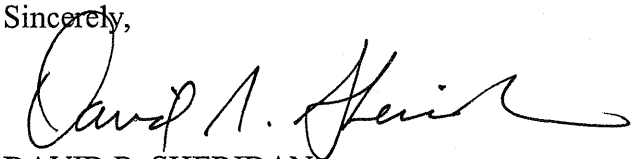
Legislation that regulates conduct for the public good or welfare is ordinarily considered remedial and entitled to liberal construction. See e.g., McCracken v. Iowa Dep't of Human Services, 595 N.W.2d 779, 784 (Iowa 1999); First Iowa State Bank v. Iowa Dep't of Natural Resources, 502 N.W.2d 164, 166 (Iowa 1993). The phrase "building code requirements," as used within section 499B.20, should not be narrowly read to include only those regulations specifically entitled or referred to as part of a "building code." See 7A E. McQuillin, The Law of Municipal Corporations § 24.511, at 106 (3rd ed.1998) ("Building codes and ordinances, being remedial, ordinarily should be construed liberally to effect their purpose"). Other building regulations adopted by a city or county relating to the erection and construction of buildings and furthering the purposes of a building code to protect the public health, safety and welfare should be included.

Since Iowa Code section 499B.20 provides for application of the state building code where there is no applicable local city or county building code, examination of the terms of the state building code is instructive. The broad statutory mandate for formulation of a state building code includes the requirement that reasonable provisions be adopted for the installation of equipment; construction materials; manufacture and installation of factory-built structures; protection of the health, safety, and welfare of occupants and users; accessibility and use by persons with disabilities and elderly persons; and energy conservation. Iowa Code §§ 103A.7(1)-(6) (2003); see also Iowa Code § 103A.8(1)-(8) (2003). Adoption by reference of national codes where appropriate is expressly authorized. Iowa Code § 103A.8(1) (2003).

The state building code adopts and incorporates, unless in conflict with other provisions of the code, a wide variety of other building regulations including the Uniform Building Code, National Electrical Code, Uniform Mechanical Code, Uniform Plumbing Code, Model Energy Code, and energy efficiency design specifications. 661 Iowa Admin. Code 16.120(1)-(7). Moreover, the state building code refers to additional requirements adopted by other state agencies including, for example, the state fire marshal. 661 Iowa Admin. Code 16.123(1); see also 661 Iowa Admin. Code chapter 5.

We believe the protection provided by the requirement in Iowa Code section 499B.20 that condominium conversions comply with applicable city and county "building code requirements" should be no less comprehensive than the alternative requirement for compliance with the state building code when no local city or county building code is in place. Therefore, we conclude that, when the state building code is not applicable, Iowa Code section 499B.20 requires compliance with all local building regulations, not merely those regulations labeled as a local "building code," prior to conversion of existing apartments to condominiums.

Sincerely,



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DRS/cj

GARNISHMENT: Effect of expiration or return of writ of execution for wage garnishment on levying. Iowa Code §§ 626.16, 626.27, 642.22(1)(b) (2003). Levying under a writ of execution for wage garnishment is possible until the earlier of (1) the writ's return, or (2) the seventy-day time frame prescribed by Iowa Code section 626.16 expires. Return of the writ does not prevent remaining acts or events involved in or attendant to disbursing or releasing the funds collected under that writ from continuing. Assuming the garnishor's underlying judgment is not fully satisfied from the funds collected under an initial writ, wage garnishment may continue by levying under a new writ or new series of writs-upon proper notice-until the judgment is satisfied or expires, whichever occurs first. (Vaudt to Walk, Mitchell County Attorney, 7-12-04)
04-7-2(L)

July 12, 2004

Mark L. Walk
Mitchell County Attorney
515 State Street
Osage, Iowa 50461-1249

Dear Mr. Walk:

You have requested an opinion from this office addressing when a writ of execution for wage garnishment ("writ") is no longer effective. Specifically, you cite a potential inconsistency between Iowa Code section 642.22(1)(b), providing that a notice of garnishment ("notice") remains effective only until a companion writ expires, and Iowa Code section 626.27, providing that "proceedings by garnishment on execution shall not be affected by its expiration or its return." In light of the potential conflict between these two statutes, you ask whether levying under a writ must cease when writ expires or is returned.

As detailed below, we conclude that levying under a writ must cease upon the earlier of (1) the writ's return, or (2) the expiration of seventy days from the date the writ issues. Return or expiration of the writ does not prevent remaining acts or events involved in or attendant to disbursing or releasing the funds collected prior to return or expiration of the writ from continuing. If the underlying judgment is not fully satisfied after those funds are applied, garnishment may continue under successive writs, upon proper notice, until satisfaction is complete or the judgment expires under the applicable statute of limitation.

Iowa Code section 642.22, which you reference within your request letter, includes the following provision regarding the validity of a garnishment notice:

> 1. A notice of garnishment served upon a garnishee is effective without serving another notice until the earliest of the following:
> a. The annual maximum permitted to be garnished under section 642.21 has been withheld.
> b. *The writ of execution expires.*

> c. The judgment is satisfied.
> d. The garnishment is released by the sheriff at the request of the plaintiff or the plaintiff's attorney.
> * * *
> 3. Expiration of the execution does not affect a garnishee's duties and liabilities respecting property already withheld pursuant to the garnishment.

Iowa Code § 642.22(1), (3) (2003) (emphasis added). As provided by section 626.16, a writ of execution expires on the seventieth day after the date of its issuance.

> Every officer to whose hands an execution may come shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from the date of its issuance.

Iowa Code § 626.16 (2003) (emphasis added).

Although no reported cases analyzing section 626.16 and its predecessors squarely address the question you raise, one consistent theme emerges from them: levying under a writ must occur within the time frame prescribed by section 626.16. See Cox v. Currier, et al., 62 Iowa 551, 554-55, 17 N.W. 767, 769 (1883) (sale of property after expiration of seventy days held valid as long as levy under writ occurred before expiration of seventy days); Merritt, et al. v. Grover, 57 Iowa 493, 495, 10 N.W. 879, 880 (1881) ("[A]n execution has sufficient life to sustain a sale made after the return-day, if the levy was made before."); Wright v. Howell, et al., 35 Iowa 288, 295, 1872 WL 392, *4 (1872) ("It being shown that a levy was made, this court will not presume that the officer entrusted with the execution of the writ, in violation of his duty, levied it after the return day." (emphasis added)); Moomey v. Mass, 22 Iowa 380, 386-87, 1867 WL 200, *4 (1867) (If a levy is made during a writ's lifetime, a sale thereunder will be valid, although made after the execution itself has been returned.).

After the seventieth day from the date a writ is issued, the writ becomes ineffective and the sheriff's ability to levy under it is lost. However, if the garnishor's judgment underlying that writ remains unsatisfied after applying the funds collected under that writ, levying may continue under a new writ or series thereof - upon proper notice - until the judgment is satisfied or expires, whichever occurs first. See Iowa Code §§ 626.2 ("executions may issue at any time before the judgment is barred by the statute of limitations"); 626.3 ("only one execution shall be in existence at the same time"); 642.14 (requiring ten-days' notice of garnishment proceedings); 642.19 ("docketing of the

(requiring ten-days' notice of garnishment proceedings); 642.19 ("docketing of the original case shall contain a statement of all the garnishments therein . . ." (emphasis added)); 642.22(1) (listing events which render notice of garnishment ineffective) (2003); see also Conklin v. Iowa Dist. Ct., 482 N.W.2d 444, 446 (Iowa 1992) (noting successive wage garnishments on defendant's employer); Lundy v. O'Connor, 246 Iowa 1231, 1233, 71 N.W.2d 589, 590 (1955) (same).

Levying a garnishee under an ineffective writ subjects a sheriff to potential liability to the garnishee, defendant, intervenors, and others if they can show they have been harmed thereby. See, e.g., Musser & Porter v. Maynard, et al., 55 Iowa 197, 198, 6 N.W. 55, 55 (1880) ("If by reason of the [sheriff's] delay [in returning a writ] the plaintiffs were in any manner prejudiced, or hindered, prevented, or delayed, in the collection of their judgment, it is probable an action would lie."). Liability for levying under these circumstances includes but is not limited to claims for trespass, conversion, wrongful attachment, abuse of process and execution based upon wrongful garnishment. Similar concerns arise if the sheriff fails to return a writ, or returns it without attempting to levy under it. See, e.g., Erb-Kidder Co. v. Levy, 262 Mich. 62, 66, 247 N.W. 107, 108 (1933) (garnishment writ attempting to attach funds accumulated under prior writs, without prosecuting the prior writs, found to be "a clear perversion of civil process").

You question whether Code section 626.27 and the court's analysis in Dunham v. Bentley, 103 Iowa 136, 72 N.W. 437 (1897), suggest that levying can continue under an expired writ until the underlying judgment is satisfied. For the following reasons, we conclude that section 626.27 - when examined in the light of other statutes and court rules relating to garnishment - creates no conflict with section 626.16 and does not warrant the conclusion you suggest. See Iowa Dep't of Transp. v. Soward, 650 N.W.2d 569, 571 (Iowa 2002) ("If more than one statute is relevant, we consider the statutes together and try to harmonize them"); Metier v. Cooper Transport Co., Inc., 378 N.W.2d 907, 912 (Iowa 1985) (statutes dealing with the same subject matter are considered together).

Section 626.27 provides that "[p]roceedings by garnishment on execution shall not be affected by its expiration or return." Iowa Code § 626.27 (2003). The phrase "its expiration or return" refers to the expiration or return of a writ. "Proceedings by garnishment on execution" is undefined. What the legislature intended by this phrase must consequently be determined by resorting to a dictionary definition of the word "proceeding." See, e.g., American Legion v. Cedar Rapids Bd. of Review, 646 N.W.2d 433, 437-38 (Iowa 2002) (courts may employ dictionary definitions in interpreting undefined statutory terms). Black's relevantly defines proceeding as "[t]he regular and orderly progression of a lawsuit, *including all acts and events between the time of commencement and the entry of judgment.*" Black's Law Dictionary 1221 (7th ed. 1999) (emphasis added). Applying this definition to section 626.27 by analogy, it becomes

execution" to include all post-writ acts and events involved in or attendant to the ultimate disbursement or release of funds properly garnished under the writ. A writ's expiration or return does not prohibit these acts and events from continuing to conclusion.

We believe this is a reasonable, practical interpretation best effectuating the purpose of section 626.27 and the remedial purposes of garnishment statutes as a whole. We also believe this interpretation of section 626.27 is fully consistent with subsection 3 of section 642.22, which, as set forth above, provides "[e]xpiration of the execution does not affect a garnishee's duties and liabilities respecting property already withheld pursuant to the garnishment." Iowa Code § 642.22(3) (2003). A contrary interpretation of section 626.27 under a more expansive definition of proceeding would eviscerate sections 626.16 and 642.22(1)(b), defeat the intended remedial purpose of garnishment statutes, and impose an unnecessary burden conflicting with the legislative goals sought to be accomplished by these statutes. See, e.g., Albrecht v. General Motors Corp., 648 N.W.2d 87, 95 (Iowa 2002) (courts give statutes construction effecting purposes behind statutes); IBP, Inc. v. Harker, 633 N.W.2d 322, 325 (Iowa 2001) (courts strive to give statutes reasonable interpretations which serve statutory goals); Hopping v. Hopping, 233 Iowa 993, 1006, 10 N.W.2d 87, 94 (1943) (garnishment statutes are remedial and are construed liberally).

Further, a close reading of the Dunham case, which you cite in your request letter, supports this interpretation of sections 626.27 and 642.22. In Dunham, the garnishor was awarded a money judgment against the defendant. Successive writs ultimately were issued, timely levied upon by the sheriff, and timely returned. Funds encumbered under each writ were turned over to the clerk. Competing claims to the funds gathered under the second writ then arose and were litigated. On appeal the second writ was declared void for lack of a sufficient endorsement, and the funds encumbered thereunder were returned to the garnishee. The court found the defective second writ no impediment to continuing "the garnishment proceedings" commenced under the first writ to determine the proper disposition of the funds gathered under that writ.

> Nor did the return of the first execution in any way affect the garnishment proceedings. The proceeds thereof [encumbered under the valid first writ] may be readily appropriated, under the order of the court, to the satisfaction of the judgment, without the use of the original execution. No question is made as to the sufficiency of the [e]ndorsement on the first execution, and any property held by [the garnishee] . . . must be accounted for thereunder.

Dunham, 103 Iowa at 103, 72 N.W at 438 (citations omitted) (emphasis added). The first

Dunham, 103 Iowa at 103, 72 N.W at 438 (citations omitted) (emphasis added). The first writ, issued August 19, 1893, was returned by the sheriff on October 4, 1893- approximately 46 days after it was issued. Return complied with Iowa Code section 3037 (1873), the functional equivalent of today's Iowa Code section 626.16:

> [e]very officer to whose hands an execution may legally come shall give a receipt therefore, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from such delivery.

Iowa Code § 3037 (1873) (emphasis added).

The Dunham court's statement that return of the first writ did not "affect the garnishment proceedings" was not a holding that levying could continue under an ineffective writ until the underlying judgment was satisfied. Rather, in context the observation meant that garnishment proceedings, instituted while the first writ was in place, were not stayed by the writ's subsequent return. In other words, distribution of the funds gathered under the writ, challenges to condemnation and distribution of the funds, and litigation regarding any other issues related to the encumbered funds can continue after a writ is returned. Legal process in the form of the writ and the authority to levy additional funds under it ends upon expiration or return of the writ, but the underlying garnishment proceedings based upon this legal process can continue to completion.

In summary, levying under a writ of execution for wage garnishment is possible until the earlier of (1) the writ's return, or (2) the seventy-day time frame prescribed by Iowa Code section 626.16 expires. Section 626.27 and the Dunham holding support this conclusion and do not, by implication, permit levying a garnishee under an expired or returned writ. Return of the writ does not prevent remaining acts or events involved in or attendant to disbursing or releasing the funds collected under that writ from proceeding. Assuming the garnishor's underlying judgment is not fully satisfied from the funds collected under an initial writ, wage garnishment may continue by levying under a new writ or a new series of writs upon proper notice until the judgment is satisfied or expires, whichever occurs first.

Sincerely,

Jeanie K. Vaudt by C

Jeanie K. Vaudt
Assistant Attorney General

COUNTY AND COUNTY OFFICERS; INCOMPATIBILITY OF OFFICES; CONFLICT OF INTEREST: County board of supervisors serving on governing board of 28E entity. Iowa Code § 331.216 (2003). The common law doctrine of incompatible offices is not applicable to dual service by county supervisors as self-appointed board directors of a city/county solid waste agency formed pursuant to Iowa Code chapter 28E. Iowa Code section 331.216 authorizes such dual service by county supervisors in self-appointed positions. We cannot determine in an opinion whether an impermissible conflict of interest has been created by participation of supervisors in zoning decisions affecting a city/county solid waste agency which they also serve as board members. (Smith to Lundby, State Senator, and Dandekar, State Representative, 11/24/04) #04-11-1(L)

November 24, 2004

The Honorable Mary Lundby
State Senator
P. O. Box 648
Marion, Iowa 52302

The Honorable Swati Dandekar
State Representative
2731 – 28th Avenue
Marion, Iowa 52302

Dear Senator Lundby and Representative Dandekar:

You have jointly requested an opinion from this office addressing whether the common law doctrine of incompatibility of offices is violated when two county supervisors serve as self-appointed members of the board of directors of a city/county solid waste agency. You have also asked whether the supervisors serving in such dual roles have an impermissible conflict of interest when participating, as county supervisors, in consideration of solid waste agency requests for zoning changes needed to enable expansion of its landfill.

I. Supervisors' dual service in appointive positions on a city/county solid waste agency board is authorized by Iowa Code section 331.216.

We do not determine whether the dual positions of county supervisor and city/county solid waste agency board member would be incompatible offices under common law precepts, as applicability of the common law of incompatible offices has been abrogated by a statute authorizing the type of dual service in question. Iowa Code § 331.216 (2003). Your opinion request acknowledges applicability of section 331.216. Our analysis assumes that the position of director on the board of the city/county solid waste agency is a public office. We need not determine whether that assumption is correct in light of the relationship between the common law doctrine of incompatibility of offices and section 331.216, which states:

> Unless otherwise provided by state statute, a supervisor may serve as a member of any appointive board, commission, or committee of this state, a political subdivision of this state, or a nonprofit corporation or agency receiving county funds.

Iowa Code § 331.216 (2003).

We have previously considered the relationship between section 331.216, the common law doctrines of incompatibility of public offices and conflict of interest. We have opined that enactment of section 331.216 effectively overruled the common law of incompatibility of public offices with regard to members of boards of supervisors serving in other appointive positions. We concluded that after enactment of section 331.216 county supervisors could appoint themselves as members of a county judicial nominating commission. 1986 Iowa Op. Att'y Gen. 15 (#85-3-5(L)). Similarly, we concluded that after enactment of section 331.216 county supervisors could appoint one of their own members to serve simultaneously on the county's conservation board without violating the doctrine of incompatible offices. Iowa Op. Att'y Gen. #01-4-4 (L) (2001 WL 34636269).

Thus, it is clear that after enactment of Iowa Code section 331.216, the common law doctrine of incompatibility of offices is not applicable to the appointment by a board of supervisors of two of its members to serve simultaneously on a city/county solid waste agency.

II. Where dual service is authorized it is likely that factors in addition to the dual service may be required to establish an impermissible conflict of interest.

Deputy Attorney General Julie F. Pottorff advised you in a letter dated August 27, 2004, that an opinion of this office could not resolve your questions concerning alleged conflicts of interest as such questions are dependent on facts that we are unable to determine through the opinion process. We referred you to the Linn County Attorney. Although we cannot answer your conflict of interest questions, we can identify principles relevant to resolution of the matter.[1]

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[1] Immediately prior to the release of this opinion we learned that a lawsuit has been filed by the City of Marion against the Linn County Board of Supervisors which alleges that the supervisors have a conflict of interest that disqualifies them from matters involving the city/county solid waste agency. We do not issue opinions on matters pending in litigation, because issuance of an opinion "could interfere with the authority" of the court to resolve the matter. *See* 61 Iowa Admin. Code 1.5(3)(a). Accordingly, in this circumstance, we leave to the court the application of conflict of interest principles. It is unlikely that our identification of the relevant principles in a conflict of interest analysis -- standing alone -- will interfere with the authority of the court to adjudicate the pending litigation.

Often conflicts of interest by government officials can be avoided by recusal. *See* Iowa Op. Att'y. Gen. #98-5-3 (1998 WL 289857). But, where two of the three-member board of county supervisors serve on the solid waste agency, a conflict of interest cannot easily be avoided by recusal of these officials from matters requiring action by the board of supervisors. Recusal under these circumstances would leave only one board member to make decisions in the matter.

The relevant authorities suggest that factors in addition to dual service may be required to establish a conflict of interest. The leading Iowa case on public officials' conflicts of interest is *Wilson v. Iowa City*, 165 N.W.2d 813 (Iowa 1969). The court affirmed a trial court judgment voiding city council actions on an urban renewal project because several of the participating council members had various conflicts of interest. One council member was determined to have a conflict of interest arising solely from his concurrent employment by the University of Iowa. The court noted that it was not necessary for a private financial advantage to create a prohibited conflict between the public duty of a council member and private employment. It was significant to the court that the University had "unusual and direct" interest in the urban renewal project and that the council member held a "position of influence as community development director" for the University. *Id.* 165 N.W. 2d at 822-23.

One year after the *Wilson* decision the Iowa Supreme Court rejected a claim that dual service by elected local officials as directors of a city/county solid waste agency constituted an unacceptable conflict of interest:

> Appellants further contend that the agreement creating the Agency is contrary to public policy to the extent that it permits elected officials of the member municipalities to serve on the governing board of the Agency. They argue that the integrity of representative government demands that the administrative officials should be able to exercise their judgment free from the objectionable pressure of conflicting interests. We agree with that proposition, but do not believe it appears here that these members of the Agency board are in such a position. It is conceded that there is nothing to indicate a personal pecuniary interest of those representatives is involved such as appears in *Wilson*.

Goreham v. Des Moines Metropolitan Area Solid Waste Agency, 179 N.W.2d 449, 462 (Iowa 1970) (citation omitted).

Analyzing *Wilson* and *Goreham*, we have commented that the relevant conflict can be more accurately described as a conflict of duties. And we have observed that in *Goreham* the court appeared to emphasize the fact that a public official serving on two local public boards with somewhat differing interests or concerns does not necessarily benefit that public official personally. 1982 Iowa Op. Att'y Gen 156 (#81-6-12(L)) (legislator's dual service on local transit agency board does not constitute prohibited conflict of interest). Similarly, we have opined that a prohibited conflict of interest does not result from city council members sitting as fence viewers in a dispute between the city and another landowner. 1982 Iowa Op. Att'y Gen. 207 (#81-8-15(L)). More recently, we contrasted *Wilson* and *Goreham,* noting that a government official who represents a governmental body on a separate 28E entity's governing board does not have an impermissible conflict of interest, at least absent litigation between the two entities. Iowa Op. Att'y Gen #98-1-3 (1998 WL 213719). Accordingly, it appears that factors in addition to dual service may be required to establish a conflict of interest.

Conclusion

In summary, the common law doctrine of incompatible offices is not applicable to dual service by county supervisors as self-appointed board directors for a city/county solid waste agency formed pursuant to Iowa Code chapter 28E. Iowa Code section 331.216 authorizes dual service by county supervisors in self-appointed positions. We cannot determine in an opinion whether an impermissible conflict of interest has been created by participation of supervisors in zoning decisions affecting a city/county solid waste agency on which they also serve as board members. In light of *Goreham* and section 331.216, we believe a court would likely consider whether there are additional factors which impact dual service by the county supervisors to establish a conflict of interest.

Sincerely,

Michael H. Smith
Assistant Attorney General