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A handbook for county  
supervisors

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TITLE

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*A Handbook for*

COUNTY  
SUPERVISORS

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## Chapter 1

# The Office of Supervisor

THE BASIC STRUCTURE of county government today is essentially the same as that established in 1870 when the Thirteenth General Assembly instituted the commission system as part of a reorganization program for county government. The name, "board of supervisors," which the Assembly assigned to this commission was, however, a carry-over from an earlier form of county government.

The functions of the board of supervisors are varied and its authority embraces practically every aspect of county government. Although these functions are primarily administrative in nature, the board exercises powers characteristic of each of the three branches of government: executive, legislative, and judicial. For example, the board fills vacancies in county offices by appointing successors, it fixes rules relating to the use of county buildings and grounds, and it determines the reasonableness of claims against the county. The board, among other things, acts as a sort of general business manager for county government, plays a major role in matters of county taxation and finance, and is the governmental authority responsible for the construction and maintenance of the county road system. In some areas the duties of the board are nominal, while in others they are extensive.

### *Qualifications*

As a general rule, if a person is qualified to vote in the county, he is eligible for election to the board of supervisors. (Sec. 333.1)<sup>1</sup> The Code of Iowa, however, places limitations on this general rule by declaring that the board's membership shall contain no more than one resident of any one township at any one time.<sup>2</sup> (Sec. 39.19) A further narrow limitation based

1. Unless otherwise indicated section references are to the Code of Iowa, 1962.
2. Three exceptions to this limitation exist: (1) If a new member is elected to succeed an incumbent, they both may be from the same township. (2) In counties with five or seven member boards, two members may be from the same township if the township contains a city with a population of at least 35,000. (Sec. 39.19) (3) When a county that contains a special charter city with more than 75,000 population reduces the membership of the board of supervisors, two supervisors may be residents of the same township in which the city is located. (Sec. 331.7) (See p. 5)



on residence is imposed: counties that have five-member boards and a population exceeding 50,000 and that also have two places at which the state district court is held, may have no more than three members from either area served by one of the court's meeting places. (Sec. 39.20)

#### *Term of Office*

Generally, the term of office for elected members of the board is three years. (Sec. 331.1) While a member appointed to fill a vacancy on the board serves only until a successor qualifies for office, a member elected to fill a vacancy holds his office for the remainder of the unexpired term. (Iowa Constitution, Art. XI, Sec. 6; Code secs. 69.11-.12)

#### *Membership of the Board*

The board of supervisors consists of three members unless the size is increased to five or seven members by vote of the electors of the county. The members are elected "at large;" that is, they represent no particular part of the county unless the county has been divided into supervisor districts. (Sec. 331.8) The board of supervisors may divide its county by townships into supervisor districts corresponding to the number of supervisors in the county. If petitioned by voters equal in number to ten per cent of the votes cast for governor in the last general election, the county *must* be divided into supervisor districts. A supervisor must maintain his residence in the district he was elected to represent. (Op. Atty. Gen. 1911-12, p. 739) The board may abolish the districts and provide for electing supervisors at large, except that when the districting was accomplished by petition, the districts cannot be abolished except by petition from one-tenth of the qualified electors of the county and submission of the question to the county at the next general election. (Sec. 331.8)

*Membership increased*—At any regular election the proposition to increase the membership of the board to either five or seven members may be submitted. The board of supervisors may submit the question to the voters of its own volition, but if petitioned by 10 per cent of the qualified voters of the county, it is required to do so. (Sec. 331.2) If the majority of votes cast are for the proposition, the additional supervisors are elected at the next general election, one-half for two-year terms and one-half for three-year terms. (Sec. 331.2)

*Membership decreased*—The number of supervisors in any county may be decreased from five or seven to three or five. If petitioned by 10 per cent of the county's eligible voters, the supervisors are required to submit the question at a regular election. A majority of the votes cast must favor the measure to make the decrease effective. (Sec. 331.3; Op. Atty. Gen. 1910, p. 247; Op. Atty. Gen. 1932, p. 194; Op. Atty. Gen. 1934, p. 690)



In determining whether the requisite number of qualified voters have signed a petition to reduce the membership of the board, the poll books of the previous general election should be consulted. The total number of votes cast for all candidates for governor is the basis for determining whether the required percentage of qualified voters have signed the petition. (Op. Atty. Gen. 1940, p. 233; Op. Atty. Gen. 1932, p. 271) Special provisions of the Code apply to counties that contain commission form cities with populations in excess of 75,000. (Secs. 331.4-5)

Whenever the voters approve a decrease in board membership, the reduction does not take place until the second business day in January following the next general election, at which time the terms of all members of the board expire. (Sec. 331.6) At the general election following the election in which the reduction has been approved, a new board of supervisors is elected. If the membership has been decreased from seven to five, two members are elected for two-year terms, two for three years, and one for four years. If the membership has been reduced to three, one person is elected for two years, one for three years, and one for four years. (Sec. 331.7)

In counties of more than 80,000 population, if the membership is reduced to five members, the members must be elected at large, but not more than one supervisor may be a resident of any one township. However, in the case of a county which contains a special charter city of more than 75,000 population, two supervisors may be residents of the township in which the city is located. (Sec. 331.7)

### *Qualifying for Office*

Whether appointed or elected, a supervisor must "qualify" before entering upon the duties of office. (Sec. 63.1) "Qualifying" consists of subscribing to an oath of office (Iowa Constitution, Art. XI, Sec. 5; Code sec. 63.10) and posting a bond of not less than \$5,000, which must be approved by a judge or clerk of the district court.<sup>3</sup> (Secs. 64.9, 64.19(3)) In general, a supervisor must qualify by noon of the second working day of January in the first year of the term for which he is elected. (Sec. 63.1) Supervisors who are appointed or elected to fill vacancies must qualify within ten days following their election or appointment, but an officer holding over in office must qualify within ten days after the failure to elect or appoint a successor or the successor's failure to qualify. (Sec. 63.8) However, sickness, inclement weather, unavoidable absence, or casualty will excuse an officer and permit him ten extra days in which to qualify. (Sec. 63.3)

3. If the supervisor chooses to furnish a bond with some association or corporation acting as surety, the reasonable cost of the bond is paid by the county. (Sec. 64.11)



### Compensation

Subject to certain exceptions, each member of the board of supervisors receives a per diem allowance for each day the board is actually in session and for each day employed in committee service. In addition to this per diem, each supervisor is allowed mileage for every mile traveled in going to and from regular, special, and adjourned sessions, and in going to and from the place where committee work is performed.<sup>4</sup> However, if the board is in continuous session, mileage is allowed for only one trip to and from the session. (Sec. 331.22; Op. Atty. Gen. 1932, p. 197) It should also be noted that members of the board of supervisors are ineligible to receive transportation expense if they are transported by another person free of charge, or if they are transported by another public officer who is entitled to mileage. (Sec. 79.11)

The Code limits the number of session days for which a supervisor may be paid. The limits are fixed according to the county population as follows: (Sec. 331.23)

COUNTY POPULATION	MAXIMUM DAYS
10,000 or less	30
Over 10,000, less than 23,000	45
Over 23,000, less than 40,000	55
Over 40,000, less than 60,000	65
Over 60,000, less than 80,000	75
Over 80,000, less than 90,000	90
Over 90,000	100

It should be noted that these limits in no way fix the supervisor's maximum salary because no limits are placed on the number of days of committee work for which the supervisor may be paid.

The exceptions to the per diem method of payment require annual salaries in certain situations:<sup>5</sup> (Sec. 331.22)

(1) If the county has a population exceeding 40,000 but not more than 60,000, and its board of supervisors does not have more than five members, each supervisor receives an annual salary of \$4,400.

(2) If the county's population is greater than 60,000 but less than 100,000 and the board does not have more than five members, \$4,800 is the annual salary. However, if such a county has no more than three supervisors, the salary is \$5,800.

(3) If its population exceeds 100,000, any county with a board of no more than three members pays each supervisor \$6,000 per year.

4. The current per diem pay is \$14 and the travel allowance seven cents per mile. (Sec. 331.22)

5. The fixed salaries given here are those established by the 59th General Assembly in 1961. They may be changed by succeeding General Assemblies.



(4) Counties with a population greater than 150,000 pay their supervisors annual salaries of \$6,600 each.

The salary represents full payment for all services by a member except that he is entitled to the statutory mileage allowance for travel in the performance of his official duties.

*Drainage session pay*—The maximum number of compensable days of session service per year as fixed by Code section 331.23 does not include time devoted by the board to consideration of drainage matters. The members of the board are allowed up to fifty additional days each year, at \$14 per day, for attending to drainage and ditch matters (except highway drainage). However, if the board, on the same day, acts both on county and drainage matters, the members are paid only for one day, with the board deciding whether payment is to be made from the general fund or the drainage fund. (Sec. 331.24)

### *Vacancies*

A vacancy on the board of supervisors may occur in several ways. Death or resignation would seem the most obvious but a vacancy also occurs if the incumbent does not hold over and a successor is not elected, or, if elected, does not "qualify." The same result occurs if the officer holds over but fails to "qualify." If a supervisor represents the county at large, or if he represents a district within the county, his change of residence to a different county, or to a different district, automatically creates a vacancy. The conviction of the incumbent of an infamous crime or of any public offense involving a violation of his oath of office creates a vacancy as does the "removal" of a supervisor from office. In addition, a vacancy occurs if a supervisor forfeits his office or if his office is declared vacant by a competent tribunal. (Sec. 69.2)

If a supervisor is absent from the county for six successive months, this is deemed to be a resignation of the office, and the board, at its next meeting, is required to declare the seat vacant. (Sec. 331.12) Vacation of the office in this manner, however, does not render such former member of the board ineligible for reappointment. (Op. Atty. Gen. 1944, p. 108)

In addition to the statutory requirements, the common law declares that the office of supervisor is vacant if the incumbent assumes the duties of an office which is incompatible with his duties as supervisor. (State v. Anderson, 155 Iowa 271, 136 N.W. 128, 1912) Incompatibility usually exists when the duties of the two offices would cause conflicts of interest in the individual officer.

A vacancy on the board of supervisors is filled either by appointment or election. If the vacancy occurs fifty days prior to a general election it must be filled at this election unless it has already been filled at a special



election called for this purpose. (Sec. 69.13) Persons elected to fill vacancies, either at a special or general election, hold office for the unexpired portion of the term and until a successor is elected and qualified. (Sec. 69.12)

If the vacancy is filled by appointment, the appointment is made by the clerk of the district court, the auditor, and the recorder. (Sec. 69.8(5)) The appointment must be in writing and filed in the office where the oath of office is filed. (Sec. 69.10) Appointees serve until a successor qualifies for office. (Sec. 69.11)

### *Removal*

"Removal," as used in the Iowa Code, is a word of special legal meaning. It has been mentioned as one of the ways in which a vacancy in the board's membership is created. A description of the procedure for removal is not necessary because it involves court action and does not require action of any kind by the board. The details of the procedure are described in Chapter 66 of the Code.

The grounds for removal and the results of removal are of importance to the individual supervisor: willful or habitual neglect or refusal to perform the duties of his office; willful misconduct or maladministration in office; intoxication, or being convicted of intoxication; corruption; extortion; or conviction of a felony (any crime which could be punished by a penitentiary sentence). (Sec. 66.1) The results of removal are vacancy of office and a prohibition for one year following removal against appointing the person who has been removed to fill a vacancy. (Sec. 69.9)

### *Organization*

At its first meeting on the second business day in January, the board of supervisors chooses one of its members as chairman and he presides at all meetings during the year. (Sec. 331.13) While the selection of a chairman should precede the transaction of any business, a delay in electing a chairman does not impair the validity of anything done by the board. (*Beagle v. Roberts*, 156 Iowa 575, 137 N.W. 1006, 1912)

Although a chairman is the only officer required by the board, section 333.1 of the Code in effect makes the county auditor the clerk and secretary of the board of supervisors. (*Thompson v. Chambers*, 229 Iowa 1265, 1270, 296 N.W. 380, 383, 1941) The board is authorized to appoint a temporary chairman from its membership if the chairman is absent, and a clerk in the absence of the auditor and his deputy. (Sec. 332.3(1))

Standing committees also are appointed at the first meeting of the year. While there is no standard list of committees for each county, among the most common are those on highways, bridges, aid to the poor, county home, and public grounds and buildings. Sometimes the work of the board is



divided among the supervisors according to districts. It should be remembered, however, that action of individual members cannot bind the board.

### *Meetings*

The board of supervisors is required to hold five meetings each year: on the second business day in January, on the first Monday in April, and on the second Monday in June, September, and November. In addition, special meetings provided by law must be called. (Sec. 331.15) All meetings of the board of supervisors must be at the court house in the county seat (Op. Atty. Gen. 1938, p. 134), but committee meetings are not subject to this requirement. (*State v. Naumann*, 213 Iowa 418, 239 N.W. 93, 1931)

The Code of Iowa prescribes a quorum to be a majority of the board of supervisors. (Sec. 331.14) If a quorum fails to appear at any regular or adjourned session, the county auditor must adjourn such meeting from day to day until a quorum is present. (Sec. 331.15)

Under the provisions of Code section 332.3(2) the board is empowered to prescribe rules consistent with law that are necessary for the board's own government, for the transaction of its business, and for preserving order.

*Special sessions*—Special meetings of the board, which should not be confused with adjourned regular sessions (Op. Atty. Gen. 1938, p. 134), may be called by the chairman or by a majority of the supervisors by making a written request to the county auditor. The request for a special meeting must indicate the date of the proposed meeting and specify its purpose. (Sec. 331.16) A general limitation is that the board in special session may accomplish any act not required by law to be done at a regular session, but the law also provides that the board in special session can transact only the business that has been stated in the request and the notice.<sup>6</sup>

*Number required to act on business*—The Iowa Code provides that a majority of the whole board of supervisors must vote in favor of the action in order to levy a tax, appropriate money for the construction of highways and bridges, contract for the erection of any public building, designate a site for a county building, buy or sell real estate, effect a settlement with any county officer, or make a change in the boundaries of any township. (Sec. 331.18)

Apart from the above specific exceptions, the supervisors, if a quorum is present, can transact business legally in the name of the board by majority action of those members present at the meeting. In counties with three supervisors, however, if only two members are present at the meeting, both

6. The auditor, upon receiving the request for a special meeting, must give all members at least six days' notice of the time, place, and purposes of the meeting. (Sec. 331.17)



must agree in order to bind the board. If there is a division, the question must be tabled until the full board is present. (Sec. 331.14)

*Legal Assistance*

The county attorney is required by law to furnish written advice and opinions, without compensation, to the board of supervisors upon request by the board. Requests of the board must be limited to matters in which the state or county is interested; these include questions regarding the duties of the board and its members. (Sec. 336.2(7))



## Chapter 2

# Budget Making

THE BOARD OF SUPERVISORS is responsible for both preparation and adoption of the county budget and has certain duties in regard to the budgets of other units of government within the county. Acting as a "certifying board," the supervisors prepare the county budget and determine the tax requirements. As a "levying board," the supervisors review this proposed budget and fix the tax levy.

When considering the budgets of cities, towns, school districts, or other units of government, the board of supervisors acts only as a "levying board" because each of these units is responsible for the preparation of its own budget estimates. The following discussion on budget preparation should be considered only in relation to the county budget when determining the functions of the board of supervisors. However, since this procedure is used by both the board of supervisors and the other units of government in preparing estimates, the discussion also explains how these units prepare the estimates that are certified to the board of supervisors.

In addition to preparing the county budget and making the necessary levies for the county and lesser governmental units, the board of supervisors further controls the county finances by making the appropriations for county governmental activities. The appropriation procedure is similar to that used in preparing the budget, thus providing a double check on the county's finances.

### *Budgets and Levies for Local Governments*

The tax needs of the other units of government within the county are certified to the board of supervisors. The board functions only as a levying board in such cases and enters the taxes that are to be levied for each unit of government on the current assessment and tax roll. (Secs. 24.12, .19) One copy of the tax rates must be certified to the state appeal board by the board of supervisors. (Sec. 24.19) It is advisable for the board of supervisors also to ascertain whether verified proof of publication of the notices of hearings held by certifying boards is on file with the county auditor. If it is not, the tax levied is void. (Sec. 24.10)



### *Preparing the Annual County Budget*

The preparation of the county budget is a three-step process: (1) information from the various county offices and departments is collected, (2) an estimate (tentative budget) is prepared, (3) hearings are held and a final budget is adopted.

*Collecting information*—On or before July 1 of each year each officer or board in charge of a county office or department must prepare and submit to the county auditor an estimate of the actual expenditures of the office or department during the present calendar year, a statement of the various expenditures by the office or department that should be provided for in the budget for the forthcoming calendar year, an estimate of the revenues (except property tax) that the office or department will collect during the present year, and a similar estimate of revenues to be collected in the forthcoming calendar year. These estimates and statements must be itemized in the same manner as the various expenditures and revenues are itemized on the records kept by the county auditor. (Sec. 24.25(1))

No later than the tenth of July, the auditor will have compiled all this information from the various offices and departments and will have added to the compilation an itemized listing of expenditures and revenues for the two years preceding the present calendar year and an estimate of the cash balances that will be in each county fund at the end of the year. On or before the tenth of July, the county auditor submits all this information to the board of supervisors. (Sec. 24.25(2))

The board of supervisors has the authority to consult with any of the county officers or boards concerning his or its budget estimates and requests and the board may adjust any such budget request as it sees fit. (Sec. 24.25(3))

*Preparing the budget estimate*—In accord with the Local Budget Law (Chapter 24 of Code), the board of supervisors<sup>1</sup> may neither certify nor levy any tax on taxable property during the fiscal year unless certain estimates are prepared, filed, and considered by the board. (Sec. 24.3) These estimates must contain each fund's<sup>2</sup> estimated receipts from sources other than taxation, the proposed amount to be raised by taxation for each fund, a list of the proposed expenditures from each fund (which must be itemized to show the amount to be spent for each general purpose during the next

1. The Local Budget Law uses the word "municipality" which here includes board of supervisors. (Sec. 24.2(1); Chicago, R.I. & P. Ry. Co. v. Streepy, 211 Iowa 1334, 236 N.W. 24, 1931)

2. Counties and lesser units of government maintain "funds" for the various activities in which they engage or which they support. For example, a county has a general fund, a secondary road fund, a poor fund, and many others, the titles of which indicate their purpose. (See Chapter 3 for a description of funds.)



fiscal year), and a comparison of the proposed expenditures with the actual expenditures for similar purposes for the two preceding years. (Sec. 24.3)

The estimates are required to be itemized and classified in detail for each class of proposed expenditures; the state appeal board will provide more precise instructions regarding the manner and form in which the estimates are to be prepared.<sup>3</sup> (Sec. 24.5) In preparing the estimate, the difference between the estimated total expenditures and the non-tax revenue is the amount to be raised by taxation for the coming fiscal year. A final requirement for the estimate is that it must show the number of dollars of tax per one thousand dollars of taxable property. This is determined by dividing the total tax revenue needs into the total assessed value of all taxable property in the county. (Sec. 24.8)

*Emergency fund*—The authority preparing the estimate may include a provision for an emergency fund for which a levy not in excess of one mill may be made. (Sec. 24.6) (See page 27 for procedure in making such a levy, and page 35 for the procedure to be followed to make a transfer of funds from the emergency fund to other funds.)

*Supplemental estimates*—Supplemental estimates for particular funds for the purpose of tax levies for future years may be prepared and considered with the principal estimate for the next fiscal year if such action is legally authorized.<sup>4</sup> (Sec. 24.7)

*Amendment of estimates*—Amendments to budget estimates, even after their certification, may be made to increase the estimates if the need to do so arises. The need may be to expend unappropriated (and therefore unexpended) cash balances on hand at the end of the preceding fiscal year which have not been anticipated by being included in the proposed budget. Also, sums of money derived from sources other than taxation may be entered into the certified budget by amendment if they have not been anticipated and appropriated in the budget which is to be amended. These amendments are made by filing and giving notice in the same manner required for the adoption of the original estimates as a budget. (Sec. 24.9)

#### *Procedure for Adopting the Budget*

*Notice*—At least twenty days before the fifteenth day of August each year, the budget estimate must be filed with the county auditor who is the certifying board's secretary. (Secs. 24.9, .17) Then a date should be fixed by the board for a hearing on the estimates and notice should be published

3. The state appeal board, composed of the state comptroller, the auditor of state, and the state treasurer, has prepared Iowa Official Form No. 634, revised April, 1939, which illustrates the itemization required by the state appeal board.

4. For example, future estimates for the retirement of debt bonds are permissible, since section 346.11 prescribes the rate of repayment that must be achieved.



with the estimate at least ten days prior to the hearing. The notice should state that a hearing will be held, the date of the hearing, and the place it will be held. (Sec. 24.9)

*Hearing*—The next step in the procedure is for the board of supervisors to meet on the date and at the place stated in the notice and hold a hearing on the proposed budget. Any person who would be subject to the tax levy is entitled to be heard. (Sec. 24.11) At the conclusion of the hearing, the board of supervisors, as the certifying board, must render its decision, which is entered on its records in the manner and form prescribed by the state appeal board.<sup>5</sup> This decision then must be certified to the levying board, which enters the necessary tax levies on the current assessment and tax rolls. (Sec. 24.12)

*Effect of the adoption*—It is a general rule that no greater tax than that fixed on the record may be levied in the fiscal year and no greater expenditure may be made for any specific purpose than the sum fixed in the budget and the appropriations made in pursuance of the budget. (Sec. 24.14) However, tax levies approved by a vote of the people are excepted from the requirements that they cannot exceed the limits fixed in the record approved by the board. (Secs. 24.15, .20)

*Appeals*—If a taxpayer's appeal is taken to the state appeal board, that board's action will be final. The *levying* board must levy in accordance with the decision rendered by the appeal board and the *certifying* board must correct its records to agree with the appeal board's decision upon receiving the result *via* the county auditor. The appeal board renders all of its decisions on appeals concerning budgets by October 15. (Sec. 24.32)

A taxpayer's appeal to the state appeal board is initiated by a budget protest. The procedure does not affect the board of supervisors except that the chairman receives notice of the hearing before a deputy of the appeal board and before the board itself, either as the certifying or levying board. If the county's budget is appealed, the board bears the burden of proof to establish that any item that is a new expenditure or an increase over the previous year is necessary, reasonable, and in the interests of the public welfare. (Secs. 24.27, .28)

#### *Preparing the County Road Budget*

No later than December 1 of each year the board of supervisors, with the assistance of the county engineer, must adopt and submit the county secondary road budget to the state highway commission.

The budget must consist of an estimate of revenues to be raised by property taxes for secondary road purposes, an estimate of the money to be

5. See Iowa Official Form No. 638, revised.



received from the state road use tax fund, estimates of revenues for road purposes to be received from all other sources, the proposed expenditures from each road fund during the next calendar year (classified and itemized as the highway commission prescribes), the actual expenditures for the last two years and the estimated expenditures for the current year, and the cash balance of each road fund at the end of the last year and an estimate of the balance at the end of the current year and at the end of the next calendar year. (Sec. 309.93)

The highway commission has the power to approve or disapprove the budget adopted by the board of supervisors. If it disapproves the budget, it must list the items not approved with its reasons for disapproval and return the budget to the board of supervisors. (Sec. 309.94) Within twenty days of receipt of the disapproved budget and highway commission report, the board of supervisors must publish notice of a public hearing that must be held within ten days of the publication. At this public hearing the highway commission's recommendations must be considered and the board of supervisors must amend or adopt the original budget. (Sec. 309.96) If the budget is revised, it may be submitted to the highway commission for its approval. (Sec. 309.94)

A secondary road budget, after final adoption by the board of supervisors, is binding in all cases except when an emergency arises. In such a case the board of supervisors may amend the budget and submit the amendment to the highway commission for approval. (Sec. 309.95) If not approved, the same hearing procedure is to be used as in the case of a disapproved original budget. (Sec. 309.95) The county may elect to operate under the proposed budget even though it has not been approved. Lack of approval of the budget by the highway commission apparently has no other effect than to cause the budget to be reconsidered by the board of supervisors after having a public hearing on the disapproved items. (Sec. 309.96(2))

However, no county may spend money from its secondary road fund in excess of the amount fixed in the budget adopted by the board of supervisors, whether such budget is approved or disapproved by the highway commission. In order to permit any county to adjust its secondary road income to changed needs that may occur after the budget has been approved by the highway commission, the expenditures for any individual item within the budget may exceed by not more than 10 per cent the amount originally budgeted for that item without the necessity of highway commission approval or the submission of an amended budget. This can be done only if other individual items are less than budgeted so that the total expenditures from the secondary road fund do not exceed the total secondary road budget. (Sec. 309.96(1))



## Chapter 3

# County Tax Levies

TAX LEVIES MADE by the board of supervisors for the operation of county government are of three varieties: those that are required by state law, those that may be authorized by vote of the people, and those that are discretionary with the board of supervisors.

### *Mandatory Tax Levies*

*General county fund*—At its September session, the board must make its annual levy of taxes for the general county fund. The board may use its discretion in fixing the amount of the levy as long as it does not exceed the limits fixed by law: (Sec. 444.9)

ASSESSED VALUATION OF ALL PROPERTY IN THE COUNTY	MAXIMUM LEVY
Less than \$16,000,000	3½ mills
\$16,000,000 but less than \$26,000,000	3 mills
\$26,000,000 but less than \$32,000,000	2½ mills
\$32,000,000 or more	2 mills

If the general county fund levy fails to provide adequate funds, the board is authorized to make an additional levy of not more than two mills. The making of this "emergency" levy is permissible during the years 1961 and 1962 only, and before it is made, a showing of necessity for the additional levy must be made to the state comptroller and approved in writing by him. Moreover, in counties that have an assessed valuation of less than \$26,000,000, the total levy (including the emergency levy) cannot exceed by more than 4 per cent the greater of the two preceding total annual levies for all county purposes. In counties with an assessed valuation of \$26,000,000 or more, the total levy cannot exceed the greater of the two preceding total annual levies by more than 2 per cent. It should be noted, however, that in determining limitations for this emergency levy any tax levied under the provisions of Chapter 347A should *not* be included in the computations. (Sec. 444.9)

*State institution fund*—Each year it is mandatory that the board of supervisors make an estimate of the amount of money that will be needed during



the coming year to pay for the expenses of commitment, transportation, and maintenance of county patients cared for in the various state (and in some cases, county) institutions.<sup>1</sup> These institutions include the mental health institutes at Mount Pleasant, Independence, Cherokee, and Clarinda; the state sanatorium for the treatment of tuberculosis at Oakdale, or any similar tuberculosis institution established and maintained by any county under the provisions of Chapter 254; the Glenwood state school; the Woodward state hospital and school; the Iowa juvenile home at Toledo; the Iowa Annie Wittenmyer Home at Davenport; the Iowa braille and sight-saving school at Vinton; the school for the deaf at Council Bluffs; and the state psychopathic hospital at Iowa City. The board then must make a levy sufficient to meet these estimated expenses. If the levy is not adequate, the deficiency is made up by transfers to the state institution fund from the general county fund.<sup>2</sup> Cost of the care of patients returned to a county from a state mental health institute under the provisions of section 226.32 may be paid from this fund. (Sec. 444.12)

*County fund for mental health*—A tax not exceeding three-eighths of a mill must be levied annually by the board to provide money for the county fund for mental health. This fund is used to pay for the support and treatment of mentally ill persons being cared for in the county home or in any place other than a *state* institution. This fund also may be used to provide additions and improvements to the county home needed to provide proper care for the mental patients committed to the home. In addition, the fund may be used to provide psychiatric examination and treatment of county patients. (Sec. 230.24) (See page 30)

*School fund*—The board must levy the taxes necessary to raise the money certified to it by the proper authorities of the various school districts in the county. However, in these cases the board must levy taxes only for funds authorized by law and in no case may the board levy an amount in excess of the amount authorized by law.<sup>3</sup> When a certified estimate calls for such

1. Counties, for instance, can provide their own institutions for the care of tuberculosis patients.

2. See pages 35-36 for a discussion of transfer of funds.

3. School corporations with 1,200 or more pupils are authorized to raise no more than \$140 per pupil; those with less than 1,200 but more than 250 pupils may raise no more than \$160 per pupil; and all others may raise \$175 per pupil except those corporations not maintaining an *approved* high school may raise \$200 per pupil plus those sums needed to pay the tuition of pupils attending high school (as long as they comply with Chapter 24 of the Code). (Sec. 298.1) An emergency increase not exceeding 35 per cent of the sums authorized above is permitted if authorized by the state comptroller, and more than 35 per cent is legal if the comptroller has authorized this excess upon the recommendation of the county board of education or the board of supervisors. (Sec. 298.2) Additional limited sums are authorized for transporting pupils to and from schools and for the purchase of textbooks to be sold, rented, or



an illegal excess, the board should levy only up to the maximum legal amount. (Sec. 298.8)

*County board of education fund*—The board of supervisors must levy the tax that the county board of education certifies to it. The proceeds of this levy must be paid into the county board of education fund. (Sec. 273.13 (10))

*Bovine tuberculosis eradication fund*—The board of supervisors is required by law to levy an annual tax on the assessed value of all taxable property in the county to provide funds for the county tuberculosis eradication fund. This fund is used to pay indemnities and other expenses involved in the eradication of tuberculosis among cattle. However, if for any year the state secretary of agriculture certifies to the county auditor that the balance in the county fund plus the state and federal funds available will be adequate to pay the expenses of the eradication work for the year, the board must not impose a levy for the fund for that year. If no certification is made by the secretary of agriculture, the board must levy a tax to cover costs that exceed the total of the federal and state aid available for the year, but in no case may the levy exceed three-quarters of a mill. (Secs. 165.18, .21, .34)

*Bang's disease eradication fund*—A tax also must be levied annually to supply money for the Bang's disease eradication fund. The comments made concerning the bovine tuberculosis fund apply to this fund also except that the levy for the Bang's disease eradication fund may not exceed one-half mill in any one year. (Secs. 164.21, .24)

*Aid to dependent children*—The amount to be expended annually for aid to dependent children is determined by the county board of social welfare and approved by the state department of social welfare. It is the duty of the board of supervisors to levy taxes for and make appropriations from the poor fund sufficient to pay for one-half the costs of benefits and assistance provided dependent children in pursuance of Chapter 239 of the Code. The amount required will be included in the levy for the county poor fund and appropriations for aid to dependent children are paid from the poor fund. If the appropriation proves to be inadequate to meet the expenses, the board of supervisors must appropriate from the poor fund the additional sums necessary to meet its share of all expenses. In no case, however, may statutory tax limits be violated by the board, but it should be noted that specific exceptions to tax limits exist for certain counties. If the county has a population of 60,000 or more, the board may levy an additional tax

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loaned free of charge to the pupils. (Secs. 298.4, 301.4) See also section 298.3, which authorizes a school corporation to estimate at least \$1,000 for each school in the corporation.



not exceeding one-fourth of a mill; counties with populations less than 60,000 but more than 35,000 may levy an added tax of no more than one-eighth of a mill. This is a tax to be levied separately from the poor fund levy and should be resorted to only when the poor fund is not adequate to pay the county's share of the costs for aid to dependent children. (Sec. 239.11)

If a grant of aid or contribution has been accepted previously and thereafter is rejected or discontinued, an increase in tax to make up for the lost revenue is allowable, but the increase cannot exceed one-half mill. (Sec. 239.15)

*Bond fund levy*—It is the duty of the board of supervisors to levy taxes, in addition to all other taxes, adequate to retire the principal and interest of the debt bonds issued. An amount must be levied so that at the end of eight years, 15 per cent of the sum of the issued bonds has been collected; at the end of ten years, 30 per cent of the sum; and at or before the maturity date (twenty years) the amount collected from levies must equal all of the principal and interest. (Sec. 346.11) However, unless a higher rate is authorized by the county's voters, the board may not levy a tax of more than three-fourths of a mill per year. (Sec. 346.10) If the board feels that a higher tax rate will be needed, the matter should be submitted to the voters. The majority required to approve a bond issue calling for a levy above the statutory limit, however, is at least 60 per cent of all those who vote on the matter.<sup>4</sup> (Sec. 75.1)

If the voters of the county have approved a bond issue to finance the erection of any public building, the board of supervisors, in cases in which the tax rate authorized by the approved proposition is not great enough to pay the interest as it matures, may levy an annual tax not exceeding one-quarter of a mill. The proceeds from this tax levy are to be devoted to payment of the interest on these bonds. (Sec. 346.18)

If some of the outstanding county bonds were issued to satisfy debts incurred in constructing or repairing county bridges, the board should realize that the interest and principal of such bonds, which are paid by tax levies, may not be paid from taxes levied on property located within a city that is authorized by law to levy its own bridge tax. (Sec. 346.2)

*Benefited water district tax*—Whenever a water district has been established under the provisions of Chapter 357 of the Code and when sufficient funds are not available from assessments to pay the interest and retire the bonds issued for the water district improvements, the county is required to levy a tax not to exceed three mills in any year; the board of supervisors

4. Any vote not counted as for or against the proposition is not counted in determining the total number of votes cast and the percentage of votes favoring the proposition. (Sec. 75.1)



must continue this annual levy as long as the bonds are in arrears. This tax, however, is levied only on property within the particular water district concerned. (Secs. 357.22-.23)

*Tax on moneys, credits, annuities, bank notes, stock*—Moneys and credits, defined in sections 429.1 and 429.2 of the Code, must be taxed at the rate of five mills on the dollar of actual valuation.<sup>5</sup> The county in which the owner resides imposes a tax (Sec. 429.2); it is the duty of the board of supervisors to impose the levy. (Sec. 429.3) The amounts collected in cities and towns are apportioned as follows: 20 per cent to the county general fund, 30 per cent to the general fund of the city or town in which collected, and the remaining 50 per cent to the general fund of the school district. The amounts collected in all other areas of the county outside cities and towns are apportioned 50 per cent to the county general fund and the remainder to the general fund of the school district in which the taxpayer resides. (Sec. 429.3)

*Assessment expense fund*—The county assessment conference board may certify to the board of supervisors for annual levy for the maintenance of the office of assessor a tax not to exceed the following: (Sec. 441.16(4))

VALUATION OF PROPERTY  
IN ASSESSING AREA

Less than \$25,000,000  
\$25,000,000 to \$30,000,000  
Over \$30,000,000

MAXIMUM LEVY

1½ mills  
1¼ mills  
1 mill

*Tax Levies Authorized by Vote*

The taxes discussed below have in common this limitation: they must first be authorized by a vote of the county's electorate. It will be noted that these taxes are usually devoted to financing special construction projects within the county that would not be normal recurring costs for all county governments.

*Retirement of county detention hospital bonds*—Whenever the county's voters have approved the construction of a detention hospital for contagious diseases, and after the issuance of the bonds to finance the project, the board of supervisors is required to levy a tax adequate to retire the bonds at maturity and to pay the interest at it comes due. (Sec. 256.2)

*Retirement of liberty memorial bonds*—If the project is approved by the county's voters, a county may construct a memorial hall or monument to

5. The 59th General Assembly determined that all interest-bearing savings accounts and other interest-bearing deposits in Iowa banks which have been on deposit for at least three months before the assessment date for moneys and credits are exempt from this tax. (Sec. 429.14)



commemorate the services rendered by members of the United States armed forces. (Sec. 37.1) The purchase of the site and the construction or reconstruction of the hall or monument may be financed by the county's issuance of liberty memorial bonds. (Sec. 37.6) If such bonds are issued, the board of supervisors, in addition to all other taxes they might levy, must levy a tax not in excess of four mills per year in order to pay the interest and retire the bonds as they become due. The authority to impose such a tax is vested in the board of supervisors for a period not to exceed twenty years. (Sec. 37.7)

Also, in order to pay the costs of maintenance and development, the board is authorized to levy an annual tax not exceeding one and one-fourth mills on all taxable property within the county. The board's decision on levying this tax is purely discretionary, however. (Sec. 37.8(1))

*County library maintenance*—If a county library has been established in accordance with the procedure provided in section 358B.2 of the Code, the cost of its maintenance is borne by taxes. Each city and town within the library district is a separate tax unit, and the entire rural area of the county is another separate tax unit. Each tax unit within the library district pays a proportionate share of the cost of the library's maintenance, the proportion being based on the population of the tax unit compared to the population of the entire library district. Therefore, the board of supervisors must levy a tax adequate to pay the rural area's proportionate share of the maintenance costs; the board is allowed to levy no more than two mills for this purpose. The levy applies, of course, only to taxable property within the library district but outside the cities or towns in the district. (Sec. 358B.13)

*Contract library service*—If the rural voters of the county have authorized the board to provide library service for the county's rural areas by contracting with city libraries, the board of supervisors is required to levy a tax annually to raise funds sufficient to fulfill the county's obligations under the contracts. The tax, however, may not exceed one mill and is levied only on all taxable property outside the county's cities and towns. (Sec. 378.15)

*Bridges over state boundary lines*—If the voters of a county approve the construction of a bridge over boundary lines of the state, the board of supervisors may levy an annual tax not exceeding one-fourth mill to build and maintain the structure. In case bonds are issued for this purpose, the board of supervisors is required to levy a tax sufficient to pay interest and principal on the bonds. (Sec. 309.89)

*County public hospital fund*—If the county's voters have approved the establishment of a county public hospital, the board of supervisors must levy an annual tax at the rate fixed in the approved proposition. However, this rate may not exceed two mills in any one year. (Sec. 347.7)



In addition, the board must levy an annual tax not to exceed one mill to finance the maintenance and improvement of the hospital; the proceeds from this levy also are credited to the county public hospital fund. The exact rate of the levy, however, as long as it does not exceed the one mill limit, is determined by the amount certified to the board of supervisors by the board of hospital trustees. One exception to the one mill limit for maintenance and improvement exists: in a county with a population of 135,000 or more the levy for maintenance and improvement may not exceed three and one-half mills in any one year. (Sec. 347.7)

Taxes levied for the maintenance of a county hospital, and taxes levied for construction and equipment of such hospital, may be used only for the purposes for which the levy was made. They may not be transferred one to the other. (Op. Atty. Gen. 1960, p. 73)

*County hospitals supported by revenue*—If the county operates a county public hospital supported by revenues derived from the hospital's services as permitted by Chapter 347A of the Code, the expenses of operating and maintaining the hospital are paid from the balance of the hospital's revenues remaining after principal and interest due that year on the hospital's revenue bonds have been paid. If the balance is insufficient to meet the expenses, the board of supervisors must provide sums from other county funds in order to pay the expenses or levy a tax not in excess of four mills to raise the money needed. (Sec. 347A.3)

For the purpose of paying the principal and interest on general obligation bonds issued to finance the enlargement and improvement of hospitals operating under this chapter, the board of supervisors must levy an annual tax sufficient for the purpose. The bonds issued may not be in excess of 2 per cent of the assessed value of the taxable property in the county. They must mature in not more than twenty years at a rate of interest of not more than 5 per cent payable semiannually. (Sec. 347A.7)

#### *Optional Tax Levies*

*Court expense fund*—If at any time the general county fund is inadequate to take care of court expenses chargeable to the county, the board of supervisors may levy a tax to pay all such court expenses. This levy is to be used exclusively to supply revenue for a court expense fund, and the levy shall be made only when a deficiency exists. (Sec. 444.10) The salary of the clerk of the district court and his deputies may be paid from this fund (Sec. 340.17), but the cost of maintenance of the court house, including salaries, must be paid from the general county fund. The court expense fund is an auxiliary fund to be used to supplement the appropriation for court use from the general fund and is not to be used as an aid to or part of the general county fund. (Op. Atty. Gen. 1948, p. 224)



*Poor fund*—The county general fund normally bears the financial burden of the county's support of the poor, but should the county's ordinary revenue prove inadequate, a tax not to exceed one and one-half mills per year may be levied to supplement the sums available from the general fund for poor support. Should a deficiency exist despite this supplemental levy, an additional levy not to exceed three mills must be made to provide funds for the support of the poor; however, this may be done only with the written approval of the state comptroller. (Sec. 252.43)

The board of supervisors must appropriate from the county poor fund and pay one-half of the benefits and assistance payable to disabled persons chargeable to the county. The appropriation may not exceed the statutory limitation, except in counties having a population of more than 60,000, an additional tax not to exceed one-fourth mill may be levied. In counties having a population of more than 35,000 and less than 60,000, an additional tax not to exceed one-eighth mill may be levied. (Sec. 241A.13)

*Soldiers' relief fund*—To provide relief and burial expenses for honorably discharged, indigent persons who served in the armed forces of the United States in any war, including the Korean conflict, the board of supervisors may levy an annual tax of not more than one mill upon all taxable property in the county. The fund also may be used to grant relief and provide funeral expenses for wives, widows, and minor children not over eighteen years of age of former members of the armed forces. (Sec. 250.1)

*Emergency fund*—The board of supervisors is authorized to levy a tax not to exceed one mill per year to provide money for an emergency fund. Approval of the state board of appeal is required, however, and the board of supervisors should not petition the state appeal board for approval until the budget hearings required by Chapter 24 of the Code have been concluded. (Sec. 24.6)

*Fairground fund*—In counties in which district or county fair or agricultural societies exist, the board of supervisors is permitted to levy an annual tax not exceeding one-fourth mill for the purpose of purchasing or outfitting a fairgrounds, or for aiding boys' and girls' 4-H club work, and providing agricultural and livestock premiums in connection with the fair. No society may receive this aid, however, unless it owns or leases at least ten acres of fairgrounds with buildings and improvements on the grounds that have a value of at least \$8,000. (Sec. 174.13)

Any county that owns real estate acquired for district or county fair purposes and that has a fair society using this real estate is entitled to levy an annual tax no greater than one-fourth mill for the fairground fund. (Sec. 174.17)

*County orphan fund*—The board of supervisors may levy up to one-eighth of a mill per year on all taxable property in the county, the proceeds



of which are to be credited to the county orphan fund which is used to support and educate destitute orphans. (Sec. 444.11)

*Children's detention home fund*—In counties with a population of more than 40,000, a detention home for children, separate and apart from the county jail or police station, *must* be maintained; and in counties with a population of 40,000 or less, but more than 30,000, a separate detention home *may* be maintained. In any county that has a separate detention home for children, the board of supervisors may levy an annual property tax not to exceed one-fourth mill to pay all costs of maintaining the detention home. Counties having a population of more than 150,000 may levy a tax not exceeding one-half mill for this purpose. (Secs. 232.35-36)

*Detention hospital for venereal disease*—In the event a county establishes a detention hospital for people suffering from venereal disease (as permitted by Chapter 140 of the Code), the board of supervisors is authorized to levy, for a period of fifty years, a special tax not to exceed one-half mill in any one year to provide a fund to finance the establishment and maintenance of the detention hospital. (Sec. 140.13) If bonds are issued in anticipation of the taxes, the taxes levied are devoted to retirement of the bonds. (Sec. 140.14)

*Road clearing fund*—The board of supervisors may subject all the taxable property in the county outside incorporated cities and towns to an annual levy not exceeding three-fourths mill. The proceeds of this levy are to be credited to the road clearing fund and devoted to payment of expenses incurred in destroying weeds or brush upon the right-of-way of secondary roads (which is the area between fences bordering on either side of the road). (Sec. 317.19)

*Weed eradicating equipment fund*—The board of supervisors is authorized to levy a tax no greater than one-fourth mill to purchase weed eradicating equipment and materials and for payment of the necessary expenses and compensation of the county weed commissioner and his deputies. (Sec. 317.20) If the materials and equipment are used on private property in a city or town, the cost of the materials and a sum determined by the board of supervisors for the use of the equipment shall be collected by a special assessment upon the property and paid into the weed eradicating equipment fund. (Sec. 317.20) Also, each year after the weed commissioner has destroyed weeds for landowners who have failed to do so, the costs incurred are recovered by a special tax on the property; the proceeds of the tax are distributed to the funds from which the costs were originally paid. Thus, the weed eradicating equipment fund is reimbursed for these costs. (Sec. 317.21)

*Flood and erosion control fund*—Whenever structures for flood and erosion control are built on land under the control of the county pursuant



to the provisions of Code Chapter 467B, the board of supervisors may levy an annual maximum tax of one-fourth mill on agricultural land in the county. The proceeds from this tax are to be used as a maintenance fund for flood and erosion control structures built on lands under the control or jurisdiction of the county. (Sec. 467B.9)

*Secondary road fund*—Annually, at its September session, the board of supervisors is authorized to make three levies that are credited to the secondary road fund: (1) a levy of not more than two and one-half mills on all taxable property in the county but not within a city or town controlling its own bridge levies (Sec. 309.7(1)); (2) a levy not to exceed eight and five-eighths mills on all property in the county except that within cities and towns (Sec. 309.7(2)); (3) an annual levy of up to five-eighths mill on all property in the county. (Sec. 309.7(3))

*County conservation fund*—If a county conservation board has been set up in the county, the board of supervisors is permitted, at its discretion, to levy an annual tax not less than one-fourth mill or more than one mill upon all taxable real and personal property in the county upon proper certification by the county conservation board made pursuant to and in compliance with all the provisions of Chapter 24 of the Code. The proceeds of this levy are credited to the county conservation fund. In counties over 90,000 population, special bonds for conservation purposes may be issued if approved by 60 per cent of the voters. The principal and interest of these bonds must be paid from the proceeds of the levy for the county conservation fund. (Sec. 111A.6)

The board of supervisors, however, may pursue an alternative course in this matter, because it also is permitted to appropriate money from the county general fund for use by the county conservation board. (Sec. 111A.6) Since this appropriation is to be used for the same purposes as the county conservation fund, the board of supervisors may choose, when financially possible, to support the conservation board's activities from the general fund rather than levy a tax for a conservation fund.

*Bounty for wild animals*—The board of supervisors, in order to meet the expenses incurred in paying bounties for the destruction of certain wild animals, may levy a tax adequate to pay all claims for bounties. The proceeds of such a levy are limited strictly to the uses for which the levy was made. (Sec. 350.8)

*Special appraisers' fund*—The assessment conference board may certify to the board of supervisors for annual levy an amount not to exceed one and one-half mills for the cost of employment of special appraisers or other technical or expert help in the valuation of property for tax assessment. (Sec. 441.50)

*General school fund levy*—The board of supervisors, in addition to all



other taxes levied for the support of the schools, may levy a tax of between one-fourth and three-fourths of a mill on all taxable property in the county. (Sec. 298.10)

*Psychiatric treatment costs*—If the county is expending funds from the county mental health fund to provide psychiatric examination and treatment in a community health center, the board of supervisors may levy up to three-eighths mill in addition to the required tax for the mental health fund. (See page 21.) (Sec. 230.24)

*Voting machines*—If the board of supervisors decides that voting machines are to be used within the county, the purchase of the voting machines may be financed by levying a tax of not more than one-half mill. If there is any excess money remaining after the machines have been paid for, it is to be placed in the general fund. (Sec. 52.3)

*Public disposal grounds*—Should the board of supervisors decide to establish a public disposal ground, it may levy a tax of one-fourth mill for the purposes of acquiring and maintaining this project. The tax, however, is levied only on the property in the township, except property within the incorporated limits of any city or town, in which the board of supervisors chooses to locate the disposal facility.

Funds raised by the levy are placed in the township dump fund. The board may enter into contracts with cities and towns allowing them to use the public disposal grounds; the funds obtained from these agreements must be placed in the township dump fund. (Sec. 332.32)

#### *Duties Pertaining to Tax Collection*

After the taxes have been levied, the county auditor and the county treasurer assume most of the responsibility for collection of the taxes. The board of supervisors, however, has a few important duties relating to the collection of taxes.

*Remission of taxes*—If a taxpayer has suffered property losses because of fire, tornado, or some other unavoidable casualty, the board of supervisors may exercise its discretionary powers and remit his taxes up to the full amount of taxes paid. The limitations on this power are that the property must not have been sold for delinquent taxes nor must the taxes have been delinquent for more than thirty days. Also, the loss for which refund is permitted is only that part of the loss not covered by insurance. (Sec. 445.62)

*Tax investigators*—The board of supervisors may hire a person, corporation, or firm to assist in discovering property not listed for taxation or assessed for taxation as the law requires. The payment of the investigators may be fixed on a salary or a per diem basis and the cost is borne by the



various county funds in proportion to the benefit the funds receive from the investigator's work. (Sec. 443.20)

*Tax collectors*—In the exercise of its discretionary power, the board of supervisors may authorize the county treasurer to appoint collectors to collect delinquent personal taxes. The collectors are compensated at a rate not to exceed 10 per cent of the amount they collect but in no event may compensation be paid until the county treasurer has received the full amount collected by the collector. (Sec. 445.50)

*Tax compromises*—If property has been offered for sale for taxes by the county treasurer for two consecutive years and has not been sold, or has been sold for only a portion of the taxes due on the property, the board of supervisors is authorized to compromise the taxes due on the property (if due prior to the tax sale certificate or due during the year in which the tax sale occurred). The compromise is to be in writing and may be entered into with the owner of the legal title or any lienholder and it should stipulate the sum that will be regarded as full satisfaction of the delinquent taxes. (Sec. 445.16) The purpose of such power is to enable the title to such property to be cleared when it is apparent that the full sum of the taxes cannot be recovered by a sale.

If personal property taxes that are not a lien on real estate have been delinquent for one or more years and it is evident that these taxes are not collectible in the usual manner, the board of supervisors may compromise such taxes by written instrument. (Sec. 445.19) Copies of the compromise agreement are filed with the county auditor and the county treasurer; upon payment, the taxes are deemed to be satisfied; and the books of the county auditor and county treasurer must reflect the cancellation of the tax debt. (Secs. 445.17-18)

*Tax suspension*—Whenever a person by reason of age or infirmity is unable to contribute to the public revenue he may file a petition with the board of supervisors. The board then may order the county treasurer to suspend the collection of taxes assessed against the petitioner or his estate for the current year or may cancel and remit the taxes. However, the petition first must have been approved by the city or town council of the town or township trustees of the township in which the property of the petitioner is located. (Sec. 427.8)

If a person has been issued a certificate of old-age assistance and is receiving monthly or quarterly payments, he is deemed to be unable to contribute to the public revenue. The state board of social welfare notifies the board of supervisors of the county in which the person owns property, including a listing of the property. The board of supervisors when so notified, and without need of petition as required in section 427.8, orders the



county treasurer to suspend the collection of all taxes on the property as long as the person receives old-age assistance. (Sec. 427.9)

The board of supervisors, in the best interests of the public and the petitioner, may make an additional order to cancel or remit taxes assessed even though prior action of suspension was ordered as provided in sections 427.8 and 427.9. (Sec. 427.10) The board of supervisors also has authority to cancel or remit taxes on the property of a deceased aged person on application of administrator of his estate. (Op. Atty. Gen. 1958, p. 337; see also Op. Atty. Gen. 1958, p. 277)



## Chapter 4

# Business Management and Finance

THE FUNCTIONS of the board of supervisors discussed in this chapter can be divided into three general categories: the making of appropriations, the maintenance and supervision of county funds, and the incurring and discharging of county obligations.

Although it might be thought that the county treasurer would be responsible for all matters relating to maintenance of funds, the board of supervisors maintains and supervises the various county funds through its power to transfer money between funds, and also by its power to levy taxes. Further, by its licensing power, the board controls an additional method of raising revenue.

In the third category, the board incurs county obligations by exercising its power to let contracts for the county and by serving as the general caretaker and purchasing agent for county governmental offices and departments. In addition, the board has duties in relation to the issuance of county bonds. On the other hand, by passing on claims against the county and by authorizing warrants to be drawn on the various county funds, the board fills an important role in discharging county obligations.

### *Appropriations for County Government*

No later than December 31 of each year, the board of supervisors must receive from the officer in charge of each county office or department detailed estimates of expenditures for each county office or department for the forthcoming calendar year. If the proposed expenditures will exceed those of the preceding year, the board also must receive a written statement from the officer in charge setting forth the reasons for the increase. (Sec. 344.1) It should be noted that this submission of estimates by the offices and departments is similar in part to the procedure followed in preparing the county budget, discussed on page 16.

The board of supervisors thereafter meets no later than January 31 and adopts a resolution appropriating the amounts the board deems to be necessary for each of the different county offices and departments. (Sec. 344.2)

*Contingent fund*—The board is authorized to appropriate money for a contingent account for any one or all of the county funds. Such sums are to



be available for expenditure for purposes not anticipated at the time of the resolution. The total of the contingent appropriation and all other appropriations may not exceed the anticipated total revenues for the year. (Sec. 344.3)

*Form of resolution*—The board, in making the appropriation for each office or department, must itemize the appropriation in the same manner as the office's or department's accounts are itemized on the records kept by the county auditor. Also, for each sum appropriated, a designation must be made of the particular county fund from which the sum will be paid. (Sec. 344.2) In no case may the board appropriate a sum from any county fund that will exceed the year's anticipated receipts for that fund. (Sec. 344.4)

There also must be included in the resolution of appropriation three columns, one of which must show the separate itemized appropriations and the other two must show the corresponding itemized expenditures for the two preceding years. (Sec. 344.4)

The resolution also must contain an itemized statement of the anticipated receipts of revenue for the current year for each separate county fund and a listing of any balances carried over from any of the funds from the preceding year. Opposite each item of anticipated receipts there must be shown, in two columns, the actual receipts collected during the two preceding years. (Sec. 344.5)

*Supplemental appropriations*—If, during the year in which the budget is in effect, the board of supervisors finds that the actual receipts for any county fund will exceed the sum anticipated in the original appropriation, a supplemental appropriation may be made. However, no such supplemental appropriation is authorized unless a specific need for it can be shown. If the need can be shown, the board, by resolution, at any of its regular meetings, may appropriate the excess funds to uses that the particular fund is required to support. The supplemental appropriation must state clearly the amount that has been collected into the fund in excess of the original estimate as stated in the original annual appropriation. (Sec. 344.6)

*Expenditure in excess of appropriation*—See "Transfer of Funds," pages 35-36, and "Limitation on Expenditures," pages 46-47.

*Interrelation of the budget and the appropriations*—Because it is unlawful to spend more than the board has appropriated (Sec. 344.10), and because appropriations cannot exceed anticipated revenues (Sec. 344.4), the preparation of the budget is very important in fixing the first and primary limitation on the county's financial transactions. Budgeting and appropriating are interrelated and actually are part of one process, so that members of the board treating any one phase of the process should be cognizant of the possible far-reaching effects of their action.



### *Transfer of Funds*

*Emergency fund*—If two-thirds of the members of the board of supervisors request permission of the state board of appeal, and if the state board grants its permission in writing, money may be transferred from the county emergency fund to other county funds to meet deficiencies in those funds. (Sec. 24.6) Such a transfer of funds need not be repaid to the emergency fund. (Sec. 24.22) The official form to be used in requesting approval of transfers from the emergency fund is Form No. 639—or alternatives—provided by the state.

*Inactive funds*—Whenever a fund becomes inactive, the remaining balance, after all obligations have been paid, may be transferred to other funds as the board may determine. Approval of the state appeal board is not required. However, if, in creating the fund which has become inactive, a provision was made regarding the disposition of the balance when the fund should become inactive, that provision is controlling. (Sec. 24.21)

*Active funds*—Permanent or temporary transfers may be made between active funds that are not obligated for a specific purpose or otherwise restricted by law. Whether the transfers are temporary or permanent—and this depends upon the nature of the fund—they may be performed only with the approval of the state board of appeal. (Secs. 24.6, .22) Iowa Official Form No. 698 is used for permanent transfer applications, and Form No. 640-a is used for temporary transfer applications.

*Transfer for deficiencies*—If any county office's expenditure exceeds, or, of necessity, will exceed the sum appropriated to any one of the office's particular accounts, the board of supervisors may authorize, by resolution, a transfer of any unexpended balance in any of the other accounts (if the account is financed by an appropriation) of the office to the account having or expected to have a deficit. (Sec. 344.8)

If any county office finds that it must spend more than the total of all money appropriated to the office's use for the year, the board of supervisors, at any special or regular meeting, by resolution, may authorize transfers of funds from other offices' accounts to this office's accounts. However, only funds provided by appropriation are subject to the board's power of transfer, and the funds transferred must be derived from the same tax fund as supports the account receiving the transferred funds. In no case may a transfer be made if it will violate any existing statute. (Sec. 344.9)

*Non-transferrable funds*—Several of the active funds may be used only in connection with the purposes for which they were raised, so that no transfer from these funds may be made. These include the secondary road funds, the poor fund, tuberculosis eradication fund, Bang's disease fund, county board of education fund, county assessor fund, and funds levied for bond retirement.



A transfer to the poor fund is not permitted unless all authorized levies for that fund have been made and a deficiency still exists. (Sec. 24.22)

*Bond funds*—The general statutory rule regarding the use of proceeds of levies for the county bond fund is that such money can be applied only to the payment of principal and interest on county bonds. (Sec. 346.12)

However, if there is a balance derived from a tax levy remaining in the county bond fund after the retirement of all the bonds and the payment of all the interest due on the bonds, the board of supervisors may order that this balance be transferred to the particular county fund for which the bonds were originally issued. (Sec. 346.14)

In cases in which there is an excess of money derived from the sale of the bonds after the purpose for which the bonds were issued has been fully accomplished, the board of supervisors, by resolution, may order this excess to be transferred to the county general fund. (Sec. 346.15) The purpose referred to, however, is not regarded as accomplished so long as some of the bonds are still outstanding. In this event, the money should be applied to the retirement of the bonds.

*Domestic animal fund*—Warrants against this fund are paid annually in January. Whenever the balance in the fund, after all warrants have been paid, exceeds \$500, the board may transfer the excess amount to the general fund. However, if within five years the domestic animal fund proves inadequate to pay all claims against it, the board of supervisors is required to return to the domestic animal fund an amount sufficient to take care of any unpaid warrants. Such returned sums may not, however, exceed the amount originally transferred to the general fund. (Sec. 352.6)

### *Claims*

The Code of Iowa prescribes the method by which people who are owed money by the county can present their claims for payment. Although claims normally are presented to the county auditor and are paid through his issuance of warrants, the board of supervisors usually examines the claims first and gives its approval before warrants are issued. (Sec. 332.3(5)) The function of the board is a non-delegable duty. (Heath v. Albroom, 123 Iowa 559, 569, 98 N.W. 619, 1904)

In order to perform its function of approving claims against the county, the board of supervisors must maintain both a *warrant book* and a *claim register*. (Sec. 331.19) Claims are numbered consecutively according to the order in which they are received. They are entered in the claim register in alphabetical order with the date of filing, the number assigned to the claim, a statement of the general nature of the claim, and the name of the claimant. The claim register also must have space available in which to record the action on the claim taken by the board. (Sec. 331.20)



The board, in session, then acts upon the claim. If the claim is allowed, this will be noted in the *minute book* of the board of supervisors by reference to the number assigned to the claim. (Sec. 331.20) The claim number provides a cross reference between the minute book and the claim register.

An entry is made in the claim register showing that the claim has been allowed and that the allowance is made against a certain county fund. (Sec. 331.20)

The members of the board, in passing on claims, should remember that it is unlawful for the board or its members to allow any claim upon any fund if the claim will exceed the amount of collectible revenues for that fund for that year. An individual supervisor, by approving such a claim, can be held liable personally for such a claim. (Sec. 343.10) The exceptions to this rule of law include expenditures for buildings or bridges destroyed by flood, fire, or similar extraordinary casualty, or for bridges necessitated by the construction of a drainage improvement; expenditures for the operation of the courts or to benefit any person entitled to aid from public funds or which are authorized by a vote of the county electorate; and expenditures from county funds which are to be refunded from the primary road fund and certain expenditures necessitated by obligations contracted at various times during the 1920's. (Sec. 343.11)

The board of supervisors may pursue three courses of action in regard to claims on which it must act: it can approve, refuse, or do nothing in respect to the claim. An unliquidated<sup>1</sup> claim either must be refused or "neglected" (no action taken) before a claimant can take further action against the county to enforce his claim. (Sec. 331.21) Those claimants whose claims are approved and paid must be listed by name in the official publication of the proceedings of the board of supervisors. (Op. Atty. Gen. 1930, p. 257)

*Support of the poor*—Claims for the support of the poor, including claims for medical care, after having been allowed and certified by the township trustees, are subject to further examination by the board of supervisors. If the board finds that the claim is for an unreasonable sum or for goods or services other than the necessities of life, it may reject the claim or reduce it to an amount it deems reasonable. (Secs. 252.34-35)

*Bounties and damage to domestic animals*—The laws of Iowa require that the board of supervisors allow certain fixed bounties for the destruction of wolves, lynx, wildcats, gophers, and red or gray foxes. In addition, the board, by resolution, may authorize fixed bounties on crows, ground-hogs, rattlesnakes, European starlings, and such other animals the board

1. The required form and preparation for submission of an unliquidated claim is described in section 331.21 of the Iowa Code.



may deem expedient to have exterminated. (Secs. 350.1-3) As with other claims, claims for bounties are presented to the county auditor, but must be accompanied with such proof as the board of supervisors prescribes.<sup>2</sup> (Sec. 350.4)

If a person's domestic animals or fowl are damaged by wolves, or dogs other than his own, he is permitted to file a claim with the county against the domestic animal fund for the damage done.<sup>3</sup> The claim must be filed with the county auditor within ten days from the time of discovery of the death or injury of the animals or fowl. The board of supervisors must act within a reasonable time, and it need allow only as much of the claim as it deems just. The value of each animal or fowl that has been killed or injured must be entered into the board's records in cases in which the claim is allowed. (Secs. 352.1-3)

The Code prescribes that claims against the domestic animal fund contain a detailed recitation of facts concerning how the damage was incurred. (Sec. 352.2) In relation to this, the Iowa supreme court has held that the furnishing by the board of blank forms that do not contain a specific request for the required detailed statement prevents the board of supervisors from denying any claim merely because the claimant failed to furnish such detailed information. (*Wisdom v. Board of Supervisors of Polk County*, 236 Iowa 669, 19 N.W.2d 602, 1945)

*Secret investigations*—The attorney general has ruled that it is proper for the county attorney to undertake secret investigations in performing the duties of his office, and he may bind the county for any reasonable expense incurred in carrying out such an investigation. Such claims, however, must be reviewed and approved by the board like other claims against the county, and the warrants issued by the auditor must state the purpose for which the payment is made and must be made payable to the person who performed the services. On the other hand, secret investigations by the grand jury may be made without having the board of supervisors audit the resulting claims for expenses incurred, because warrants on such claims issue if the judge of the district court has given his approval. (Op. Atty. Gen. 1948, p. 6)

*Travel expenses*—When private automobiles are used by county officers and employees in performing their official duties, these officers or employees are entitled to receive seven cents per mile for actual and necessary travel. (Sec. 79.9) When allowed mileage, the officer or employee is not permitted

2. Sec. 350.5 prescribes certain things a verified claim must show, which apparently takes it out of the board's discretion in these cases.

3. The domestic animal fund is not available to an owner of sheep injured by dogs where his claim has been paid by an insurance carrier, nor is the carrier entitled to any right of subrogation. (Op. Atty. Gen. 1960, p. 136)



to be reimbursed for expenses incident to the same trip. (Sec. 79.10) Interpretation by the attorney general has fixed the rule that if he is allowed mileage, charges for gas, oil, and storage may not be allowed, but the officer or employee may recover the expenses of his meals and lodging incurred during the trip. (Op. Atty. Gen. 1932, p. 55)

In no case shall any official be allowed mileage or travel expense if he was transported gratuitously or if he rode with another officer or employee who was entitled to mileage. (Sec. 79.11) Moreover, in no case may any claim for expenses by a county officer be allowed if the expenses were incurred by the officer's attendance at any *convention* for county officials. (Sec. 343.12) The attorney general has ruled, however, that the board of supervisors may, at its discretion, allow reasonable expenses of county officers who attend *conferences* which are for the betterment of the officers in the performance of their official duties. Whether the meeting attended is such a conference or is a convention is a question to be determined by the board of supervisors. (Op. Atty. Gen. 1955, p. 70)

A claim for mileage or travel expenses shall not be allowed by the board whenever the claimant is a peace officer unless the destination and the number of miles in each trip are given. If the peace officer's trip was an extended one, the trip's expenses, except the cost of meals, must be verified before the board can approve the claim. (Sec. 79.13)

#### *Warrants*

The county auditor cannot sign or issue a county warrant unless the claim for which the warrant is issued has been approved by the board of supervisors or unless the claim falls within one of the specified exceptions to the requirement of the board's approval. The board signifies its approval by recorded vote of its members or by a resolution. (Sec. 333.2)

There are four exceptions to the requirement of the board's prior approval: (1) Bills and claims of the county board of education are paid by warrants of the county auditor upon written order of the secretary of the county board of education, countersigned by the president of the board. (Sec. 273.13(11)) (2) Funds under the control of the board of trustees of a county hospital may be paid upon warrants drawn by the secretary of the board of trustees and countersigned by the chairman of the board of trustees. (Sec. 347.12) (3) The auditor may issue warrants before the board approves the bill when the bill is for expenses relating to operation of the courts. (Sec. 333.3) (4) He also may issue warrants in cases in which the board of supervisors, by resolution, has authorized payment without its prior approval, if the bill is presented to the auditor when the board is not in session. The board of supervisors, however, may authorize such action by the county auditor only in cases of fixed charges such as water,



light, telephone, freight, express, and postage bills that are duly verified, and salaries and payrolls if the compensation was fixed by the board, and the officer or foreman in charge certifies that the compensation has been earned. (Sec. 333.4)

In all cases in which a warrant is issued in payment of a bill that has not been approved previously by the board of supervisors, the bill shall be presented to the board for its approval at the first meeting following payment, and the bill shall be entered in the minutes just as are other claims that the board has allowed. (Sec. 333.5)

#### *Deposit of Public Funds*

Public funds of the county may be deposited by the county treasurer only in banks that have been approved by the board of supervisors. The approval of the board must be in the form of a resolution or order entered in the minutes. The resolution or order must name each bank approved and specify the maximum amount of public funds that may be deposited in each. (Secs. 453.1-.2) The board, however, is limited in that it must select banks within the county or in an adjacent county. (Sec. 453.4) If these banks refuse to receive the deposits, the board may approve any bank that is conveniently located within the state. (Sec. 453.5)

#### *Bonds*

Specific provisions regarding bonds used to finance county hospitals and roads are discussed under topic headings dealing with hospitals and roads. Further instances in which bonds are used in financing county projects are discussed here.

*Special purpose bonds*—In general, the board of supervisors is required to obtain the approval of the county's voters before it can order any county project commenced that will involve large expenditures. In cases in which the project will be financed by the issuance of county bonds, the voters' approval of the proposed project must be accompanied by their approval of the proposed tax levy rate that will provide the funds to retire the bonds. Approval of only the proposed project is of no legal effect and does not authorize the board to order the project into effect. (Secs. 345.1, .7)

If the proposition has been submitted to a vote as required by law, and the board of supervisors finds, by a canvass of the returns, that a majority of the voters have approved the proposition, the result of the vote must be entered "at large" in the minute book. The proposition then becomes legally effective. Notice of the adoption of the proposition should be published in the same manner as a notice of an election.<sup>4</sup> (Sec. 345.11)

4. Notice must be published at least once a week for four weeks in a newspaper published in the county. In cases of elections, the question submitted also is posted at each polling place on election day. (Sec. 345.6)



Specifically, the board is forbidden by law to order the construction, remodeling, or reconstruction of any building, or addition to a building, or the purchase of any real estate, if the probable cost will exceed \$10,000 unless a majority of the voters of the county have given their express approval at a special or general election. A proposition need not be submitted to the voters if the project can be accomplished without the levy of additional taxes and the probable cost will not exceed \$20,000. (Sec. 345.1) Also, the board may not order the establishment of a county home without prior approval of the voters if the cost will exceed \$15,000. (Sec. 253.1) Exceptions to this rule include cases in which a courthouse has been destroyed by fire and at least \$100,000 has been donated for its reconstruction. In such cases, the board may appropriate a sum equal to one-half the sum donated to be used for the construction of a new courthouse, provided that the amount appropriated is available in the general fund and has not been appropriated for other purposes. (Sec. 345.2) Also, counties with a population of at least 40,000 and a county seat having a population of at least 5,000 may spend up to \$25,000 for additions to the courthouse, jail, county home, or other county building without a vote of the electorate if the money is available in the general fund. (Sec. 345.3) An additional exception relating to county hospitals is discussed in this handbook on pages 98-100.

In drafting the proposition to be submitted to the voters, it should be noted that a tax rate cannot exceed, in any one year, one-fourth of 1 per cent of the total valuation of the taxable property in the county. The rate must be fixed so that the bonds can be retired within ten years, unless the county's population is 25,000 or more, or unless the proposal is to expend \$100,000 or more. In either of these cases, the rate must be fixed so that all the bonds will be retired during a period of twenty-five years. (Sec. 345.8) When it is apparent that the principal and interest of the bonds cannot be retired with the proceeds of one year's levy, the proposition submitted to the voters must provide for the levy to continue from year to year at the same rate until the debt is retired. (Sec. 345.10)

*Issuance of special purpose bonds*—No bond of this type may be issued unless it will mature within twenty-five years from the date of its issuance. The bonds are to be numbered consecutively, and the retirement of the bonds must follow the order in which the bonds are numbered. As rapidly as the funds are collected, the bonds with their interest should be retired. (Sec. 345.9)

*County debt bonds*—In addition to the bonds discussed above that are issued to finance a specific project, the board of supervisors also is authorized to issue bonds to fund the county debt. Whenever the county's indebtedness exceeds \$5,000 on the first day of January, April, June, or September, the



board of supervisors may, by a two-thirds vote of all its members, fund or refund the county debt by the issuance of serial bonds with a maximum maturity date of twenty years.<sup>5</sup> (Sec. 346.1) The bonds may bear no more than 5 per cent interest, the board having the option of making the interest payable annually or semi-annually. The form of these bonds must follow substantially the form provided in section 346.3 of the Code. (Sec. 346.3)

The members of the board who vote to order an issue of bonds pursuant to Chapter 346 in excess of constitutional limits<sup>6</sup> subject themselves to personal liability for the amount issued in excess of the limits. (Sec. 346.9) However, the issuance of funding bonds to retire outstanding claims and warrants has been held not to be an increase in the county's debt but merely a change in the form of the debt. (*Hibbs v. Fenton*, 218 Iowa 553, 255 N.W. 688, 1934)

The bonds must be in denominations of at least \$100 and no larger than \$1,000. (Sec. 346.1) Once they are numbered, executed, and sealed, they are turned over to the county treasurer for negotiation. The county treasurer normally will conduct the negotiation of the bonds, and he must report to the board at each of its sessions regarding the bond transactions that have occurred. The board may be assured that the county will obtain a cash return from the sale of the bonds equal to the value stated on the bonds, because the law requires that the bonds must not be sold for less than par plus accrued interest. (Secs. 346.5, 346.8, 75.5)

*Notice requirements*—Except in the cases of issuance of bonds authorized by the vote of the electorate or made mandatory by law, the board must publish notice of the proposed issue in a newspaper of general circulation in the county. Therefore, bonds that are to be issued for a county debt exceeding \$5,000 when the matter has not been put to a vote of the people, will be subject to this notice requirement. The notice must be given at least ten days before the proposed date of issuance, and it must state the amount and purpose of the bonds. If five or more taxpayers object to the bond issue, the question is submitted to the state appeal board and its decision is final unless either party gives notice to the other within thirty days of the decision that it is appealing to a district court. (Secs. 23.12-.15)

*Retirement of debt bonds*—For a discussion of the retirement of debt bonds, see page 23.

### *Contracts*

*Personal interest forbidden*—Members of the board of supervisors are forbidden by law to buy from or sell to the county supplies, labor, or ma-

5. Indebtedness incurred in constructing or repairing bridges may be funded by issuance of bonds whenever the indebtedness exceeds \$5,000. (Sec. 346.2)

6. For a discussion of constitutional debt limits, see page 46.



terials, nor may any member be a party, directly or indirectly, to any contract to furnish supplies, labor, or material. If a member violates this prohibition, he is guilty of a misdemeanor. (Sec. 741.11) In addition, specific non-criminal prohibitions require that a supervisor may not be involved directly or indirectly in any supplies furnished the poor. (Sec. 252.29) A similar rule applies to bridges, culverts, and road improvement. (Sec. 314.2)

*Building contracts required*—Whenever a county building is to be erected or repaired at a probable cost of more than \$2,000,<sup>7</sup> a written contract is required.<sup>8</sup> Also, an advertisement for bids must be carried in all official newspapers of the county for three weeks before the contract is let. Prior to the advertising, detailed plans and specifications must be placed on file in the county auditor's office and made available to public inspection. Although the board is required to let the contract for the work to the lowest responsible bidder, it may reject any or all bids and advertise for new ones. (Secs. 332.7-8)

*Public improvement contracts*—Whenever the board of supervisors desires to enter into a contract for any public improvement costing \$5,000 or more—except secondary road improvements—it must adopt proposed plans and specifications and fix a time and place for a hearing.<sup>9</sup> Notice of the hearing must be published in at least one newspaper of general circulation in the county at least ten days prior to the hearing. (Sec. 23.2) At the conclusion of the hearing, the board must make its decision concerning the awarding of the contract, but an appeal may be taken to the state appeal board by interested parties. (Secs. 23.3-7) No contract that has been appealed to the state board is valid until that board has given its approval. The state board also is required to approve or disapprove any expenditures for public improvements that exceed the contract price by more than 5 per cent. (Sec. 23.9)

In contracting for the proposed improvement, the board is required to advertise for bids on the improvement by two publications in a newspaper published in the county in which the work is to be done. The first publication must be at least fifteen days before the date set for receiving bids. The work must go to the lowest responsible bidder unless the board determines that all bids are unacceptable.

All bids must be accompanied by a deposit of money or certified check in an amount specified in the advertisement for bids as security that the

7. See "Public Improvement Contracts" below for requirements in letting contracts that involve more than \$5,000.

8. Good business practice indicates the need for all contracts to be written. Also, the statute of frauds requires a written contract if performance will not occur in one year. (Sec. 622.32(4))

9. For a discussion of contracts for secondary road improvements, see page 80.



bidder will enter into a contract for the performance of the work. The amount of the bid security must be equal to at least 5 per cent, but not more than 10 per cent, of the estimated total cost of the work. The deposits of the unsuccessful bidders are returned as soon as a contractor is chosen, but the successful bidder does not get his deposit back until the contract has been executed. This bid procedure does not apply to the contracting procedure for work covered by some other provision of the Code. (Sec. 23.18)

Upon completion of any public improvement governed by Chapter 23 of the Code, the board of supervisors must file a sworn report with the state appeal board. The report must state the location and nature of the improvement, the contract price, the actual cost, the name of the person supervising the construction, the name of the person making the final inspection, whether the work conforms to the plans, specifications, and contracts, and what the failures to comply with plans and specifications are. (Sec. 23.11)

Unless the provisions of Chapter 23 are adhered to in the awarding of contracts for public improvements and in giving of notice of the issuance of bonds,<sup>10</sup> any bonds or tax levies for the payment of the bonds are null and void. (Sec. 23.16)

It should be noted that when public improvements have been authorized by a vote of the people, this authorization may be withdrawn at a later election, but this in no way affects contracts already let under authority of the original election. (Sec. 345.12)

Every contract for public improvements other than for road and highway construction must contain a provision that preference will be given to Iowa domestic labor. Failure to abide by the Iowa Preference Law is a misdemeanor punishable by a fine up to \$100 or by imprisonment for not more than thirty days for each offense. (Secs. 73.3-.5)

*Performance bonds*—Whenever a contract is made for the construction of any public improvement costing \$1,000 or more, a performance bond is mandatory; if the improvement costs less than that sum, a performance bond is optional with the board. (Sec. 573.2. See also page 45 where sufficient performance bond is required of successful coal contract bidder if the value of the coal to be delivered exceeds \$300 per year.)

The amount of the bond is fixed by the board of supervisors. If payments are to be made while the improvement is under construction, the bond must equal at least 75 per cent of the contract price. (Sec. 573.5) Section 573.6 of the Code fixes certain terms of the performance bonds that should be placed verbatim on the bond. If they are not, they are deemed as a matter of law to be contained in the terms of the bond anyway. (Sec. 573.6)

The contractor is free to provide a bond or to provide a money deposit,

10. Discussed on page 42 and in section 23.12 of the Code.



a certified check, state or federal bonds, bonds issued by any Iowa county, city, town, or school corporation, or highway paving district, or drainage district bonds issued in the state of Iowa. (Secs. 573.4-5)

### *Purchasing*

Apparently, on ordinary purchases the board of supervisors need not call for bids. Certain limitations are provided by statute, however.

*Preference for Iowa products and labor*—The Iowa Preference Law requires the county to use only products and materials grown or produced in Iowa if they are available in a marketable quantity and of a quality adequate for the purpose for which the county will use them, and if the cost is no higher than that of the same products produced in a different state. (Sec. 73.1) The law requires that all requests for bids and all proposals for expenditures of public funds must be made in general terms so that no brand or trade names are specified. Also, all requests must contain this statement: "By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa." (Sec. 73.2)

*Purchase of coal*—Another area specifically covered by statute is that concerning the county's purchase of coal. If the annual purchase price of coal for county needs exceeds \$300, it is the duty of the board of supervisors to advertise for bids in a paper published in the county. The notice must be published at least fifteen days before the time the bids are to be received and must contain a statement of the place, date, and time for receipt of bids, the quantity needed, and a description of the coal to be purchased. (Sec. 73.7)

The bids must be opened in public at the date and place fixed in the notice, and the lowest bid must be accepted unless the board feels that, in the best interests of the taxpayer or the employment of labor, or because of the efficiency or cost of operation of the county's heating plants, the lowest bid should not be accepted. The board, therefore, may reject any or all bids, but if all are rejected, a new bidding must be held after proper notice. (Sec. 73.7)

In receiving bids, the board must not consider any bid that does not state the name of the producer and the location of the mine and have attached a certificate of the secretary of the state mine inspectors to the effect that the producer is complying with the workmen's compensation laws and all mining laws of the state. (Sec. 73.8)

Upon accepting a bid, the board must enter into a written contract to purchase the coal, and the successful bidder must provide a sufficient performance bond. Contracts for coal must contain a provision that in case an emergency arises the county may purchase up to 10 per cent of its coal requirements from other sources without taking bids. (Sec. 73.7)



It is unlawful for the county to use coal mined in another state whenever suitable Iowa coal may be purchased. If a sufficient quantity cannot be obtained, or if the quality available is not suited to the county's needs, or if the heating plant equipment is not adapted to use this coal, or if Iowa coal would decrease the heating plant's efficiency or increase costs, then the use of Iowa coal is not required. (Sec. 73.6)

#### *Debt Limitations*

The members of the board of supervisors should be aware of the fact that a violation of the constitutional and statutory debt limitations can subject the members to personal liability. The Iowa Constitution provides and the Iowa Code repeats that a county may not become indebted for any purpose in an amount exceeding 5 per cent of the value of the property within the county. (Constitution, Art. XI, Sec. 3; Code Section 407.2)<sup>11</sup>

#### *Limitation on Expenditures*

The "Tuck Law," enacted in 1923, makes it illegal for the board of supervisors to allow any claim (see page 37), issue any warrant or enter into any contract that will cause an expenditure during that year from any county fund in excess of the total of the unexpended balance brought forward into the fund from the preceding year plus the collectible revenues for the fund for that year. Any county supervisor who participates in doing any one of the acts made illegal by the "Tuck Law" becomes personally liable for the payment of the claim or warrant or for the performance of the contract to the extent that the claim, warrant, or contract exceeds the funds available for the year. (Sec. 343.10; Op. Atty. Gen. 1925-26, p. 200)

Certain exceptions to the scope of the "Tuck Law" exist, however. Expenditures for bridges or buildings to replace those lost by extraordinary casualty, such as fire or flood, are excepted.<sup>12</sup> Also, expenses incurred by the county in operating the courts are excepted, as are sums spent for bridges that have been necessitated during the year by construction of a public drainage improvement. Expenditures of county funds for people entitled to aid from public funds and expenditures specifically authorized by vote of the county's electors are exempted from the application of the "Tuck Law." In addition, sums expended from county funds that are to be reim-

11. Code Section 407.1 also provides that a county may not become indebted in any manner for its general or ordinary purposes to an amount exceeding in the aggregate  $1\frac{1}{4}$  per cent of the actual value of the property within the county. The attorney general has ruled that the  $1\frac{1}{4}$  per cent debt limitation obtains unless addition is authorized by affirmative vote of a majority of the voters, and in any event the indebtedness may not exceed 5 per cent. (Op. Atty. Gen. 1916, p. 211)

12. See Op. Atty. Gen. 1958, p. 79, however, where it was stated that a board of supervisors should not have issued, in anticipation of tax levy, a \$5,000 warrant to build an addition to the courthouse because this violated section 343.10.



bursed by the primary road fund are excluded. Finally, expenditures provided by contract prior to July 4, 1923, are exempted if they are for the funding or refunding of legal obligations or debts of the county, as are those expenditures of the general county fund contracted for prior to January 1, 1924. (Sec. 343.11)

In addition to the statutory requirement that expenditures must not exceed revenues for any given year, the statutes of Iowa also limit expenditures for any specified purpose to the sums appropriated for that purpose for the year. (Sec. 24.14) However, taxes authorized by a vote of the electorate are excepted from this limitation, as are expenditures from the poor fund. Another exception to the limitation exists in the emergency fund, in that this fund may be used by any other fund even though such use will cause expenditures exceeding the amount provided in the year's budget. (Secs. 24.14, 24.6, 24.15, 343.11(4))

*Liability of supervisors for excessive taxes or expenditures*—Members of the board should note that the term "expenditure" may mean, in addition to the actual disbursement of funds, the contracting to pay funds. (Op. Atty. Gen. 1925-26, p. 373) If the board allows claims in excess of revenues, the members, in addition to their financial liability under the "Tuck Law," may be guilty also of a misdemeanor. (Op. Atty. Gen. 1938, p. 77) It is also a misdemeanor for the board to authorize a tax in excess of the amount certified or in excess of any limit fixed by law (including both constitutional and statutory limits). (Sec. 444.7)

#### *Settlement with Officers*

At the regular meetings in January and in June, the board of supervisors is required to make a full and complete settlement with the state treasurer. The settlement amounts to a determination of the balances due the state by the county and a payment of money on hand that is due the state. Upon settlement, the board must certify to the state comptroller all credits to the state for double or erroneous assessments and unavailable taxes; all money due the state for state revenue, interest, or delinquent taxes, sales of land, or peddlers' licenses; and all other money due, as well as the amounts actually collected by the county and the amounts still delinquent. This report must be divided to show the year for which the money is due and how much of each year's money due is collected and how much is not. (Sec. 452.6)

A settlement also must be made with the county treasurer when he leaves office. (Sec. 452.7) This consists of an accounting by the treasurer for all money transactions and a determination that money on hand agrees with the balances shown on the books. (Sec. 452.11) The board must see that the books are balanced correctly before turning them over to the new



treasurer. (Sec. 452.9) The board then must file with the county auditor a written report of the settlement and attach to it a certified list of the amounts and places of the various deposits of county funds. (Secs. 452.12-.13) In addition, the board must file a statement of amounts due the state with the state auditor which shall show all charges against the treasurer while in office, all credits made, delinquent taxes, and all unfinished business turned over to the new treasurer, as well as the amount of money paid over to the successor. This report must show to what year and what account the money turned over belongs. (Sec. 452.8)

### *County Property*

All county property that is not made the responsibility of some other county authority is placed under the care and management of the board of supervisors, which has a general power to make such orders concerning county property as the board may deem expedient and lawful. (Sec. 332.3 (4-6))

In addition to this broad grant of power, certain more specific powers are delegated to the board. Real estate needed by the county is to be purchased or leased by the board. The board also may designate changes of sites of buildings that are required to be at the county seat,<sup>13</sup> or site changes of any buildings used for the care and support of the poor. (Sec. 332.3(12)) The board may sell or lease county real estate not needed for county purposes. (Sec. 332.3(17)) And if county property is no longer needed for the purpose for which it was originally acquired, the board may convert this property to a new purpose or sell or lease it for a fair price. (Sec. 332.3(13)) The attorney general has stated that the board has no authority to lease county road machinery or equipment to a city or town unless the county no longer needs it for county purposes. (Op. Atty. Gen. 1956, p. 201)

The board is required to provide rooms for county purposes, and it bears the responsibility of constructing, repairing, and equipping buildings used by the county and the courts. The board may not lease space in the courthouse for private purposes without legislative grant. (State ex rel Wadsworth v. Board of Supervisors of Linn County, 232 Iowa 1092, 6 N.W.2d 877, 1942) The attorney general has ruled, however, that even though the leasing organization is private, if the purpose of the organization is public, the board may lease. (Op. Atty. Gen. 1938, pp. 317, 318) Leases of courthouse space to a state police broadcasting station (Op. Atty. Gen. 1936, p. 217) and to a county extension district (Op. Atty. Gen. 1958, p. 79) have been allowed.

13. The site must be kept within the limits of the county seat, however.



County buildings may be insured in the name of the county or for the county's benefit by the board. (Sec. 332.3(11)) If the use will not interfere with the original use intended for the property, the board of supervisors may permit any person to use part of the county lands for ornamental purposes or for the erection of a monument or fountain, subject, however, to such regulations as are deemed desirable by the board. (Sec. 332.3(16))

Rules governing the use by the public of all county buildings and grounds may be promulgated by the board of supervisors, and the Code of Iowa provides that a violation of these rules shall be a misdemeanor. (Sec. 332.3(19))

Although it is well established that the board has the general supervision and control of county property, due care must be taken that conflicting provisions of the Code, such as submitting questions to the voters, contract requirements, and limitations on expenditures, are not violated.<sup>14</sup>

*Joint city and county buildings*—Counties, and the city or town at which the county seat is located, are authorized to enter agreements for the acquisition and control of a joint city-county building. The Iowa Code provides two alternatives for the financing of such a building: (1) by the issuance of bonds paid by a tax levy, and (2) by the issuance of bonds paid for from revenues derived from the use of the building.

Under the first alternative, bonds to pay the county's share of the cost of the acquisition of sites and the construction of buildings may be issued by the county only when such a proposition has been approved by a majority of the voters at a general, regular, or special election. If the vote on the proposition is unfavorable, it may be submitted at subsequent elections. In the letting of contracts for construction of buildings that involve expenditures of \$5,000 or more, advertisements for bids must be published in a manner mutually acceptable to the board of supervisors and the governing body of the city or town. (Secs. 368.19-23)

Whenever bonds have been approved and issued by the county for the purpose of financing its share of the expense of constructing a joint county-city building, a tax sufficient to pay the interest and principal on the bonds must be levied by the board of supervisors. A tax for the county's share of maintaining such jointly owned property also may be levied. (Sec. 368.21)

The 59th General Assembly established the alternate means of financing a joint city-county building. The building may contain additional space available for lease to the general public, and the cost of construction and maintenance shall be borne by the issuance of revenue bonds payable solely

14. For example, see "Limitation on Expenditures," page 46; "Liability of Supervisors for Excessive Taxes or Expenditures," page 47; "Public Improvement Contracts," page 43; "Special Purpose Bonds," page 40; "Debt Limitations," page 46; and "Tax Levies Authorized by Vote," page 24.



from revenue derived from the operation and lease of this additional space. Details of the bond issuance are to be determined by resolution of the board of supervisors and ordinance of the city or town council. The fees and rentals that must be charged for the use of these buildings must be large enough to pay the principal and interest on the bonds, the cost of operation and maintenance of the building, and provide an adequate depreciation fund. (Sec. 368.19)

#### *Licenses and Permits*

*Business establishments*—The county board of supervisors has the power to regulate and license any theatre, moving picture show, pool or billiard room or table, dance hall, skating rink, amusement park, bowling alley, restaurant, or other business establishment open to the public and located on or accessible to a road or highway outside the limits of an incorporated city or town where entertainment, foodstuffs, or prepared food or drink is furnished to the general public for hire, sale, or profit. (Sec. 332.23)

No person may engage in any of these specified business activities without first obtaining a license from the board of supervisors and paying a fee as prescribed by the board, but not in excess of \$10. The license issued must be for a period of not less than six months nor more than one year. (Sec. 332.24) All license fees must be credited to the county general fund, and all expenses incurred in licensing and regulating the specified businesses must be paid out of the general fund. (Sec. 332.26)

When a license is granted, the terms and conditions on which the business establishment may be operated must be recorded in the minutes of the board of supervisors. The licensee must be notified of this action and he shall, upon request, be furnished with a copy of the terms. The licensee must pay the cost of furnishing this copy. (Sec. 332.25)

The county board of supervisors may revoke a license whenever any licensee or agent, employee, or servant of any licensee, permits any intoxicated person to be in or remain upon the premises, or permits any profane or obscene language, lewd or lascivious acts, indecent or suggestive dancing, or fighting or quarreling, to be uttered, done, or engaged in upon the premises, or whenever necessary to promote the health, safety, recreation, or general welfare of the people of the county. If a license is revoked, a pro rata part of the license fee must be repaid to the licensee. (Sec. 332.27)

The county board of supervisors also has the power to seek an order of the district court to abate, restrain, or prohibit any business establishment where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others, or where any nuisance, public or private, is maintained. (Sec. 332.28)

Any person whose license has been revoked or whose business establish-



ment has been restrained or prohibited by action of the county board of supervisors may appeal to the district court of that county by serving a notice on the chairman of the board within twenty days after the final decision of the board. (Sec. 332.29)

*Cigarette permits*—The county board is authorized to issue retail permits for the sale of cigarettes outside of the corporate limits of cities and towns, but such action must be certified to the state tax commission. (Sec. 98.13 (2)) The board is not required to issue a permit to an applicant; it may refuse to do so on the ground that granting a permit might be harmful to the health or morals of the community or might hinder law enforcement. (Op. Atty. Gen. 1938, p. 708) Sales of cigarettes may not be made until a permit has been obtained; this entails the filing of an application, the giving of a bond, and the payment of a prescribed fee. (Secs. 98.13(5-6), 98.14)

The fees required for cigarette permits are fixed by the General Assembly and are paid into the county general fund. (Sec. 98.35) The schedule of fees is as follows: (Sec. 98.13(3))

MONTH PERMIT GRANTED	FEE
July, August, September .....	\$ 50.00
October, November, December .....	37.50
January, February, March .....	25.00
April, May, June .....	12.50

All permits expire on June 30 of each year, and no permit may be granted until all fees are paid for the period ending the following June 30. Notwithstanding the provision of section 332.5, which authorizes the location in the courthouse of newsstands operated by disabled veterans, the board of supervisors cannot waive the requirements of Chapter 98 of the Code, and any veteran dispensing cigarettes at such a newsstand is required to obtain the necessary permit. (Op. Atty. Gen. 1938, p. 579)

In such cases where the holder of a cigarette permit desires voluntarily to surrender his permit, the schedule of refunds established by the General Assembly is as follows: (Sec. 98.13(4))

FEE PAID	MONTH SURRENDERED	REFUND
Full Annual (\$50.00)	July, August, or September.....	\$ 37.50
Full Annual (\$50.00)	October, Nov., or December.....	25.00
Full Annual (\$50.00)	January, February, or March.....	12.50
Three-fourths (\$37.50)	October, Nov., or December .....	25.00
Three-fourths (\$37.50)	January, February, or March.....	12.50
One-half (\$25.00)	During first three months of period covered by the fee.....	12.50

Upon five days' written notice, the board of supervisors may hold a hear-



ing and revoke a permit if there is a violation by the permit holder of any provision of Chapter 98. The notice is served by certified mail to the permittee's place of business and contains a statement of the reasons for the proposed revocation and the time and place of the hearing. The revocation is mandatory if section 98.2 is violated. (Sec. 98.22(1))

Whenever a permit is revoked, a new permit cannot be issued to the violator for any place of business, or to any other person for the place of business where the violation occurred, for one year unless "good cause" is shown why a new permit should be granted. (Sec. 98.22(3))

*Beer permits*—The board of supervisors has discretionary power to issue class "B" permits (which allow the holders to sell beer at retail for consumption on or off the premises) and class "C" permits (which allow the holders to sell beer at retail for consumption off the premises) in villages platted prior to January 1, 1934 (Sec. 124.5), and any other area in the county that is outside the limits of a city or incorporated town. Except in villages platted prior to January 1, 1934, the issuance of class "B" permits by the board is limited to golf or country<sup>15</sup> clubs outside of any city or town; these clubs cannot be proprietary clubs or clubs operated for a profit. They must be incorporated with at least fifty permanent adult members. The application must be approved by a majority of the members, and the club must have been formed prior to January 1, 1934, or in continuous operation at least two years before an application for a class "B" permit is made. (Secs. 124.15-.16)

It is the duty of the board to make a thorough investigation to determine the fitness of the applicant and to make a decision regarding the application within thirty days of its receipt. (Sec. 124.23)

Upon issuing a permit, the board of supervisors must certify this fact to the state beer permit board so that a state permit can be issued. If the board revokes a permit, this action must be certified to the state permit board so that it can revoke the state permit. (Sec. 124.5)

Some provisions of the Code regarding issuance of "B" and "C" permits contain the word "shall" (Secs. 124.9-10), indicating it is mandatory that the permit be issued to any applicant meeting the qualifications prescribed. The attorney general of Iowa has ruled, however, that the wording in no way affects the board's power to grant or refuse to grant licenses at its discretion. (Op. Atty. Gen. 1938, p. 463) The board's discretion is limited, however, by the provision that a permittee must be a person of "good moral character," which specifically excludes persons who have been found guilty of violating any provision of the beer or liquor laws of Iowa or who have

15. If organized for any outdoor exercise or activity, a club can qualify as a country club. (Op. Atty. Gen. 1934, p. 354)



been convicted of a felony or an indictable misdemeanor. (Secs. 124.2(6)-.6-10)

All permits (other than the six-month permit allowed golf and country clubs) issued under the authority of Chapter 124 of the Code expire one year from the date of issuance and are renewable for periods of one year. (Sec. 124.6)

All authorized permit fees collected from clubs receiving their permits from the board of supervisors are to be placed in the general county fund. (Sec.124.16(1)) Some latitude in setting fees for class "B" permits is given the board of supervisors. Except for hotels and clubs, the class "B" permit fee may not be less than \$100 nor more than \$300. Golf and country clubs shall be charged \$50 for a six-month permit. For hotels with 250 or more guest rooms, the fee for the class "B" permit must be \$250; if the hotel has 101 to 249 guest rooms, a fee of \$150 is required. The class "B" permit for hotels with 100 or fewer guest rooms is \$100. The class "C" permit fee is fixed at \$25. (Sec. 124.24) Wherever discretion is allowed in fixing a fee, however, the board must apply the fee schedule uniformly once it has been established. (Op. Atty. Gen. 1936, p. 153)

Whenever a permit holder voluntarily surrenders his permit, the board of supervisors is required to refund a portion of the fee paid as follows: if surrendered during the first three months of an annual period, three-fourths of the permit fee; if surrendered during the fourth, fifth, and sixth months of an annual period, one-half of the permit fee; if surrendered during the seventh, eighth or ninth months of an annual period, one-fourth of the permit fee; no refunds are to be made when a permit has been held more than nine months. Also, no refund may be made if a complaint has been filed with the board charging a violation of Chapter 124 of the Code. If the permit is not revoked subsequently through action of the board, the holder may voluntarily surrender his permit and secure the refund provided above. If charges against a permit holder are sustained and his permit revoked, no refund may be made. (Sec. 124.6)

The county board of supervisors must revoke any permit it has issued if the holder is convicted of a felony or is convicted of selling beer in violation of the beer and malt liquor law. The same mandatory result must occur if the permittee is convicted of bootlegging, found guilty of illegally selling or dispensing wine or spirits, permits mixing on the premises of alcohol with any beverage, or is found guilty of violating any provision of Chapter 124 of the Code. (Sec. 124.30) Power is also vested in the board to revoke permits it has issued if the holder's place of business is conducted in a disorderly manner. (Sec. 124.5) The board also may revoke a holder's permit if he violates any of the board's regulations. (Sec. 124.34)

In cases in which reasonable grounds for revocation appear to exist and



the board of supervisors has held a hearing on the matter but has not revoked or canceled the permit, the state permit board has jurisdiction to review the board of supervisors' action. The state permit board also has jurisdiction to hold a hearing on the issue of revocation if the board of supervisors fails to hold any hearing requested by the state permit board or by at least ten taxpayers (whose request is made in a verified petition). In all cases in which the state permit board has jurisdiction over the matter, it has power to issue a final order which is binding on all parties concerned. (Secs. 124.4, .40; Op. Atty. Gen. 1940, p. 572)

Within limits prescribed by law, the board of supervisors may regulate opening and closing hours of establishments operated by beer permit holders. (Sec. 124.35) The law requires that no beer be sold or consumed on the premises of a class "B" permittee between one and six a.m., but clubs are excepted from this provision. (Sec. 124.35) Also, all class "B" permittees are forbidden to sell or permit consumption of beer on the premises between midnight Saturday and seven o'clock Monday morning. (Sec. 124.20) The board also is empowered to pass such regulations as it deems necessary, as long as they do not conflict with any provisions of Chapter 124, on matters relating to the permittee's business that affect the welfare and morals of the community. (Sec. 124.35)

The county board of supervisors is vested with an additional power to regulate dancing in places that hold class "B" permits issued by the board. (Sec. 124.35) These regulations must not conflict with the provisions of Chapter 124 of the Code. It should be noted that no dancing is permitted on the premises of a class "B" permit holder unless the board, by resolution, has authorized and licensed this activity. (Sec. 124.39(1)) The basic requirements of floor space, policing, fixtures, and lighting are fixed by section 124.39 of the Code.

*Public shows*—The General Assembly has granted the board of supervisors authority to regulate or prohibit "the public exhibition, for any price, gain, or reward, of any traveling show, circus, rodeo, or other public display of any kind" outside the limits of any city or town. Prior to the exhibition of any of the above, a license must be obtained from the county auditor and a fee paid to the county treasurer. The amount of the fee for such public exhibitions is fixed by the board of supervisors but may not exceed \$100 for each place in the county at which an exhibit is promoted. (Sec. 444.18)

*Dog licenses*—Although the license fees paid by dog owners are prescribed by state law, the board of supervisors has the power to increase the statutory fees if it appears that the revenue therefrom will not be sufficient to pay the claims on the domestic animal fund. This grant of power to the supervisors does not extend, however, to cities and towns that exact a



license fee on dogs. The increase in fees which the supervisors may prescribe may not make the total fees for male dogs more than \$3.00 nor more than \$5.00 for unspayed female dogs. (Sec. 351.6)

The board of supervisors is charged with responsibility for providing, by contract or otherwise, for the seizure, impoundment, and disposition of dogs not wearing a license as required by Chapter 351. (Sec. 332.3(21))

*Licensing of auctioneers*<sup>16</sup>—A license issued by the board of supervisors is required before an auction sale<sup>17</sup> may be held within the county but outside the limits of any municipality.<sup>18</sup> (Sec. 546A.1) Upon receipt of a verified application, as required by section 546A.2, and an adequate bond, providing a penal sum two times the value of the goods to be offered for sale, as required by section 546A.3, and upon the payment by the applicant to the county treasurer of the fee required by section 546A.4, the board of supervisors, acting through its chairman, must issue a license authorizing the auction sale.

Within ten days after the auction sale, the board must receive from the licensee a verified inventory of the goods sold and the price received for the goods. The board's chairman must immediately, upon receipt, forward a copy to the state tax commission. (Sec. 546A.6)

It should be noted also that the chairman of the board of supervisors must be made the licensee's agent for purposes of service of process; this appointment is made in the bond required as a condition to obtaining the license. Thereafter, if the chairman is served as an agent for the licensee, he must mail the licensee a copy of the process. This must be done within five days of the time the chairman is served, and the copy should be mailed to the licensee's last known address. (Sec. 546A.3)

#### *Insurance*

Code section 517A. 1, enacted in 1957, provides that all state commissions, departments, boards, etc., and agencies of *all political subdivisions* of the state of Iowa *not otherwise* authorized are authorized to purchase liability, personal injury, and property damage insurance covering all officers and employees while in the performance of their duties, including operat-

16. The provisions of Chapter 546A, which governs the licensing of auctioneers and the conduct of auction sales, are constitutional. (Steinberg-Baum & Co. v. Countryman, 247 Iowa 923, 77 N.W. 2d 15, 1956)

17. This requirement, however, does not apply to auction sales of livestock, farm produce, machinery, or other items commonly sold at farm sales, nor does it apply to auction sales of "new" merchandise (or replacement stock for such merchandise) if this merchandise was assessed as personal property by the county in which the sale is to be held. Also, sales at the direction of a court or its officers are not required to be licensed. (Sec. 546A.8)

18. The same license is required for sales within a municipality if the municipality has not provided by ordinance for the licensing under Chapter 368 of the Code.



ing an automobile, truck, tractor, machinery, or other vehicles *owned or used* by the political subdivision.

While the board would seem to qualify as a political subdivision under the new statute, Code section 332.3(20) already provides that the board of supervisors has power to purchase insurance on county employees while in the performance of their duties and operating an auto, truck, machinery, or other vehicles *owned* by the county. This insurance is limited to \$10,000 for property damage, \$50,000 for personal injury or death of one person, or \$100,000 for personal injury or death of more than one person. (Sec. 332.3(20))

The attorney general has ruled that section 332.3(20) has not been repealed by implication because of the enactment of section 517A.1. Rather, section 332.3(20) is an exception, another authorization with limits applicable only when the terms of the policy are restricted to vehicles *owned* by the county. If the board of supervisors purchases broader coverage insuring liability of employees operating vehicles owned or used by the county, the limits specified in section 517A.1 apply. (Op. Atty. Gen. 1958, p. 74)

The board also has power to insure county buildings in the name of the county or for its benefit. In the event that buildings are destroyed by fire, wind, or lightning, the board may use the insurance money received to reconstruct the destroyed structures. (Secs. 332.3(11), .11)

#### *Offices and Supplies*

It is the duty of the board of supervisors to furnish offices, fuel, lights, blanks, books, and stationery necessary for the clerk of the district court, sheriff, recorder, treasurer, auditor, county attorney, county superintendent of schools, county assessor, and county surveyor or engineer. (Secs. 332.9-.10) The attorney general has held that this obligation also extends to the office of the county board of social welfare. (Op. Atty. Gen. 1944, p. 98) In addition, the board of supervisors must furnish quarters for city assessors. (Sec. 405.12) With the exception of the county attorney, no county officer may occupy an office with a practicing attorney. (Sec. 332.9) The duty to furnish books, however, does not require the board to furnish the county attorney law books or a law library. (Sec. 332.10)

#### *County Vehicles and Garages*

The board of supervisors is empowered to own and operate such automobiles and motorcycles as the county sheriff uses or needs in the performance of the duties of that office. If the board chooses, it may contract with the employees of the sheriff's office for the use of their automobiles if the board decides this would be advantageous to the county. A garage may be operated by the county for the purpose of servicing automobiles and other vehicles that are owned and operated by the county. (Sec. 332.3(18))



## Chapter 5

# Supervision of Personnel

ALTHOUGH THE MAJORITY of county officers—auditor, treasurer, recorder, attorney, sheriff, and clerk of the district court—are elected, the board of supervisors plays an important role in appointing and fixing the salaries of certain officers, deputies, and temporary help, and in filling vacancies in county offices.

### *Mandatory Appointments*

*Vacancies*—Under the provisions of section 69.8(4) of the Code, the board of supervisors must fill vacancies that occur in county offices, including constables and justices of the peace.<sup>1</sup>

*County engineer*—Because of the extensive network of roads and highways in each county, the appointment of a county engineer is highly important. The selection of one or more county engineers, who must be registered engineers, is mandatory with the board of supervisors. (Op. Atty. Gen. 1934, p. 64) The term of office for county engineers may not exceed three years, but the board may terminate appointments at any time. Compensation is fixed by the board and payment is made from the general county fund or the secondary road fund. (Secs. 309.17-18)

*County medical examiner*—The General Assembly in 1959 passed an act that abolished the office of county coroner effective January 1, 1961, and established the office of county medical examiner.

The county board of supervisors must appoint a medical examiner for a term of two years. The medical examiner must be licensed in Iowa as a doctor of medicine and surgery or as an osteopathic physician or osteopathic physician and surgeon. He must be appointed by the board of supervisors from lists of two or more names submitted by the component medical society and the osteopathic society of the county in which he is a resident. If no list of names is submitted by either society, the board of supervisors must appoint a county medical examiner from the licensed doctors of medicine, or licensed osteopathic physicians or osteopathic physicians and surgeons, of the county. If no qualified appointee can be found in the county, the board of supervisors must appoint the medical examiner from another

1. See page 63 of this handbook for a discussion of "Vacancies."



county. If, for good cause, a county medical examiner is unable to serve in any particular case or for any period of time he must notify the chairman of the board of supervisors promptly and the chairman must designate some other qualified person to act in his place. (Sec. 339.1-2)

The duties of the county medical examiner are prescribed by law, and are basically those formerly performed by the county coroner except that the medical examiner is not authorized to serve as sheriff or to appoint a temporary sheriff as was the coroner.

The county board of supervisors is authorized to provide, or arrange, and pay for laboratory facilities, deputy medical examiners, and such professional, technical, and clerical assistance that may be required by the county medical examiner in the performance of his duties. (Sec. 339.8)

Compensation for the duties of the county medical examiner is made from fees prescribed by law.<sup>2</sup> (Sec. 339.5, .12)

*County weed commissioner*—Appointment of a county weed commissioner is also mandatory with the board of supervisors. The weed commissioner, who is appointed for a one-year term commencing March 1, may not be employed otherwise by the county. With the approval of the board of supervisors, the weed commissioner may appoint a deputy or deputies. Compensation of the weed commissioner and his deputies is fixed by the board of supervisors. Both salary and travel expenses are paid from the county general fund or the weed eradication and equipment fund. (Sec. 317.3)

#### *Approval of Appointments*

*Deputy county officers*—The county auditor, treasurer, recorder, sheriff, attorney, and clerk of the district court *may* appoint deputy officers or assistants but these appointments must be approved by the board of supervisors. The board also is responsible for determining the number of deputies, assistants, and clerks to be allotted to each office. This determination, as well as the approval of appointments, is by resolution of the board and is entered in the board's proceedings. (Sec. 341.1) Revocations of appointments, however, are made by the officer making the appointment (or his successor), who also is responsible for the acts of his assistants, deputies, and clerks. (Sec. 341.3)

*Jail cooks and assistants*—In counties with a population of more than 150,000, the sheriff may appoint, with the approval of the board of supervisors, a cook for each of the county jails and such assistants as the board may determine are necessary. Whenever the sheriff fails to make these

2. In the absence of statutory authorization, the board of supervisors has no authority to substitute an annual salary for the fees of the medical examiner. (Op. Atty. Gen. 1960, p. 74)



appointments, it is the duty of the board to provide personnel for the jobs. Salaries of the cooks and assistants are fixed by the board and may include board and lodging in the jail. (Secs. 338.4-5)

*Participation in appointment of the county assessor and board of review—* The board of supervisors is an integral part of the conference board, which appoints the assessor and the county board of review for tax assessments. An act passed by the General Assembly in 1959 combined several chapters of the Code into a new County Assessor Act. Under this new act, a conference board is established consisting of the board of supervisors, mayors of all incorporated cities and towns in the county where property is assessed by the county assessor, and members of the county board of education. The chairman of the board of supervisors acts as chairman of the conference board. (Sec. 441.2) At a regular meeting the conference board must appoint an examining board, which conducts examinations for the office of assessor. (Sec. 441.3) The examining board returns to the conference board a certified list of qualified applicants for the office of assessor, and one of these applicants is appointed by the conference board to the office of county assessor for a term of six years. (Secs. 441.5-.6, .8) The assessor must appoint his deputies from the list of qualified applicants as certified by the examining board. The number of deputies must be authorized by the conference board. (Sec. 441.11)

The chairman of the conference board must call a meeting by written notice to all members for the purpose of appointing a board of review for all assessments made by the assessor. The board of review may consist of three or five members. As nearly as possible, the board should include one licensed real estate broker, one registered architect or person experienced in the building and construction field and one farmer. No more than two members of the board of review may be of the same profession, and not more than one member may be from the same town or township.<sup>3</sup> The terms of the members of the board of review are for six years and are staggered so that in any one year there will be incumbent members on the board as well as new appointees or reappointees. (Secs. 441.31-32)

In accordance with a ruling of the Iowa attorney general, members of the board of supervisors are not eligible for appointment to the board of review. (Op. Atty. Gen. 1948, p. 120)

#### *Optional and Other Appointments*

A number of appointments are optional with the board of supervisors. A county surveyor may be appointed to hold office at the pleasure of the board,

3. Removal of residence by a member from the township from which he was appointed to a township in which another member of the board resides creates no vacancy; the statute applies only to the board *as selected*. (Op. Atty. Gen. 1957, p. 73)



but the Code makes no provision for the surveyor's compensation other than on a fee basis. The surveyor must be a registered land surveyor, holding a certificate under Chapter 114 of the Code. (Sec. 355.1)

The board also may authorize the county treasurer to employ personal property tax collectors, with compensation not to exceed 10 per cent of the total amount collected. Payment to such collectors may not be made, however, until all taxes that have been collected have been paid over to the county treasurer. (Sec. 445.50)

In any cause or proceeding in which the county or state is interested, the board of supervisors may employ an assistant for the county attorney. In addition, the county attorney, with the approval of a judge of the district court, may procure assistants necessary to prosecute a person charged with a felony. Upon presentation to the board of a certificate signed by the judge before whom the case was tried, the board is required to allow a reasonable compensation for the services of such assistants. (Sec. 341.7)

Temporary assistance also is authorized for the county auditor in cases where a deputy has not been appointed. Although apparently the board plays no part in the hiring of such temporary assistants, the board is required to make a reasonable allowance for their services. (Sec. 341.8)

In counties in which there is no agricultural society or in which the society fails to report to the state fair board as required for state aid, the board of supervisors is authorized to appoint a delegate to the convention held on the second Wednesday in December of each year. This convention meets to elect members of the state fair board. (Sec. 173.2)

Appointments referred to elsewhere in this handbook are:

Board of hospital trustees (see page 97.)

Board of library trustees (see page 116.)

Conservation board (see page 108.)

County board of health (see page 96.)

County home steward (see page 94.)

Overseer of poor (see page 90.)

Public health nurses (see page 100.)

Social welfare board (see page 87.)

Soldiers' relief commission (see page 92.)

Tax collectors (see page 31.)

Zoning adjustment board (see page 113.)

Zoning administrative officer (see page 113.)

Zoning commission (see page 112.)

#### *Considerations in Approving Appointments and Employment*

In making or approving appointments or employment by the county, the board should be aware of the nepotism laws of the state. Under these laws



it is unlawful for any person appointed or elected to any public office or position to appoint as his deputy, clerk, or helper any person who is related to him within the third degree, unless the appointment is first approved by the board or person who approves the bond of the principal officer. (Sec. 71.1) However, the board of supervisors is the authority which approves the bonds of county officers (Sec. 64.19), so it is within the board's power to validate most appointments to county positions that would be unlawful otherwise. The nepotism laws are subject to several exceptions: (1) employees receiving \$600 or less per year, (2) public school teachers, and (3) those appointments made by a board or commission. (Sec. 71.1; Op. Atty. Gen. 1934 p. 382)

In addition, the laws of Iowa make it mandatory for honorably discharged men and women of the armed forces of the United States who served in any war, including the Korean conflict, to be given preference for public employment, provided their qualifications are the same as other applicants. (Sec. 70.1) However, the Code specifically excludes from this law's requirement all appointments of private secretaries, deputies, and any person holding a strictly confidential relationship with the appointing officer. (Sec. 70.8)

### *Compensation*

It is the duty of the board of supervisors to fix and provide for the payment of compensation for all services rendered by county and township officers for which the statutes of Iowa do not make other provisions. (Sec. 332.3(10)) Salaries of the elected county officials are fixed by the General Assembly, but in certain cases the board may allow additional compensation within limits prescribed by the legislature. Also, in most instances, the board of supervisors is granted authority to determine compensation for deputies, assistants, and clerks within limits established by the legislature. If the General Assembly increases the salaries of county officers, the increases are mandatory and operate as authority for the board of supervisors to amend previously adopted operating budgets. (Op. Atty. Gen. 1948, p. 55)

*County treasurer*—The compensation allowed the county treasurer is fixed by law based on a population schedule. (Sec. 340.3(1-13)) However, in counties with populations of 40,000 or more that include a city of 15,000 or more people, the board may allow the treasurer additional compensation not to exceed \$50 a year for each 5,000 inhabitants of such a city. If the county contains a city whose population is 75,000 or more, the board of supervisors must grant additional compensation to the treasurer. The additional pay may not be less than \$25 nor more than \$50 for each 5,000 people of the city, and the total additional pay cannot exceed \$500 annually.



(Sec. 340.3(14)) In counties in which the district court is held at two different places, the county treasurer shall receive \$500 in addition to the compensation fixed by the population schedule. (Sec. 340.3(15)) In any county with a land area of less than 390 square miles, the treasurer shall receive an annual salary equal to the amount fixed for that officer in counties with populations between 20,000 and 25,000. (Sec. 340.3(16))

*County assessor and deputies*—The county conference board, of which the board of supervisors is a part, has the duty of fixing the salary of the county assessor and the compensation of his deputies and assistants. (Sec. 441.16)

*Deputy officers*—The first deputy and second deputy of the auditor, the treasurer, the recorder, and the clerk receive annual salaries equal to not more than 80 per cent of the salary to which the principal officer is entitled. In counties with populations of 100,000 or more, any deputy in charge of the motor vehicle registration and title department must receive an annual salary equal to 80 per cent of the principal officer. It is the general duty of the board of supervisors to fix the compensation for extra help and clerks in county offices. If any county office requires more than two deputies, and if the additional deputies possess equal abilities, these additional deputies receive annual salaries determined by the board, but each salary must not exceed 70 per cent of the salary of the deputy's principal officer. However, in counties with populations of 100,000 or more, deputies (where more than two are required) and the first assistant to the deputy in charge of the motor vehicle registration and title department must be paid annual salaries equal to 70 per cent of their principal. (Sec. 340.2)

*Assistant county attorneys*—If a county's population is 36,000 or more, and more assistants than the first assistant county attorney are required, the board of supervisors fixes the additional assistants' salaries. The amount of the salary must be within 50 to 65 per cent of the salary of the county attorney. The first assistant's salary is fixed by law, and the board has no power over it. (Sec. 340.10)

In any county of 57,000 or more population that has a city other than the county seat with a population of between 6,000 and 15,000, the board of supervisors may fix the salary for an assistant county attorney residing in that city. In no case, however, may the compensation of that assistant exceed \$2,000 per year. (Sec. 340.10(4))

In the event the county attorney or his deputies are unable to conduct necessary business because of absence, sickness, or disability, the court may appoint an attorney to act as county attorney. When the acting county attorney appears before a justice of the peace, his compensation is determined by the board of supervisors. In causes taken to a court of record, the compensation is fixed by the judge of that court. (Sec. 336.3)



*Deputy sheriffs*—The board of supervisors is authorized to fix the compensation of deputy sheriffs subject to limitations provided by section 340.8 of the Code. First and second deputies receive annual salaries that may not exceed 85 per cent of the salary of the sheriff. (Sec. 340.8) All other deputy sheriffs receive such salaries as the board authorizes, but the board can never authorize compensation to exceed salaries paid to the first and second deputies.

In counties in which the district court is held in two places, deputies, other than the chief deputy in charge of the office where the court is held outside the county seat, are authorized a salary fixed by the Code and not subject to the board's power. (Sec. 340.8(3))

#### *Vacancies, Resignations, Removals*

Elective county offices become vacant upon the happening of any of the events listed on page 11 (Sec. 69.2), and removal of any appointed or elected officer may be obtained on the grounds listed on page 12.<sup>4</sup> (Sec. 66.1) Removal, of course, creates a vacancy in office.

In addition to the above procedures, the board of supervisors has specific authorization to remove from office any county officer who refuses or neglects to make any report or give any bond within twenty days after being required by the board to do so. A majority vote of the board is required. (Sec. 332.3(9)) The board of supervisors can require any county officer to report on any subject connected with the duties of his office or to give such bonds as are necessary to assure the faithful performance of the duties of his office. (Sec. 332.3(8))

When an elective county office (including justices of the peace and constables) other than that of a county supervisor becomes vacant, the board of supervisors has a duty to make a temporary appointment to fill the position until it can be filled by election. (Sec. 69.8(4)) As decided in *State ex rel. Ingram v. Larson*, 224 Iowa 509, 275 N.W. 566, 1937, this provision also applies to the appointment of a clerk of the district court, although the district judge may appoint a clerk to hold office until the board names an appointee to fill the vacancy.

#### *Combining County Offices*

The 58th General Assembly (1959) enacted legislation providing a means whereby the duties of two or more county officers or employees may be combined. Offices subject to this provision are: sheriff, treasurer, recorder, auditor, medical examiner, clerk of the district court, overseer of the poor,

4. The discussions pertain to vacancies in the board of supervisors and removal of a supervisor from office. The same reasons for vacancy of office and the same rules for removing a supervisor pertain to other elective county offices.



county home steward, soldiers' relief commission, director of social welfare, assessor, and weed commissioner. (Sec. 332.17)

The board of supervisors, if petitioned by voters equal to at least 25 per cent of the votes cast for the county office receiving the greatest number of votes at the last preceding general election, must call an election for the purpose of voting on a proposal (or proposals) for combining the duties of any of these officers or employees. If the petition contains more than one proposal, each proposal must be listed on the ballot as a separate issue. The petition must state the offices and positions to be combined and the office or position that is to be abolished. (Sec. 332.18)

If an appointive position is abolished, the incumbent's term of office terminates one month from the day the proposal is approved. When an elective office is abolished, the incumbent holds office until the completion of the term to which he was elected, but if the proposal is approved at a general election at which an abolished office is filled, the person elected to the abolished office does not take office. (Sec. 332.20)

When the duties of any abolished office are assigned to an elective officer, the board of supervisors may set the salary of the elective officer in lieu of the amount provided in Chapter 340. The person filling the combined office must take the oath and give the bond required for each office. (Sec. 332.21)

#### *Bonds of County Officers*

The bonds of the auditor, clerk of the district court, county attorney, recorder, sheriff, medical examiner, superintendent of schools, justices of the peace, constables, and assessors are fixed by the board of supervisors. (Sec. 64.8) State law prescribes a minimum bond of \$5,000 for the clerk of the district court, auditor, sheriff, and county attorney, and a \$500 minimum for justices of the peace and constables (Sec. 64.9); the county treasurer's bond is fixed by statute at \$10,000. (Sec. 64.10) The bond of the county engineer may range from \$2,000 to \$5,000. (Sec. 309.19) The assessor's bond is set by the conference board. (Sec. 441.15) In cases where no limits are fixed by law, the board of supervisors fixes the amount of the bond. (Sec. 64.7)

Bonds required of deputy officers may be in any amount fixed by the board of supervisors. The giving of the bond by the deputy, however, does not relieve the principal officer from liability for official acts of the deputy. (Sec. 64.15) The reasonable costs of bonds required of deputy county officers, clerks, and cashiers are paid by the county. The bonds of deputy sheriffs may be either bonds or liability policies, according to whichever the sheriff requires, subject, of course, to approval by the board of supervisors. (Sec. 341.5)

The bonds required of county officers must be executed with at least



two sureties (and in the case of the county treasurer's bond, at least four sureties). (Sec. 64.16) The obligation of the surety includes liability for all money or public property that comes into the hands of the officer. (Sec. 64.3) Upon petition, a surety may be relieved of his obligation if, after a hearing, the board of supervisors decides that there is "substantial ground for apprehension." (Sec. 65.4, .7) In this event, the county officer must supply a new bond or the office is declared vacant. (Secs. 65.7-8)

Within five days after presentation of bonds to the board of supervisors by the county officers, township clerks, and assessors, the board must approve (by endorsing approval on the bond) or disapprove the bond. (Sec. 64.20) If the board refuses or neglects to approve the bond of a county officer, he may present the bond within five days to a judge of the district court for approval. If, upon hearing, the bond is found to be sufficient, the judge's approval has the same effect as that of the board of supervisors. (Sec. 64.22)

Whenever a bond is presented to the board of supervisors after final adjournment of the board's January session, the county auditor may give his approval to all bonds except those of the county auditor and county treasurer. The county auditor then must report this approval to the board at its next meeting. Unless the board disapproves, the bonds the auditor has approved will be deemed approved by the board. However, if the board disapproves of the bond, a new bond sufficient for approval must be furnished by the officer within five days. Nevertheless, the disapproved bond will cover all acts done up to the time of substituting an approved bond. (Sec. 64.21)

Those officers whose bonds are approved by the board of supervisors may be required by the board to furnish a new bond as additional security if it is the board's opinion that public security requires it. In such cases, the board must give the officer ten days' notice to show cause why a new bond should not be required. Upon failing to show cause, the officer must furnish a bond within the time prescribed (which the law requires to be no less than a "reasonable" time) by the board. (Sec. 65.2) The result is that one officer will be covered by two valid bonds. If the officer does not furnish the second bond, his office becomes vacant. (Sec. 65.3)

If the county has received a judgment against any county officer and the sureties to his bond, and, if the board is satisfied that the full amount cannot be collected, the board of supervisors may compromise the judgment. (Secs. 332.12-.13)

If any officer refuses or neglects to provide a bond within twenty days after he is required to do so, the board of supervisors is authorized to remove him from office. (Sec. 332.3(9)) In addition, any officer who acts in an official capacity without giving bond when it is required shall be fined an amount not to exceed the amount of the bond required of him. (Sec. 64.25)



### *Reports and Records of County Officers*

The board of supervisors may require any county officer to report to it, under oath, on any subject connected with the duties of his office. (Sec. 332.3(8)) In addition to this general provision, the various county officers are required by law to make certain reports quarterly and annually to the board and to keep certain records ready for inspection at all times.

All fees and charges collected by the county auditor, treasurer, recorder, sheriff, clerk of the district court, and their deputies or clerks must be reported quarterly to the board of supervisors. This mandatory report must give an itemized account of all fees collected during the preceding quarter. (Sec. 342.3)

In addition, the Code specifies that unless otherwise provided, all officers required to collect and pay over fines must make a sworn report in writing to the board on the first Monday in January each year. This report must indicate the amount of the fines assessed, the amount of the fees and fines collected, and the vouchers showing payments of these sums to the proper officials. (Sec. 79.7) This duty of submitting an annual report to the board of supervisors is not limited to county officers alone; constables and justices of the peace are subject to the same requirement. (Sec. 601.132) A similar accounting is required on the same date of clerks of district, municipal, superior, and police courts and mayors of cities and towns. (Sec. 666.6)

In counties of more than 150,000 population, the sheriff is required to account to the board of supervisors for all fees collected or due for the boarding, lodging, and care of federal prisoners in his custody. Usually, however, counties of this size enter into a contract with the federal bureau of prisons for maintenance of federal prisoners. (Sec. 338.9)

The above reports are mandatory, and a failure to file the reports with the board of supervisors is a misdemeanor and renders the officer failing to perform his duty subject to prosecution and punishment. (Secs. 343.6, 666.6) In addition, the board may employ an expert accountant to make the report, and the expenses involved are charged to the delinquent officer. The board may resort to the officer's bond if he does not pay the expenses of the accounting. (Sec. 343.5)

The board of supervisors also has duties relating to certain other official reports. The county auditor is required to prepare an annual report each January. The board has the duty of ordering the printing of this report for distribution to the county's taxpayers. (Sec. 333.14) Also, the board has the power to require the auditor to include information in the report in addition to the information specifically required by the Iowa Code. (Sec. 333.13(5)) This power to require added information is purely discretionary, and its exercise depends on local needs for information about county affairs.

The financial report of the county auditor contains a record of receipts



and disbursements by the county. (Sec. 333.11) In addition to this printed record, the county treasurer is directed by law to have a true account of receipts and disbursements ready at all times for inspection by the board of supervisors. (Sec. 334.1)

The county board of supervisors bears the responsibility of enforcing most of the weed control provisions of the Iowa Code, Chapter 317 (Sec. 317.9); consequently, it is entitled to receive, on or before the first day of November, the weed commissioner's annual mandatory report. (Sec. 317.7)

When county libraries are established under the provisions of Chapter 358B of the Code, the board of trustees is required to make a report to the board of supervisors at the close of each fiscal year. The report covers the general condition of the library and the business it has transacted during the fiscal year. (Sec. 358B.11)

*Disposal of useless documents*—Certain records in the offices of the county auditor and county treasurer may be destroyed only upon authorization by the board of supervisors. These include all duplicate tax receipts, poll tax receipts, and hunting license applications that are more than five years old, and all assessors' books, assessment rolls, county vouchers, and canceled county warrants more than ten years old. (Sec. 332.15)



## Chapter 6

# Secondary Roads and Bridges

THE BOARD OF SUPERVISORS is charged with the general supervision of the secondary roads in the county. (Sec. 306.3) The secondary road system in Iowa consists of all public highways outside of cities and towns except primary, state park,<sup>1</sup> and institutional roads. (Sec. 306.2(3)) The Code of Iowa also imposes on the board of supervisors the duty to construct, repair, and maintain bridges and culverts on all public highways within the county except on primary roads and on highways within municipalities that control their own bridge levies. However, any culvert thirty-six inches or less in diameter must be constructed and maintained by the municipal corporation in which it is located. (Sec. 309.3) The magnitude of the responsibilities thus imposed on the supervisors of the ninety-nine Iowa counties may be illustrated by the total mileage in the secondary road system—approximately 93,000 miles, including 35,000 miles of farm-to-market roads.<sup>2</sup>

Although the board of supervisors has general supervision of the secondary road system, all construction and maintenance work is performed under the immediate supervision of the county engineer, who bears the responsibility for seeing that the work is performed efficiently and economically. (Sec. 309.21; Op. Atty. Gen. 1948, p. 150)

### *Financing*

*Qualification of county for aid*—The board of supervisors has been given a general grant of power to make arrangements and agreements with federal or state authorities, and with other parties, that are required by the federal or state authorities to qualify for federal or state financial aid for secondary road construction, reconstruction, and improvement. (Sec. 310.2)

*Secondary road funds*—Counties maintain only one fund for secondary

1. If the state park road is an extension of a secondary road, and if it enters and exits from the park at different points, the board of supervisors' jurisdiction over the road is concurrent with that of the state conservation commission. The board may expend secondary road money on such roads the same as on other county roads. However, the conservation commission in effect will have exclusive jurisdiction and control of these roads if the board of supervisors had not made agreements with the commission regarding construction, maintenance, and estimate of costs. (Sec. 306.3)

2. *Iowa Official Register*, 1959-1960, p. 171.



road expenses: the secondary road fund. It consists of (1) all funds derived from secondary road tax levies (see page 29), (2) all funds allotted to the county from the state road use tax fund, (3) all funds provided by individuals for improvement of secondary roads at their own expense, and (4) all other funds dedicated by law to the secondary road fund. (Sec. 309.8; Op. Atty. Gen. 1958, p. 138)

*Use of the secondary road fund*—The secondary road fund may be used for any or all of certain purposes specified by the Code of Iowa. These purposes include: (1) the expenses of construction, reconstruction, maintenance, and repair of secondary roads; (2) payment of all or part of the construction and maintenance expenses of bridges in towns and cities of 8,000 or less population; (3) payment of all or part of the costs of construction of roads in incorporated towns of less than 400 population if the roads lead to state parks; (4) payment of special drainage assessments levied because of benefits to secondary roads; (5) payment of interest and principal of county bonds issued to finance secondary roads, bridges, or culverts; (6) payment of any obligation relating to secondary roads that the county, by law, is required to assume; (7) payment for road equipment, materials, supplies, and garages or sheds for storage, repair, and servicing; and (8) payment for the naming or numbering of roads and the erection and maintenance of guideposts or signs at road intersections. (Sec. 309.9)

*Anticipatory certificates*—The county board of supervisors is empowered to issue anticipatory certificates (anticipating secondary road revenues) that are similar to bonds. However, before these certificates can be issued, the board must obtain the advice of the state highway commission. (Sec. 309.46)

In no case may the certificates issued exceed in amount a sum equal to 50 per cent of the estimated funds that will accrue to the secondary road fund during an identified period of no less than one nor more than two years' duration. (Sec. 309.46; Op. Atty. Gen. 1932, p. 252) A resolution of the board is required to authorize the issuance of these certificates; the resolution must specify: (1) the secondary road funds identified by the year or years that are anticipated by the certificates; (2) the amount of certificates authorized; (3) the denomination of each certificate; (4) the rate of interest each certificate shall bear (which may not exceed 5 per cent per year); and (5) an authorization by the board of the signatures of the chairman of the board of supervisors and the county auditor for purposes of signing and countersigning the certificates. (Sec. 309.47)

Thereafter, proper execution of the certificates requires that the chairman of the board of supervisors sign each certificate and deliver them to the county auditor. (Sec. 309.50) The certificate must state expressly that it



is payable solely from the secondary road fund accruing in the specified one year or two years. (Sec. 309.48)

#### *Construction Program*

*Highway commission advice*—Supervisors should be aware of the fact that the state highway commission is available for advice regarding the manner of construction and maintenance of secondary roads. The advice may be obtained on request to the highway commission. (Sec. 309.16)

*Comprehensive program required*—By December 1 of each year the board of supervisors must have prepared and adopted a comprehensive program of road construction for the coming calendar year. This planned program is based on an estimate of funds that will be available in the forthcoming year. (Sec. 309.22) (See page — for discussion of secondary road budgets and note the interrelation of the preparation of the budget and the comprehensive program.)

*Comprehensive program*—In preparing the secondary road program, the board of supervisors must meet and consult with township trustees to determine what improvements of secondary roads are needed in the various townships. (Sec. 309.10) After consulting with the county engineer, the board must select roads tentatively to be included in the improvement program, being mindful that the objective should be to provide the best possible system of intra-county and inter-county connections of all roads in the county. (Secs. 309.25-.26) The board then directs the county engineer to make a reconnaissance survey and estimate of costs of improvement for all the roads affected or at least those roads or parts of roads upon which early construction is most needed. (Sec. 309.26) Also, the board may order the engineer to file a written report with the board designating the order of urgency of construction for those roads included in the plan. (Sec. 309.27)

The engineer is free to include in the report suggestions that certain roads or parts of them be added to, or omitted from, the program. (Sec. 309.28) In any case, the county engineer must submit with the report a map of the county showing the location of the roads included in the construction program. (Sec. 309.29) If the board believes that additional reconnaissance surveys and estimates are needed or advisable, it may order them to be made. (Sec. 309.30) Before the program can be adopted finally by the board of supervisors, it must be approved by the state highway commission. (Sec. 309.22) However, the highway commission need approve only the type and manner of construction; the priority of improvement of secondary roads is within the sound discretion of the board of supervisors. (Op. Atty. Gen. 1958, p. 139) Upon final adoption of the comprehensive road program, it is given to the county auditor for recording at length in the county road book. (Sec. 309.34)

*Contracting for construction work*—The board of supervisors, as the



contracting authority for the county's road construction program, has the power to require, if it so elects, that each person or company filing a bid shall also file with the board a statement disclosing the bidder's financial standing, the nature and extent of his equipment, and his (or its) experience in performing similar work. Such statements must be filed before the letting in which the bidder expects to bid. Prior to letting the bid, the board may notify the bidder of the limits on the amount and nature of work for which he is deemed qualified to bid. (Sec. 314.1)

If the engineer's estimate exceeds \$5,000, the fact that a contract for road or bridge construction will be let must be advertised and the letting of the contract must be public. This, however, does not apply to contracts for surfacing materials obtained from local pits and quarries. (Sec. 309.40) If the contract need not be advertised, the board, at its option, may advertise and let the contract publicly, or it may let it privately at a cost not exceeding the engineer's estimate. A third alternative open to the board in such cases is to have the construction project built by day labor. (Sec. 309.41)

Insofar as possible, each contract awarded should be accompanied by standard specifications and in no case may the contract call for a traveled roadway to be less than twenty-two feet from shoulder to shoulder. (Sec. 309.39) Also, if, according to the engineer's estimate, the cost of the road construction will be \$2,000 or more per mile, or the work will cost a total of more than \$5,000, the highway commission must give its approval to the contract before it can become effective. (Sec. 309.42)

#### *Purchase and Condemnation of Right of Way*

If additional land is required in the maintenance, improvement, relocation, or establishment of a secondary road, or if additional land is required to provide drainage of the road or to obtain materials for improving or maintaining a secondary road (including obtaining access to such materials), the board of supervisors may enter into an agreement with the property owner concerned for the purchase of the land, or the board may bring a condemnation proceeding, or it may use a special proceeding for acquiring land. (Sec. 306.13)

This special proceeding may be used when the board is unable to acquire the needed right of way by agreement with the owner. The proceeding begins with the service of notice by the county auditor on the owners of the land, the occupants, persons who hold recorded mortgages on the land, and parties who hold recorded leases. (Sec. 306.23) The board then appoints one freeholder, the owner or owners of the land select another, and the two freeholders select a third freeholder. The three freeholders then act as appraisers. If the owners fail to appoint a freeholder or if their appointee does not appear or qualify, the board selects a second freeholder. If the two selected freeholders fail to appoint a third within ten days, or if their



appointee fails to serve, the board of supervisors selects a third appraiser. (Sec. 306.22)

The three freeholders, after qualifying, assess the damage that will be caused by the county's acquisition of the property and make a written report of their finding to the board of supervisors. (Sec. 306.25) The board then must hold a hearing on the objections made by any owner, mortgagee of record, or actual occupant to the proposed road change or the damages assessed. The board may adjourn its hearing until jurisdiction over all owners concerned will be obtained if, at the time of hearing, such jurisdiction is lacking. (Sec. 306.26)

The board of supervisors first must consider the objections to the proposed change and, if the objections are sustained, the proceedings must be dismissed unless a change of plans can eliminate the objection. If a change is adopted and new parties are affected, the board may adjourn the hearing in order to obtain jurisdiction over the new parties. (Sec. 306.27) When all objections have been considered and eliminated by plan changes or by overruling by the board, the board then must consider the damages awarded. If the board considers them excessive, the proceedings must be dismissed, but if they are not excessive, the board may order the proposed road change. (Sec. 306.28) Claimants may appeal the issue of damages to the district court and if the damages fixed by the district court are deemed excessive by the board of supervisors, the board may rescind its order establishing the change. (Secs. 306.29-30) An appeal to the district court on the issue of damage need not delay the prosecution of work on the road change, however, if the amount already awarded is tendered in writing to the claimant. If the tender is accepted, no appeal is possible. If the county possesses the land and the road change is rescinded following the appeal, the county is liable for the damages caused during possession. (Sec. 306.31)

*Additional uses of the special proceedings*—The special proceeding also is to be used whenever land is to be taken by the county because of a change in a secondary road, a stream, water course, or dry run. The board of supervisors on its own motion may decide on such a change if it is necessary to avoid the construction and maintenance of bridges, to avoid grades on railroad crossings, to eliminate dangerous curves, turns, and intersections, or to prevent a stream, water course, or dry run from encroaching on a road. (Sec. 306.21) Payment for the change to prevent a stream from encroaching on a highway may be made from the secondary road fund. (Op. Atty. Gen. 1956, p. 172)

#### *Maintenance of County Roads*

The board of supervisors shares with the county engineer the responsibility of seeing that the secondary road system is kept in repair and dragged



to keep the roads in proper condition. The board may adopt methods to provide continuous maintenance of the roads. Further, the county is responsible specifically for keeping all waterways, such as bridges and side ditches, free from obstruction and for providing ample outlets for the side ditches. In addition, the board and the engineer are charged with the duties of having impediments removed from the traveled part of the roads, of keeping the roads free from ruts, depressions, and holes, and of repairing and keeping smooth and unobstructed the approaches to bridges and culverts. (Sec. 309.67; Chapter 319)

#### *Farm-to-Market Roads*

In general, the board of supervisors plays a far less significant role in farm-to-market road construction than in the construction of other secondary roads. The reason is that the state highway commission controls the expenditure of funds and the contracting for the construction to a much greater degree. The state highway commission maintains a farm-to-market road fund, crediting and debiting the fund according to receipts and disbursements, and allotting to each county its share of the fund. (Sec. 310.6) Each quarter the county engineer receives a statement from the state highway commission showing the transactions pertaining to the county's account and the balance remaining in the county's account at the quarter's end. (Sec. 310.8) The board of supervisors may increase the account's revenue only by passing a resolution making available for improvement or construction of farm-to-market roads any portion of the county's allotment of road use tax funds the board sees fit. (Sec. 310.20)

If funds allotted to a county are not expended within three years following the close of the year in which the funds were allotted, the balance unspent at that time is apportioned among all the counties as if it were an original allocation. The funds are deemed expended if a contract has been let which obligates the payment of the funds upon performance of the contract. (Sec. 310.27)

The farm-to-market road system of a county consists of those roads that already have been designated as farm-to-market roads. Their purpose is to connect rural areas with other rural areas, towns, cities, and primary roads. Only with the consent of the state highway commission may the board of supervisors make any change or modification of the present road system. Also, no additional mileage may be added to the present farm-to-market road system in the county until all of the mileage currently in the system has been satisfactorily graded, bridged, and surfaced. (Sec. 310.10)

*Planning and contracting*—The board of supervisors of a county that has qualified itself to receive farm-to-market road funds may draft and submit to the highway commission for its approval proposed projects for the con-



struction, reconstruction, or improvement of farm-to-market roads. (Sec. 310.11) If approved by the commission, the county engineer makes surveys, plans, and cost estimates of the project, submitting these both to the board of supervisors and to the highway commission for approval. (Sec. 310.13)

If the project is to be financed in part by federal funds, the highway commission handles the letting of the contract and the board of supervisors is consulted only to obtain its approval of the awarding of the contract. If no federal funds are involved, the highway commission advises the county board of supervisors and must give its approval to the project, but the board of supervisors handles the awarding of the contract subject to the approval of the highway commission. If the cost of the project will exceed \$1,000, the board of supervisors must advertise for bids, recommend an award of contract, and submit it to the highway commission for approval. (Sec. 310.14)

Claims for work performed under the contracts may be approved by the chairman of the board or a majority of the board's members signing the claim, and all claims are paid from the farm-to-market fund and are charged to the county's allotted share of the fund. (Secs. 310.16, .18)

The county engineer has the duties of supervising and inspecting the work performed, but he is, in performing these duties, under the supervision of the highway commission. (Sec. 310.19)

*Obtaining right of way*—The board of supervisors may proceed to acquire the right of way or it may choose to request the highway commission to do so. In either case, the costs are borne by the county's allotment of the farm-to-market fund. (Sec. 310.22)

*Maintenance of farm-to-market roads*—The board of supervisors is charged with the duty of providing maintenance of farm-to-market roads in a manner satisfying federal authorities and the state highway commission. If this is not done, the highway commission will give notice to the board of its lack of satisfaction and sixty days will be allowed the board from the time of receipt of notice to put the road into a proper condition of maintenance. After sixty days, the highway commission may correct the deficiencies and charge the cost to the county's allotment of the farm-to-market fund. The charges must be reimbursed from the county's secondary road maintenance fund as a condition to highway commission approval of any more farm-to-market projects in the county. (Sec. 310.29)

#### *Changes in Highways*

The board of supervisors,<sup>3</sup> on its own motion, has the power to alter, vacate, or close any secondary road or railroad crossing thereon and to estab-

3. By implication, the Code exempts farm-to-market roads from much of the board's power discussed here because of the express limits on the board's power over such roads.



lish new roads within the county if such roads are intended to become part of the county's secondary road system. (Sec. 306.4)

In order to exercise this power, however, it is necessary for the board to conduct a hearing on its proposed action. The hearing must be held in the county at a place and date fixed by the board unless the road to be vacated or changed is located in more than one county. In this case the boards of supervisors of the counties involved act jointly in fixing a time and place of hearing in one or more of the affected counties. (Sec. 306.5) Notice of the hearing must be published at least twenty days before the hearing date in some newspaper of general circulation in the county or counties in which the affected road is located. (Sec. 306.6) The notice must fix the time and place of the hearing and state the location of the road (or part thereof) that will be the subject of the hearing. (Sec. 306.7) Further, the state highway commission and any state board or commission controlling lands that may be affected by the county's action must be notified by the board by certified mail of the time and place of the hearing and the road's location. (Sec. 306.6; Op. Atty. Gen. 1952, p. 99) However, if the action proposed is the establishment of a new secondary road, the board may provide a hearing and publish notice of its action but it does not have to. (Sec. 306.12)

Those parties served with mailed notice, and any persons financially interested in the proposed action of the board, have a right to appear, object, and have a hearing with the board. Those parties owning land abutting a road that the board proposes to vacate or close may file a written claim for damages with the board no later than the date fixed for hearing. (Sec. 306.8) Upon completion of the hearing, the board must enter either an order dismissing the proceedings or an order to vacate or close the road. If the order is to vacate or close the road, the order must also include the damages to be allowed to those claimants who have filed for damages. Copies of this order are sent to the auditors of the affected counties, the state highway commission, and any board or commission controlling affected state land. The order is final in all aspects except the issue of damages (Sec. 306.10); this issue may be appealed to the county district court. (Sec. 306.11)

It should be noted that the board of supervisors may buy the entire piece of abutting property of any person claiming damages from the closing or vacating of a road if the board decides that this action is in the best interests of the public welfare or economy. After the road has been closed or vacated, the land is resold at the best obtainable price. The purchase price is paid from the secondary road fund and the proceeds of the subsequent resale are returned to this fund. (Sec. 306.9)

#### *Secondary Road Assessment Districts*

The Code of Iowa provides for a source of revenue for surfacing second-



ary roads in addition to the general secondary road funds of the county. (Sec. 311.1) If petitioned by 35 per cent or more of the owners of land within a proposed district, the board may create a special assessment district. The petition must describe the roads to be improved, the nature of the improvement, the lands to be included in the proposed district, and the percentage of the estimated costs of the improvements that the district will pay. (Sec. 311.6) The petition cannot propose a payment of less than 25 per cent of the county's costs (Sec. 311.3), and in no case can the proposed district or the special assessment district actually created extend more than one-half mile on each side of the road to be improved. (Sec. 311.2) In cases where the road is a county line road, the special assessment district, if created, can bear no less than 25 per cent of the county's share of the cost of the road's improvement. (Sec. 311.4) It is also possible to include property in a city or town in such an assessment district if both the board of supervisors and the city or town council concur in approving the improvement of any road or street in the town which is an extension of a secondary road. (Sec. 311.5)

The owners of at least 75 per cent of the lands that abut on a secondary road or are adjacent thereto may request by petition, prior to October 1 of any year, that the road be suitably surfaced. The petition must state that the owners of abutting or adjacent land will pay a fixed per cent of the estimated costs (at least 50 per cent). Such projects shall be given preference according to their date of filing by the board of supervisors. In such cases, however, a special assessment district need not be created if these land owners deposit with the county treasurer the fixed percentage of the cost stated in the petition. (Sec. 311.7)

A limitation on the authority to improve roads by use of special assessment districts is that in any one year the secondary road funds of the county expended on such special assessment districts' projects may not exceed the total secondary road funds that may be expended legally on road construction in one year. Also, during any three-year period, no one township may receive more than its pro rata share (figured on an area basis) of the secondary road funds which may be spent legally on local secondary roads during the three-year period. (Sec. 311.7)

The petition is originally filed with the county auditor who also receives the subsequent report of the county engineer concerning the proposed road improvement. (Sec. 311.8) The engineer's report is important to the county supervisors principally because it contains an estimate of the project's cost and an apportionment of the percentage of the cost (as fixed by the petition) among the various tracts of land included in the assessment district. (Sec. 311.8) Such estimated costs are presumed correct and the apportionment is presumed to be equitable. (Sec. 311.10)



The board of supervisors then fixes a time for a hearing and directs the county auditor to publish a notice concerning the hearing. (Sec. 311.11) If there is an error in the engineer's report concerning apportionment of costs, or if the notice makes an omission or error concerning any tract of land involved in the assessment district, the board can have notice served and hold a hearing for those persons or concerning those tracts of land prior to the entry of its final order establishing the district or fixing the apportionment. (Sec. 311.13)

If the engineer's estimate exceeds an average cost of \$7,000 per mile, the board of supervisors may request a determination by the highway commission regarding whether the construction project should be undertaken by the county. The state highway commission's determination on the matter is final. (Sec. 311.7)

On the date fixed in the published notice, the board of supervisors must hold a hearing on the creation of the proposed special assessment district. The board may adjourn from time to time without losing its jurisdiction. On the final hearing, the board may reject or approve the proposed district, or it may adopt a modified version of the originally proposed district. It may add or remove lands from the proposed district as it deems fit and, upon approving either the original or a modified version, the board must issue an order establishing the special assessment district and describing the roads to be improved, the type of improvement that is to be made, and the lands to be included in the special assessment district. Thereafter no lands can be added to or removed from the special assessment district. (Sec. 311.15)

The board, at the final hearing, also considers the assessments to be made, hears all objections, and orders the assessments increased, diminished, annulled, or adopted as fixed by the engineer's report. The assessments are levied on all realty in the district and collected at the time the semi-annual installment of other taxes is collected in March. (Sec. 311.16) It should be noted that any realty in the district owned by the state, a municipality, or a county is assessed the same as private property except that buildings on the property are not considered when determining valuation. (Sec. 311.9) Further, it should be realized that in all cases the assessment is based on the engineer's estimate of cost and not on the actual cost of the improvement. (Sec. 311.20) Within fifteen days of the levy by the board, any land owner whose lands are within the district may institute an appeal to the district court regarding the board's assessment and if the district court orders an adjustment of the assessment, the board of supervisors must adjust it at once as ordered. (Sec. 311.24)

The preparation of plans and specifications, the awarding of the construction contract, and the performance of the contract follow the procedures



provided by law for construction work on secondary roads in general.<sup>4</sup> (Sec. 311.21) The secondary road fund of the county is used to pay the construction costs. As taxes are received in payment of the levies on the special assessment district, they are paid into the secondary road fund. If certificates have been issued in anticipation of these tax levies, they are credited to the secondary road fund. (Sec. 311.23)

If immediate cash is needed to finance the project, the board may issue certificates in anticipation of the revenue to be received from the special assessment district. The total sum of the certificates may never exceed the unpaid total balance of the assessment levied on the special district. In order to issue the certificates the board must adopt a formal resolution reciting the name of the district, the sum assessed against the district's lands, the amount of the assessment still unpaid, the immediate need for the funds not yet received, the number of certificates to be issued and the denomination of each, the specific numbering or designation of each certificate, the interest it will bear (no more than 6 per cent), the fact the certificates are payable only from the proceeds of the special assessment, the maturity date of the certificates (which shall be the first day of January following the maturity of the last installment of the special assessment), and the authorization to the board's chairman to sign each certificate. (Sec. 311.28) Thereafter, the board's chairman signs the certificates and turns them over to the county auditor who countersigns them and presents them to the county treasurer who handles any further transactions concerning the certificates. (Sec. 311.29)

### *Bridges and Culverts*

*Requirements for all bridges and culverts*—The state highway commission will furnish, free of cost, standard specifications for bridges and culverts.<sup>5</sup> (Sec. 309.79) Statute requires that all culverts have a clear width of roadway of at least twenty feet and that bridges have at least sixteen feet. (Sec. 309.74) Any contract for the construction or repair of a bridge or culvert which calls for a total expenditure of \$2,000 or more must be approved by the state highway commission before the contract can be effective. (Sec. 309.80)

*City-county bridges and culverts*—If part of a culvert or bridge on a highway which is part of the secondary road system lies within the corporate limits of a city which controls its own bridge fund, the plans and specifications for the construction of the bridge or culvert must be agreed to by the

4. See page 70.

5. A culvert is a waterway structure with a "clear span" of twelve feet or less, but does not include any part of a tile system used for subsurface drainage. A bridge is any waterway structure with a "clear span" of more than twelve feet. (Sec. 309.75)



board of supervisors and the city's council and approved by the state highway commission. The city and county must share equally the cost of the construction. All disputes between the board and the council are to be referred to the highway commission; its decision binds both the city and the county. (Sec. 309.73)

*Intra-county bridges*—The board of supervisors has authority to appropriate no more than \$50,000 for the construction of any one bridge and its approaches. If a greater sum is required, an authorization by the voters of the county is required for the amount exceeding \$50,000. (Secs. 309.76, .78) However, this requirement for an election may be waived if the board of supervisors seeks funds under Code section 310.20. (Op. Atty. Gen. 1954, p. 157) Section 310.20 permits the board of supervisors, by its resolution, to make available any portion of the county's road use tax funds for improvement or construction of farm-to-market roads.

*Inter-county and inter-state bridges*—The board is authorized to spend no more than \$25,000 as its share for the construction of any bridge and its approaches if the bridge connects the county with another county or another state, or if the bridge is on a road running between the counties or the county and another state. If its share will be more than \$25,000, a vote of the county's electors is required to authorize the expenditure in excess of the \$25,000 limit. (Secs. 309.77, .78)

Where a bridge is required on a county line road, the boards of the adjoining counties may agree to locate the bridge wholly within one county in order to obtain a proper site for the bridge or to avoid unnecessary expense in attempting to use a less favorable site on the county line. The boards shall determine jointly the proportionate share of the expense that each county is to bear. (Sec. 309.84) When such action is taken, the board of supervisors may appropriate money for the condemnation of land even though the land lies within the adjoining county. (Op. Atty. Gen. 1923-24, p. 190)

If 10 per cent of the voters in the last general election in any county bordering on a stream that forms a state boundary petition the board of supervisors to act on the question of building a bridge across the stream to the bordering state, the board of supervisors must submit the proposal to the county's voters at the next general election but at least sixty days after the filing of the petition. (Secs. 309.85-.86) Notice of the submission of the question is published in at least three newspapers of general circulation in the county for two consecutive weeks. If the county has only two such newspapers, publication in both newspapers suffices. The last publication must appear at least three days and not more than ten days before the election. (Sec. 309.87) If the proposal is approved, the board is authorized to make agreements with the adjoining state or a municipal division of that



state regarding what part of the bridge the county will build or maintain or what share of the cost of construction and maintenance the county will bear. (Sec. 309.88) In order to finance its share of the construction and maintenance of such a bridge, the board may levy a tax of not more than one-fourth mill annually on all property in the county. Also, bonds may be issued to the extent of the expenditure authorized by the voters (the expenditure is fixed by the voters' petition), such bonds to mature during a twenty-year period. The board is required to maintain levies sufficient to meet principal and interest payments.<sup>6</sup> (Sec. 309.89)

It should be noted that if contracts for joint maintenance of such a bridge are made, the county's liability for maintenance can extend only to that part of the bridge which lies within the boundary line of Iowa. (Sec. 309.91)

#### *Awarding of Contracts*

In awarding a contract, the board should consider the prices bid and the nature and extent of each bidder's equipment, his financial responsibility, and his experience in performing similar types of work. (Sec. 314.1)

The contract must be in writing and it must be secured by a bond. (Sec. 314.1) Any provision in the contract that seeks to limit the time for suit on the bond to less than five years for bonds covering concrete work or to less than one year for bonds covering other work is invalid. (Sec. 309.58) Also, if any state or county official or employee, whether elected or appointed, is directly or indirectly interested financially in the contract, this will be a complete legal defense to any action to recover any consideration due or earned under the contract at the time of its termination. (Sec. 314.2) However, state or county officials and employees may sell materials to be used in performing the contract without affecting the contract's validity if no agreement existed prior to the awarding of the contract that the employee or official would sell the materials. (Op. Atty. Gen. 1956, p. 59)

#### *Approval of Contract by County*

All claims for construction, reconstruction, improvement, repair, or maintenance of any highway must be itemized on voucher forms prepared for that purpose, sworn to by the claimant, certified by the engineer in charge, and then forwarded to the board of supervisors for final audit and approval. If the work is performed on a farm-to-market road, the board and the highway commission both must approve the claim before the state comptroller may pay the claimant. (Sec. 314.3) The approval of the board is shown either by the signature of the board's chairman or by the signatures of a majority of the board. (Sec. 314.4) If partial payment is made under the

6. See also page 25.



contract while work is in progress, such partial payment does not constitute a final acceptance of the work done nor does it waive any defect in the contractor's performance. (Sec. 314.4) If a claim is approved by the board when the work has not been done satisfactorily, no waiver of defects results, and the contractor, at his own expense, must correct the defect promptly or his bond will be charged with the cost of correcting the defect. (Sec. 314.3)

When at least 95 per cent of any contract for the construction of a public improvement has been completed satisfactorily, and the remaining work cannot proceed for a period of more than sixty days because of conditions beyond the control of the contractor, the board of supervisors may make full payment for the completed work and enter into a supplemental contract with the contractor on the same terms and conditions as far as applicable for the remaining work provided the contractor's bondsman consents and agrees that the bond will remain in full force and effect. (Chapter 573)

#### *Extensions of Secondary Roads in Municipalities*

Except in cities that have populations exceeding 2,500 and in which the houses or business houses average less than 200 feet apart, the board of supervisors may construct, reconstruct, improve, repair, and maintain any street or road that is an extension of any secondary road. The board also may eliminate dangerous conditions at railroad crossings on such extensions. However, such action by the board is subject to the approval of the municipality's council although the council has no control over the determination of the location of such extensions. In other words, the council must approve or disapprove of the extension contemplated by the board but does not directly have a power to affect the location of the extension though in practice its power of approval may be used to force the board to locate the extension at a certain place. (Sec. 314.5) If a farm-to-market road is located along the corporate boundary line of any municipality, it may be included in the farm-to-market road system and subjected to the board's (and the highway commission's) authority over farm-to-market roads. (Sec. 314.6)

#### *Miscellaneous*

*Speed limits*—Section 321.285 of the Code provides that speed on secondary highways shall be "reasonable and proper," but not to exceed sixty miles per hour in the daytime or fifty miles per hour at night. However, the board of supervisors may declare a lesser speed to be reasonable and proper on any secondary road within a county. The declaration must be based on engineering and traffic investigations conducted by the state highway com-



mission at the board's request. The lower speed limits become effective when appropriate signs that give notice of the speeds are erected by the board. (Sec. 321.285)

*Payrolls for day labor*—If the board of supervisors so elects, it may authorize the county auditor to draw warrants for payrolls for labor furnished under the day labor system of construction. The auditor draws warrants for payrolls certified by the engineer in charge of the work. These warrants are passed on by the board at its next meeting. (Sec. 309.61)

*Gravel beds*—The board of supervisors is empowered to purchase or condemn land within the county outside the limits of cities and towns for the purpose of obtaining gravel or other suitable material for the improvement of the county's secondary roads. The purchase or condemnation must include an adequate roadway, following the most reasonable route, leading to the site of the gravel or other material. However, if the board so chooses, it may purchase the gravel or other material from a source outside the county. In either case, the costs are paid from the secondary road fund. (Sec. 309.63) If the board of supervisors has given permission, private parties or municipal corporations may take materials from this land if the materials are used to improve any street or highway within the county. However, it is a misdemeanor for the board of supervisors to dispose of any of these materials for any purpose other than the improvement of streets or highways within the county. (Sec. 309.66)

*Procurement of gravel for road improvement*—If the board is seeking suitable surfacing material, it may give written notice to any landowner and the occupant of the same land and enter upon the land to determine if deposits of surfacing material are located there. Damages caused by such activity may be settled by agreement with the parties damaged or by the same procedures used for condemning land. Unless the owner consents in writing, no prospecting within twenty rods of any house or building on the premises is permitted. (Sec. 314.9)

*Interstate highways and bridges*—If the board of supervisors controls a part of a road or bridge that lies on or crosses a state line, it is empowered to negotiate and make agreements with the proper authorities of the bordering state regarding plans for the improvement and maintenance of the road or bridge. Such plans and agreements may include provision for the apportionment of the work and costs involved. (Sec. 314.10)

The board of supervisors, acting jointly with the proper authorities of the bordering state, have discretionary power to permit utility companies to use interstate bridges under the board's control for suspension of the companies' pipes and lines. The board and the bordering state's authority, acting jointly, may impose such terms and conditions as they see fit upon the use of the bridge by the utility companies, but the law forbids requiring



the joint use of lines or pipelines by different companies. Further, in no case may a grant of the use of the bridge by the utility companies be made if such use will interfere with the public's use of the bridge for highway purposes. (Sec. 314.11)

*Intercounty highways*—The boards of supervisors of contiguous counties must act to provide proper connections of secondary roads that cross county lines and provide continuous lines of travel. Also, these boards must adopt plans and specifications for the construction, reconstruction, or repair of bridges, culverts, and roads that cross or lie along county lines; they also must provide for division of the costs and work involved. In all cases, the action of the boards on these matters is subject to the approval of the highway commission. (Sec. 309.68)

If the boards fail to perform their duty, either by not acting at all or by failing to agree, the highway commission shall act on its own motion or upon the appeal of one of the boards (if it is a case of the two boards being unable to agree). In either case, the highway commission shall investigate and certify its decision to each board of supervisors and the boards must comply with the order as if the work were located entirely within their own counties. (Sec. 309.69) Should either or both of the boards fail to comply with the order within sixty days, the highway commission will act in their stead. (Sec. 309.70)

*Mains, walks, and ways*—If the board of supervisors receives written application designating a particular part of a secondary road in the county to be affected, the board has discretionary power to grant the applicant permission to lay gas or water mains under the highway (excluding pipe-line companies), or to construct and maintain cattleways over or under the highway, or to build sidewalks upon or along the highway. The board may grant permission on reasonable terms and conditions. In no case may the grant to have mains under the highway exceed a period of twenty years. (Sec. 320.4-5)

*Obstructions along and upon the highways*—Owners of property abutting on secondary roads are required to trim osage orange and shrubbery hedges that grow on their property along the highway. The Code specifies that at least once every two years this shall be done and the trimming must consist of cutting the plants back to within five feet of the ground. However, it should be noted that no trees or shrubs, except osage orange grown as a hedge fence, are permitted to be grown on or within the line marking off the boundary of the road from the abutting private property unless the trees or shrubs are used as a windbreak. In such cases, the windbreak must be used to shelter a residence, an orchard, or a feeding lot and may not be more than forty rods in length. When requested by the board, the owner must designate, within one day, the forty rods to be set aside as a wind-



break. If the owner fails to act, the board may select the forty rods of hedge or trees to be preserved. (Sec. 318.1)

The board is empowered to enforce the requirements that hedges, trees, and brush be destroyed, or trimmed if the law does not require destruction. In order to do this, the board must serve written notice on the owner to destroy or trim the trees or shrubs, and if the owner has not acted within sixty days of receiving notice, the board may have the work done and the costs certified to the auditor for collection in the same way as taxes. (Sec. 318.2) The total costs include both the costs of the work done and the costs of serving notice. Payments may be made from the secondary road funds to be reimbursed as the costs are collected from the owners. (Sec. 318.3)

A general exception to the requirement of destruction of trees and shrubs is that the board of supervisors may exempt evergreen trees, walnut trees, oak, maple, and other hardwood trees from destruction. Also, if trees along the highway are part of a grove or forest that extends more than five rods back from the road's boundary, the destruction of these trees is not required. Any single tree or group of trees (ten or fewer) that the board deems should be preserved because of their age or beauty is exempt from destruction. (Sec. 318.5)

If there is wood left from the cutting or trimming that in the board's judgment would more than pay for the cost of advertising and selling the wood, the board may have the wood sold at public auction following a ten days' notice of the sale by publication in the newspaper published nearest the hedge or trees that have been destroyed. Proceeds exceeding the costs of advertising, selling, and cutting shall be paid to the owner of the trees or hedge. (Sec. 318.4)

The board of supervisors is charged with the duty of removing all obstructions from secondary highways (Sec. 319.1), and is empowered to remove billboards and advertising signs from property devoted to secondary road use. (Sec. 319.13) However, no pole used for telephone, telegraph, or other utility transmission purposes may be removed unless the owner is given thirty days' written notice. Also, no fence may be removed without first giving the owner or occupant of the land enclosed by the fence at least sixty days' written notice. (Sec. 319.2) The notice shall be served like an original notice. (Sec. 319.3) If the poles or fence are not moved back to a line designated by the county engineer (or board of supervisors if there is no county engineer) within the time allowed, the board may cause the removal of the poles or fence at the expense of the owners. (Secs. 319.4, .6) The line fixed by the engineer as the place where the poles or fence are to be relocated should be specified in the notice served on the owner. (Sec. 319.3)



The remedy of a court injunction restraining obstruction of the road is also available to the board of supervisors upon application to a proper court. When seeking an injunction, the board also is authorized to adjudicate the location of the highway's boundaries if all interested parties are brought into the case. (Sec. 319.9)

Even though a billboard or a sign is built upon private property, if it obstructs the view of part of the secondary highway or a railroad track and by so doing renders the use of the highway dangerous, the board of supervisors may have the billboard or sign abated as a public nuisance and have the persons responsible for the erection of the nuisance punished as provided in Chapter 657 of the Code. (Sec. 319.10)

*Cemeteries*—The board should note that a road may not be established through any burying ground without the consent of interested parties. (Sec. 306.14)

*Road plans, plats, and field notes*—All road plans, plats, and field notes for rural subdivisions must be filed with and recorded by the county auditor and approved by the board of supervisors and the county engineer before the subdivision is laid out and platted. If the proposed subdivision is within one mile of the corporate limits of any city or town, the road plans must be approved also by the city engineer or council of that municipality. (Sec. 306.15)

*Sale or rental of unused right of way*—If the board of supervisors determines that land acquired for a right of way for a secondary road is not now and will not in the future be used for this purpose or for the improvement or maintenance of the road, the board may sell the land or part of it for cash. (Sec. 306.16) Not less than ten days prior to the sale, the board must send notice of the sale to the present owner of the adjacent tract of land out of which this parcel was originally purchased or condemned. If the tract of adjacent land belongs to a city or town, the mayor of that city or town is to receive the notice. The notice must be sent by certified mail to the last known address of the landowner. The notice is to provide the landowner an opportunity to be heard and to purchase the land if he will pay an amount equal to the highest offer received for the land. (Sec. 306.17)

The conveyance is made in the name of the county and may contain such provisions as the board of supervisors may prescribe. The chairman of the board and the county auditor are empowered to sign the conveyance. (Sec. 306.19)

If the land acquired for highway improvement is not needed immediately for such improvement, the board of supervisors may rent the land or the buildings for a cash rental consistent with the fair market value of similar property. A local real estate firm may be employed for management and



collection of rentals or the board may do this itself. The commission or service charge of the real estate firm must be paid out of the rentals. (Chapter 306)

*Permits for excessive sizes and weights*—The board of supervisors is authorized to issue permits to parties who wish to move certain equipment, machinery, and vehicles that do not comply with the statutory size or weight limits. These permits apply only to roads under the control of the board of supervisors. The statute should be referred to in order to determine the stipulated conditions for issuing such a permit and for limits of size, weight, time, distances, and methods of movement. (Sec. 321.467)

*Contracts with cities for street improvements*—Cities of less than 5,000 population may contract with the county in which they are located for street construction and maintenance, the cost to be paid by the municipality for whom the work is done. (Sec. 391.2)



## Chapter 7

# Social Welfare

TRADITIONALLY THE LOCAL UNITS of government have been responsible for the social welfare of their citizens. While the state government of Iowa has provided hospitals for indigent and mental patients, homes for orphans and neglected and dependent children, schools for the blind, deaf, feeble-minded, and epileptics, and old-age assistance, most of the responsibility for the welfare of the people still resides in the local units of government. At the same time, the General Assembly has prescribed many statutory requirements and limitations and many controls are exercised through state agencies.

### *County Board of Social Welfare*

In each county the board of supervisors is required to appoint a county board of social welfare. The social welfare board in counties of less than 33,000 population consists of three members, no more than two of whom may be members of the same political party, and one member must be a woman. In counties with populations greater than 33,000, the social welfare board has a membership of five persons including one woman; no more than three members may be members of the same political party. One or more members of the board of supervisors may be appointed to serve as members of the social welfare board. Appointments are for a term of one year and must be entered on the records of the board of supervisors and filed with the county auditor and the secretary of the state board of social welfare. (Sec. 234.9)

Members of the board of social welfare are compensated at the rate of three dollars per day for services, but total yearly compensation (excluding expenses) for each member may not exceed \$90 in counties of less than 33,000 population and \$120 in larger counties. (Sec. 234.10) If supervisors also are members of the county board of social welfare, they may not receive compensation for welfare duties performed on the same day on which they are paid for official duties as supervisors. On other occasions, however, they are reimbursed for "actual and necessary" expenses incurred and in addition receive the three dollar per diem. (Sec. 234.10)

Compensation of county board of social welfare employees is fixed by the county board, subject to approval of the board of supervisors and the



state board of social welfare. (Sec. 234.13) A ruling of the state attorney general has declared such employees to be state employees and as such their vacations and sick leaves are governed by section 79.1 of the Code. (Op. Atty. Gen. 1948, p. 88)

#### *Welfare Duties of Supervisors*

Existence of the board of social welfare does not exempt the board of supervisors from certain duties and responsibilities in connection with the general function performed by the social welfare board.

##### *Aid to blind*

The board of supervisors is required to appropriate annually from the county poor fund a sum adequate to pay one-fourth of the administrative costs within the county incident to aid to the blind (exclusive of compensation and expenses of the county board of social welfare) and one-fourth of the sum necessary to pay assistance and benefits to blind persons living in the county. The above sums are determined by the county board of social welfare and approved by the state board. In case the sums appropriated are not adequate, the board of supervisors is required to appropriate from the county poor fund an amount sufficient to pay the county's share of aid to the blind. (Sec. 241.20)

##### *Aid to dependent children*

Upon approval by the state board of social welfare, the board of supervisors is required to appropriate from the county poor fund a sum equal to one-half of the assistance and benefits payable for dependent children in the county. These appropriated funds must not include contributions to the poor fund that have been received from sources other than state or county funds. If the sum appropriated by the board of supervisors proves inadequate, the county's obligation is met by an additional appropriation from the county poor fund. (Sec. 239.11) (See also p. 22)

##### *Aid to the disabled*

The board of supervisors must appropriate annually from the county poor fund a sum equal to one-half of all benefits and assistance paid to disabled persons for which the county is chargeable. The state department of welfare reports to the county the total amount of assistance and benefits paid with respect to recipients chargeable to the county. All administrative expense is paid by the state fund for aid to the disabled. If the amounts appropriated are insufficient to meet the county's obligations, an additional amount must be appropriated from the county poor fund. (Sec. 241A.13) (See also p. 27)

##### *Emergency relief*

While the county board of social welfare is charged with the administra-



tion of emergency relief in the county, it also is required to perform duties prescribed by the board of supervisors as well as the state board of social welfare. (Sec. 251.4(5))

In connection with emergency relief, the board of supervisors possesses all authority not expressly given to other agencies. (Sec. 251.5) Specifically, the board of supervisors is charged with ascertaining all necessary facts concerning persons seeking relief and determining the minimum amount of relief required by such persons and their families and which persons seeking relief are employable. The board of supervisors may require an employable person to contribute labor having a total value at local wage rates equal to the cost of relief he receives. Also, the board of supervisors may determine the projects on which relief labor may be used, although for administrative expediency this determination may be delegated to political subdivisions of the county. (Sec. 251.5)

#### *Support of the poor*

Those people who have no property and are unable to earn a living by their own labor because of physical or mental disabilities are classified as "poor persons" by the Iowa Code. (Sec. 252.1) However, aid may be given other needy persons also, even though these persons may have some means of support, if the board of supervisors is of the opinion that aid would be conducive to the welfare of these persons and in the best interest of the public. (Sec. 252.1)

*Application for relief*—Persons eligible for relief under the provisions of section 252.1 may make application to a member of the board of supervisors, to the trustees of the township in which they reside, or to the overseer of the poor. Relief granted by township trustees is subject to approval by the board of supervisors, which must determine whether relief shall be continued or denied. (Secs. 252.24, .32, .33) In the event the township trustees do not grant the requested relief, the applicant may appeal to the board of supervisors, which is authorized to direct the trustees to provide relief or to prescribe the relief to be given. (Sec. 252.37)

*Form of relief*—Relief granted by the county may be given in the form of food, rent, clothing, fuel and light, medical care, or in money. The amount of assistance to be granted must accord with standards of assistance that the board of supervisors must establish. (Sec. 252.27)

The board of supervisors may enter into contracts with licensed doctors and dentists to furnish medical and dental care for the poor. Such contracts may not be for more than one year and the doctors and dentists with whom the contracts are made are required to give bond in an amount to be determined by the board of supervisors for the faithful performance of the contracts. (Sec. 252.39; Op. Atty. Gen. 1956, p. 168) Contracts also



may be made with osteopaths for the care and treatment of indigent sick in the county. (Sec. 150.9)

As a condition to the granting of relief, and in payment therefor, the board may require any able-bodied recipient to work on the roads and highways at the prevailing local hourly wage. (Sec. 252.27) The board also is authorized to use the county poor fund to join with the United States government, or with cities and towns in the county, or with both the federal government and cities and towns in the county, in sponsoring work projects. However, the county may not use money from the poor fund for such projects in excess of what would be the cost per month of direct relief to those poor people working on the projects. (Sec. 252.42)

In lieu of ordinary relief, the board of supervisors may pay an annual allowance to poor persons of proper mental capacity and maturity if they are likely to become public charges, but this allowance may not exceed the cost of granting relief in the regularly prescribed manner. (Sec. 252.36)

If the board of supervisors so desires, it may enter into an annual contract with the lowest responsible bidder to supply any or all supplies needed to support the poor. Similarly, the board may enter into a contract, not to exceed one year, for the actual support of the poor of the county. Such contractors are required to give bond for the faithful performance of their contractual duties. (Sec. 252.38) When the latter form of contract is entered into, the board is required to appoint some person to conduct a surprise inspection to determine whether the conditions of the contract are being carried out. If the board should find that the poor are not reasonably and properly supported and cared for, it may set aside the contract. However, the board must make a proper allowance of funds to the person who held the contract for performance prior to rescission of the contract. (Sec. 252.40)

No supervisor, trustee, or employee of the county may be interested directly or indirectly in any supplies furnished the poor. (Sec. 252.29)

*Allowance of claims*—Claims for support of the poor, including claims for medical care, after having been allowed and certified by the township trustees, are subject to further examination by the board of supervisors. If the board should find that the claim is for an unreasonable sum or that it is for goods or services other than the necessities of life, it may reduce the claim to an amount it deems reasonable or reject the claim entirely. (Sec. 252.34-35)

*Overseer of poor*—An overseer of the poor may be appointed by the board of supervisors.<sup>1</sup> His powers and duties encompass all those granted to town-

1. Under the "integrated" plan of county relief, the duties of the overseer of the poor may be exercised by the county board of social welfare.



ship trustees by Chapter 252 of the Code. The board of supervisors is authorized to determine the overseer's salary, and to pay it either from the general or the poor fund. (Sec. 252.26)

*Legal settlement and paupers from outside the county*—A legal settlement may be acquired in any of the ways designated by Code section 252.16. Any person continuously residing in any county in the state for a period of one year acquires a settlement in that county. Any person having acquired a settlement in any county of the state shall not acquire a settlement in any other county until such person has continuously resided in that county for one year. (Sec. 252.16)

However, any person who has moved into a county from another state or from another county in Iowa and who is or apparently will become a public charge may be transported back to his original residence upon the county's petition and the district or superior court's approval. (Sec. 252.18)

When relief is granted to a poor person who has a settlement in another county, the auditor must notify the auditor of the county of the person's settlement of the fact. That county then must state whether it plans to dispute the claim. If not disputed, the person is maintained where he then is at the expense of the county of his settlement, without affecting his legal settlement. (Sec. 252.22)

If the alleged settlement is disputed, the issue is tried in district court. The county of settlement, when that has been determined, is liable for all reasonable charges and expenses incurred in the relief and care of the poor person. (Secs. 252.23-.24)

#### *Indigent patients*

Legal residents of a county who are pregnant or suffering from some malady or deformity that probably can be treated, improved, or cured, may be hospitalized at public expense if they personally are unable to meet the costs. Any adult may file a petition to this effect with a juvenile court (which is the first step toward securing the needed medical treatment), and it is also the duty of any county supervisor having knowledge of any person in such a condition to file or cause such a complaint to be filed. (Sec. 255.1-.2)

Complaints regarding indigent patients are investigated by the overseer of the poor or by some other agent selected by the board. The investigation is for the purpose of ascertaining the legal residence of the patient and the ability of the patient or those responsible for him to pay the cost of care and treatment. A report of the investigation must be filed with the clerk of court at or before the term of hearing. (Sec. 255.6) If the court finds that medical treatment is required at public expense and that the patient cannot be admitted to the State University Hospital, a court order



must be rendered requiring the board of supervisors to provide treatment, at county expense, either at the patient's home or in a hospital. (Sec. 255.8)

### *Soldiers' Relief*

The board of supervisors is required to appoint a three-member soldiers' relief commission to administer the relief functions of Chapter 250 of the Code. Members of the commission must be citizens of the United States who have been honorably discharged from one of the country's armed forces and who have served in any war including the Korean conflict. The membership must be equally divided, as nearly as possible, among veterans of the Spanish-American War, World War I, and World War II. (Secs. 250.3-4) Appointments are made at the regular June meeting of the board and are for terms of three years. If any appointee is guilty of neglect of duty or maladministration, the board may remove him from office. (Sec. 250.4) Members of the commission receive five dollars per day when engaged in the work of the commission. They also receive the same mileage allowance as that granted to the board of supervisors. The per diem and mileage is paid out of the soldiers' relief fund. (Sec. 250.5) (See also p. 10.)

This commission, with the board of supervisors' approval, may employ administrative and clerical assistants whose compensation is fixed by the board of supervisors. One of the deputies of the county auditor is appointed by the commission to serve as its administrative assistant, but this appointment also must be approved by the board. (Sec. 250.6) The board does not have any other control over employees of the commission. (Op. Atty. Gen. 1948, p. 140)

*Soldiers' relief fund*—The commission prepares and certifies its own budget to the board of supervisors; the board has power to approve the budget or to reduce it for valid reasons which must be entered in the records. The decision of the board of supervisors on this matter is final. (Sec. 250.7)

Disbursements from the soldiers' relief fund are under the joint control of the board of supervisors and the commission. (Sec. 250.2) On the first Monday of each month the board of supervisors reviews all the soldiers' relief claims that have been certified during the past month. (Sec. 250.10) In addition, following every regular meeting of the commission, the board receives a certified list of those persons to whom relief has been authorized, with the amounts awarded to each recipient. (Sec. 250.9)

*Burial expenses*—The board of supervisors has a duty to designate a person in each township who is given the responsibility to procure decent interment in a suitable cemetery for any person entitled to relief under Chapter 250 who dies without leaving sufficient funds to defray funeral expenses. The commission pays these expenses but can spend no more than



\$200 for a funeral.<sup>2</sup> (Sec. 250.13) The board of supervisors also has the responsibility of approving the design and material of headstones which may be furnished at public expense but which may not cost more than fifteen dollars each. (Sec. 250.14)

The county in which the person dies has the duty of paying for the burial and the headstone, but the county of which the deceased was a resident must reimburse the former county. The board of supervisors of any county expending funds for such burial and headstones has a duty to audit the account of those people providing the burial and to pay the account in the same manner as other claims are paid. (Sec. 250.15)

Care and maintenance of the lots in which people are buried pursuant to Chapter 250 is provided by the county board of supervisors' payment from the county general fund to those having control of those cemeteries. However, the care and maintenance rates assessed to the county may not exceed the costs for care and maintenance of similar lots in the same cemetery. (Secs. 250.18-19)

### *County Homes*

County homes may be established by order of the board of supervisors. The supervisors are authorized to make contracts and to establish a county home, but when the expenditure proposed is in excess of \$15,000, approval by the voters of the county is required. (Sec. 253.1) However, if a county has a population of 40,000 or more and a county seat of more than 5,000 population, the board of supervisors may expend up to \$25,000 on the county home without submitting the proposition to the county's voters if the funds are presently available in the general fund and are otherwise unappropriated. (Sec. 345.3)

The board of supervisors, or any committee appointed by it for that purpose, is authorized to make all contracts and purchases necessary for the county home. The board or committee is authorized to make needed rules or regulations for the management and government of the county home and the conduct of its occupants. (Sec. 253.2)

Regular operating expenses of the county home are paid from the county general fund and the poor fund. (Sec. 252.43) Revenue obtained from the labor of persons living in the home and the money obtained from the poor farm must be appropriated to the use of the county home as the board of supervisors may direct. (Sec. 253.5)

A financial report of the county home or farm is required to be published

2. Upon petition of five reputable freeholders of any township or municipality in the county, the soldiers' relief commission is authorized to furnish the petitioners suitable metal markers to be placed on the graves of deceased veterans. The maximum amount that can be expended for each marker is \$3.50. (Sec. 250.16)



by the board of supervisors in the official county newspapers during January of each year. The report must include: (1) a statement of the receipts and their sources, (2) total expenditures, (3) value of the property as of January 1, and (4) a comparison with the inventory of the preceding year. (Sec. 253.3)

*Admission and discharge*—Persons may be admitted to the county home only upon written order of a township trustee or a county supervisor. (Sec. 253.6) It is the duty of the board of supervisors to order the discharge of any person in the county home when he becomes able to support himself. (Sec. 253.7)

*Steward*—A steward for the county home may be appointed by the board of supervisors. This appointee is governed by rules and regulations established by the supervisors or the county home committee, serves at the pleasure of the board, receives compensation as determined by the board, and must give such security for his faithful performance as may be required by the board. (Sec. 253.4)

*Visitation and inspection*—Once each month some member of the board must visit the county home. The purpose of this visit is to examine carefully the condition of the inmates, their food, clothes, general treatment, and the labor they are required to perform, and to inspect the steward's books and accounts. The visiting supervisor has power to look into any other matters pertaining to the county home or its inmates and he is required to report his findings to the full board. (Sec. 253.8)

*Contracts for support of poor*—If the board of supervisors so desires it may contract for the support of the poor. Under such circumstances the use and occupance of the county home and farm may be granted to the person with whom the county has contracted for a period not exceeding three years. (Sec. 253.10)

*Joint maintenance of county homes*—The board of supervisors has discretionary power to enter into agreements with the supervisors of adjoining counties for the mutual support and maintenance of county home inmates in one county home. The cost of caring for the inmates is to be divided between the two counties as determined by the boards of supervisors of the counties concerned. (Sec. 253.11)

#### *Detention Homes*

In counties with populations of more than 40,000 the board of supervisors must provide a suitable detention home and school for dependent, neglected, and delinquent children. This home and school must be entirely separate from and outside the enclosure of any jail or police station. If the county has a population of more than 30,000, the board of supervisors may establish such a home and school if it so chooses. (Sec. 232.35)



### *Commitments to Juvenile and Orphans' Homes*

In general, the procedure for commitment to the state juvenile home (Toledo) and to the state orphans' home (Annie Wittenmyer Home, Davenport) is set forth in Chapter 232 of the Code. However, voluntary admissions may be approved by the board of supervisors of the county of the child's residence or by a judge of a court of record. (Sec. 244.4) The county of legal residence of a committed child is responsible for one-half of the cost of support and maintenance of the child. (Sec. 244.14)

### *Public Housing*

The 59th General Assembly enacted enabling legislation that allows counties to participate in programs of providing low rent housing to low income persons. (Sec. 403A.2-3) In order for a county to engage in such a program, the proposal must be authorized by a vote of at least 60 per cent of the electors of the county voting on the proposition at any regular primary or general election, or special election called by the board of supervisors. Such an election may be called by the board at its discretion, but must be called when a petition signed by voters equal in number to at least 2 per cent of the votes cast in the county for governor at the last election has been filed with the county clerk. Notice of the time and place of the election must be given by publication once each week for three consecutive weeks prior to the election in a newspaper having general circulation in the county. (Sec. 403A.25)

A public hearing to consider the housing project must also be held, and the board of supervisors must publish notice of this hearing in a newspaper having general circulation in the county. The notice must describe the time, date, place, and purpose of the hearing, identify the general location for the housing project under consideration, and outline the general scope of the project. (Sec. 403A.5)

If the housing project is approved, the board of supervisors itself may exercise the duties indicated by Chapter 403A or, at its discretion, may delegate them to a board or commission, or county officer of the board's choosing. (Sec. 403A.5) These duties include a wide range of activities in planning, administering, and financing the housing project.

Any two or more counties may join or cooperate with one another for the purpose of financing, planning, undertaking, constructing, or operating a housing project. (Sec. 403A.9)

The board of supervisors may borrow money or accept contributions, grants, or other financial assistance from the federal government for the project. (Sec. 403A.4) Bonds may be issued to carry out the purposes of the program, and refunding bonds may be issued for the purpose of paying or retiring bonds previously issued. (Sec. 403A.12)



## Chapter 8

# Health

THE STATE DEPARTMENT OF HEALTH is responsible for directing public health programs throughout the state as a whole, but many health protection services are carried out at the county level. The boards of supervisors have extensive and diversified duties in regard to the establishment and financing of programs, and the appointment of certain personnel.

### *County Board of Health*

After consulting with and obtaining the advice of the state commissioner of health or his agent, the board of supervisors may collaborate with boards of health of the cities, towns, and townships in the county in adopting a county health unit plan. (Secs. 138.1, .3)

When a county adopts the county health unit plan, the board of supervisors is required to appoint a county board of health to supply guidance and direction for all public health activities within the county. The board of health appointed by the board of supervisors may not exceed eleven members, three of whom must be members of the county medical society while the remaining members may be representatives of local boards of health within the county. Members of the county board of health serve without pay; their duties and organizational procedures are set by the state board of health. (Sec. 138.2)

All financial expenditures of the county board of health are subject to approval of the board of supervisors and are paid from county funds. (Secs. 138.2, .4)

### *County Public Hospitals*

The General Assembly has made provisions for counties to establish public hospitals. These are not in any sense hospitals exclusively for indigent patients, but are authorized in realization of the need to provide adequate facilities for all persons regardless of their economic status. (Sec. 347.16)

Whenever a petition signed by two hundred or more resident freeholders of a county (at least one hundred and fifty of whom must live outside the city or town in which it is proposed to locate the hospital) is presented to



the board of supervisors requesting the establishment of a county public hospital, or the abandonment of an existing hospital and establishment of a new one, the board is required to submit the question of issuing bonds not in excess of \$500,000 to the county's voters at a general or special election. However, before a special election may be held on such a proposition, it must be requested by the petition and the board of supervisors must approve the request unanimously. (Secs. 347.1, .3-.4)

When a proposition to authorize an issuance of bonds is submitted to the electors, it must carry by at least 60 per cent of the votes cast in the election. (Sec. 75.1) This requirement overrides Code section 347.5 which requires that the proposition needs the approval of only a majority of the voters to carry. (Dickinson County Memorial Hospital Corporation v. Johnson, 248 Iowa 392, 80 N.W. 2d 756, 1957)

Upon approval of the proposition by the voters, the board of supervisors has a duty to issue bonds not exceeding the total sum fixed in the approved proposition. These bonds are payable in twenty years from the date of issuance, with a right reserved to the county to retire the bonds at any time after ten years from the date of issuance if the county so chooses. The interest these bonds may bear may not exceed 5 per cent. It is mandatory that it shall be shown on the face of the bonds that they are county public hospital bonds payable only from the county public hospital fund. (Sec. 347.5)

*Board of trustees*—The first board of trustees to manage the county hospital must be appointed by the board of supervisors. Three of the seven trustees may be women, and not more than four trustees may live in the city or town in which the hospital is located. The provision applies only to original appointments. Filling of vacancies in the membership is performed by the remaining members of the board of trustees; but if fewer than four trustees remain on the board, the vacancies are filled by the board of supervisors. (Secs. 347.9-.10) A new board is elected at the next general election after appointment of the original board of trustees. The trustees are elected on a nonpartisan basis, and nomination of prospective trustees is to be made by petition in accordance with Chapter 45 of the Code. Petition forms are to be furnished by the county auditor and must be signed by qualified electors equal in number to 1 per cent of the votes cast for governor at the last general election. The petition must be filed with the county auditor at least fifty-five days before the general election. (Sec. 347.9)

*Additions to county hospitals*—Additions to existing county hospitals may be authorized by the voters at a special or general election provided at least 60 per cent of those voting favor the proposition to issue bonds and to levy a tax to retire the bonds. Before the board of supervisors can submit the proposition to the voters, however, it must receive a petition



requesting such action. The petition must be signed by voters of the county whose number is equal to 5 per cent of the number voting for the office of governor in the last general election in the county. Further, the petition must be approved by the hospital's board of trustees. (Sec. 347.2)

*Municipal hospitals becoming county hospitals*—A hospital organized and existing as a city or town hospital under Chapter 380 of the Code may become a county hospital if approved by the electors of both the city or town and the county. The proposition of whether a city or town hospital should become a county hospital must be placed on the election ballot for voter approval when the board of supervisors receives a petition signed by qualified voters of the county equal in number to 5 per cent of the votes cast for governor at the last general election requesting it. In determining whether the proposition has carried, the votes of the residents of the city or town in which the hospital is located must be analyzed twice: once to see if the proposition carried in the city or town, and once to ascertain if the proposition carried on a county-wide basis. (Sec. 347.23)

*Nursing homes*—A nursing home may be operated in conjunction with a county hospital. This may be erected and maintained by proceedings authorized in Chapter 347 for hospital buildings and additions. (Sec. 347.26)

#### *County Hospitals Financed from Revenues*

In addition to the above method of acquiring a county public hospital, counties having populations of less than 150,000 may establish public hospitals supported solely from revenue obtained from operation of the hospital. Administration and management of such a hospital is vested in a five-member board of hospital trustees. The original hospital board is appointed by the board of supervisors for a term of office to last until the next general election at which time the members of the hospital board are elected. Not more than two members of the board of trustees may be residents of the same township. The trustees serve without compensation although they may be reimbursed for expenses incurred in the performance of their duties. (Sec. 347A.1)

To establish a hospital of this nature, the board of supervisors must pass a resolution providing for the issuance of negotiable interest-bearing revenue bonds with maturing dates not exceeding thirty years from the date of issuance. The bonds may bear not more than 5 per cent interest, payable semi-annually. Notice of the resolution authorizing such revenue bonds must be published by the county auditor in at least one newspaper of general circulation at least once each week for two consecutive weeks. If, within twenty days of the first publication of the notice, a petition is filed with the county auditor containing signatures equal in number to at least 20 per cent of the number of persons voting for governor in the last election,



the proposition to issue the bonds must be submitted to the county's electorate. Or, the board of supervisors may repeal the bond resolution if it chooses. An affirmative vote of 60 per cent of those voting is required to carry the proposition. If no petition is filed during the twenty-day period, the board of supervisors may proceed with establishing the hospital and issuing bonds. (Sec. 347A.2)

The bonds shall be sold in the manner and upon the terms provided in the resolution of the board of supervisors authorizing the bonds. It should be noted that this same resolution of the board may contain those covenants deemed desirable by the board of supervisors regarding the use and application of the bond proceeds, the operation of the hospital, and the custody and use of the hospital's revenues. (Sec. 347A.2)

Each revenue bond must show upon its face that it does not represent an indebtedness of the county and that it is payable solely from the hospital's revenues. (Sec. 347A.2)

In the event that revenues are not sufficient to pay operating costs of the hospital and upon certification of this fact by the hospital trustees, the board of supervisors must pay these expenses from other county funds or levy a tax, not to exceed four mills, for the purpose of paying these expenses. (See page 26.) In no case, however, may general county funds or the proceeds of this special tax be used to pay the interest or principal of the revenue bonds issued for the establishing of a county public hospital authorized by Code Chapter 374A. (Sec. 347A.3)

*Enlargement and improvement*—The 59th General Assembly enacted legislation whereby general obligation bonds can be issued to pay for the cost of enlarging and improving hospitals established under Chapter 347A. The board of supervisors, upon petition by the hospital board of trustees, may pass a resolution providing for the issuance of negotiable interest-bearing general obligation bonds with maturing dates not exceeding twenty years from the date of issuance. The principal amount of these bonds must not be more than 2 per cent of the assessed value of the taxable property in the county as shown by the latest state and county tax lists, and the bonds may not bear more than 5 per cent interest, payable semi-annually. In the resolution authorizing the issuance of the bonds, the board of supervisors must provide for the levy of an annual tax sufficient to pay for the bonds and the interest thereon. Notice of the resolution authorizing such bonds must be published by the county auditor in at least one newspaper of general circulation at least once each week for two consecutive weeks. If, within twenty days of the first publication of the notice, a petition is filed with the county auditor containing signatures equal in number to at least 20 per cent of the number of persons voting for governor in the last election, the proposition to issue the bonds must be submitted to the county's



electorate. Or the board of supervisors may repeal the bond resolution if it chooses. An affirmative vote of 60 per cent of those voting is required to carry the proposition. If no petition is filed during the twenty-day period, the board of supervisors may proceed with the enlargement and improvement of the hospital and the issuance of bonds. (Sec. 347A.7) (See also page 26.)

#### *Contracts with Other Hospitals*

The board of supervisors of a county that does not have a county hospital may enter into a contract for not more than one year with any hospital in the county for the hospital care of indigent persons, or others who may be the responsibility of the board of supervisors. When this has been done, the board of supervisors must determine those persons entitled to care at the county's expense. The contract cannot provide that the hospital receive less than its cost of rendering the care and service to these persons. (Sec. 347.21)

#### *Memorial Hospitals*

If a memorial building is erected under the provisions of Code Chapter 37, which is to be used as a hospital, additions and nursing homes may be erected in conjunction with the hospital under the procedure outlined in Chapter 347 dealing with county public hospitals. The commissioners in charge of erection and management of the memorial perform the same functions as the hospital trustees under Chapter 347. (Sec. 37.27)

#### *Miscellaneous Health Duties*

*Public health nurses*—The board of supervisors, either by itself or in cooperation with city and town councils and school boards, is authorized to employ public health nurses for such periods of time and in such numbers as they deem advisable. If cooperatively employed, the compensation and expenses of the public nurses may be apportioned among the employing political units. The county's share of the costs comes from the county's general fund. Duties of the public health nurse must relate, in general, to the promotion and conservation of public health; a more detailed definition of their duties is made by the employing authority which, of course, may be the board of supervisors. (Secs. 143.1-3)

*Hospitalization for epileptics and education of the mentally retarded*—Except for private patients, voluntary admissions to the hospital for epileptics (Woodward state hospital and school) and the schools for the mentally retarded (Woodward and Glenwood state school) may be made only with the approval of the board of supervisors of the county in which the person involved is legally settled.<sup>1</sup> (Sec. 223.13) The expenses of persons so com-

1. A board of supervisors has no authority under section 223.13 to approve voluntary commitments or admissions to Woodward or Glenwood for the purpose of vocational



mitted to the hospital are borne by the county and are paid from the state institution fund by the board of supervisors. (Sec. 223.18)

Insofar as applicable, the laws regarding commitments of mentally ill persons are followed in committing epileptic persons to these institutions. (Sec. 223.7)

*Tuberculosis patients*—Suitable care and treatment for patients suffering from tuberculosis must be provided by the board of supervisors. To this end they may contract with nonprofit hospitals for such care and treatment. (Sec. 254.1)

Persons suffering from tuberculosis may not be cared for in buildings at the county home. The board of supervisors, without submitting the question to the voters, may appropriate not more than \$5,000 in counties having a population of more than 15,000 and less than 67,000 for the purpose of acquiring, constructing, and equipping facilities for tubercular care. In counties of less than 15,000 population, \$2,000 may be appropriated for this purpose. (Secs. 254.2-3) If greater sums are to be expended for this purpose, it is necessary to submit the question to the voters of the county for approval, as provided in Code Chapter 345.

For each tuberculosis patient cared for in any such institution, the board of supervisors may allow a sum not to exceed the average per diem cost of treating the average patient in such an institution. This allowance shall be taken from the county's state institution fund. (Sec. 254.4)

If indigent tubercular patients are committed to the State Sanatorium at Oakdale, the county of legal settlement is liable for their support. (Sec. 271.14)

In counties that do not maintain a separate public tuberculosis hospital,<sup>2</sup> the board of supervisors is authorized to receive for the county all donations or contributions from patients or other persons and any money payable under an insurance contract covering the costs of such hospitalization. (Sec. 254.10)

*Contagious and infectious diseases*—While the main responsibility for administering Chapter 139 of the Code (Contagious and Infectious Diseases) rests with the local board of health, the supervisors are called upon to approve and pay claims for supplies and services. The board of supervisors, however, is not bound by the bill certified by the local board

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rehabilitation of feeble-minded people since there is no express authority given in Chapter 332 of the Code (Powers and Duties of Board of Supervisors) which may be construed to allow the board of supervisors to enter into such a program. (Op. Atty. Gen. 1958, p. 81)

2. If a county public tuberculosis hospital is maintained, the board of hospital trustees is entitled to receive donations, contributions, and insurance contract payments. (Sec. 254.10)



of health, but is required to allow only claims on the poor fund in those amounts deemed reasonable by the board. Therefore, the board has power to reduce any claim to what it considers a reasonable sum for the supplies or services rendered. (Secs. 139.26-29) If a person receives support and supplies from a county and it is later discovered that he is a legal resident of another county, the board of supervisors of his county must reimburse the county which originally paid for his support and supplies. (Sec. 139.30)

*Detention hospitals for contagious diseases*—If the board of supervisors is petitioned by three hundred resident freeholders<sup>3</sup> of the county to establish a detention hospital for persons suffering from infectious or contagious diseases, the board must submit the issue to the county's electorate. If the vote is favorable, the board must order the construction and equipping of such a hospital, but the sum expended may not exceed \$100,000. (Sec. 256.1)

County bonds shall be issued to finance constructing and equipping the hospital; the bonds are to have a maximum maturity date of fifteen years and may bear no more than 5 per cent interest, payable annually. The board of supervisors must make tax levies sufficient to pay the bonds and interest as they become due. (Sec. 256.2)

*Detention hospital for venereal diseases*—The board of supervisors may provide a detention hospital for the isolation of persons infected with venereal diseases if the board, in its own judgment, decides such a hospital is needed or if the board is advised by the state department (acting in conjunction with the United States Public Health Service) that it is necessary to provide the hospital. Any venereal disease detention hospital should be constructed and equipped in accordance with plans and specifications furnished to the county in advance by the state department. (Sec. 140.12)

The board of supervisors, with county tax funds, may rent, purchase, or construct a place suitable for the hospital and may equip and maintain it. In anticipation of tax proceeds, bonds bearing no more than 5 per cent interest may be issued by the county. (Sec. 140.14) The board may provide that portions of these bonds will mature at different dates, but in no case may any bonds mature in less than three or in more than fifty years from the date of issue. (Sec. 140.15)

If a detention hospital is established by the board of supervisors, the board must appoint and fix the compensation of a physician, nurses, and such other attendants as may be necessary. (Sec. 140.16)

*Support of the mentally ill*—The county fund for mental health is to be used exclusively for the support and care of mentally ill persons in the mental ward of the county home or elsewhere and to make improvements or

3. Two hundred of these must be residents of the city, town, or village in which the proposed hospital is to be located. (Sec. 256.1)



additions at the county home in order to care for mentally ill patients. In no case, however, may the county fund for mental health be used to provide care and support of any mentally ill person in any state hospital. (Sec. 230.24) The county of legal settlement of a mentally ill person is liable for the expenses incurred by the state in caring for the person in a state hospital (Sec. 230.1), and the county must pay these expenses from its state institution fund. (Sec. 230.23)

Notwithstanding the provision for levying an annual tax (see page 21), persons legally liable for the support of a mentally ill person (spouse, parents, or adult children) are held responsible for the expense of maintaining and caring for that person in the county home or other hospital. (Sec. 230.15) The county auditor, subject to the direction of the board of supervisors, is charged with the duty of enforcing the obligation against the persons liable for the patient's support<sup>4</sup> (Sec. 230.15), but the board, acting in the best interests of the county, may compromise any such claim. (Sec. 230.17) Any assistance furnished by the county under Chapter 230 (Support of the Mentally Ill) becomes a lien on the property of the person assisted or his spouse.<sup>5</sup> (Sec. 230.25) The board, having the duty to collect such claims, must direct the county attorney to proceed with the collection of the claims. (Sec. 230.27) When an account has been fully satisfied, the board of supervisors must release the county's lien on the property. (Sec. 230.29)

The board of supervisors is authorized to use money from the county fund for mental health for psychiatric examination and treatment of indigent persons requiring such services. If the county does not have facilities available, the board may contract with another county for the use of such facilities. Any county expending funds from the county mental health fund for psychiatric examination or treatment of persons in a community health center may levy an additional tax of not to exceed three-eighths mill. (Sec. 230.24)

If a person has been declared mentally ill by the hospitalization commission, but cannot be admitted to a state hospital at once or is appealing from the finding of the hospitalization commission, he may be cared for temporarily by friends or relatives under conditions approved by the commission if he may be safely permitted to go at large. (Secs. 229.23-.25,

4. In order that the board of supervisors be able to carry out its responsibilities, the names of mentally ill persons being cared for at public expense must be disclosed to it. (Op. Atty. Gen. 1960, p. 62)

5. No lien attaches to the property of a voluntary patient or spouse of a patient receiving treatment at a community mental health center under Code section 230.24, where such patient has not been committed to the mental health center. (Op. Atty. Gen. 1960, p. 65)



229.18) When temporary care and custody, however, is not provided in this manner, the commission must require the board of supervisors to provide, at the county's expense, care and restraint of the person in the county home or other suitable place. (Sec. 229.26)

A person confined in a state hospital for the mentally ill must be transferred to the county home upon the finding by a commission<sup>6</sup> appointed for that purpose that the patient can receive proper treatment in the county home. The board of supervisors of the patient's home county, however, must approve the transfer before it may be effected. (Sec. 227.11)

6. The commission consists of the superintendent of the state hospital and a physician or physicians appointed by the board of supervisors of the county in which the patient has legal settlement. (Sec. 227.11)



## Chapter 9

# Agriculture and Conservation

THE BOARD OF SUPERVISORS performs a variety of duties designed to aid agriculture and conservation. An important function—supervision of drainage activities—is not discussed in this handbook because a summary treatment is not possible for so broad a subject. However, the statutory provisions relating to drainage activities have been collected and listed in Footnote 2 on page 107 in this chapter. It will be noted that much of the board's duties in relation to agriculture and conservation consists in creating and supervising other agencies designed to perform the actual work.

### *Aids to Agriculture*

*County limestone quarries*—In counties in which there are no privately owned limestone quarries or in which private quarries cannot furnish the needed limestone to farmers in an amount and at the same price and terms as the county would be able to do, the board of supervisors has the power to establish or lease county limestone quarries for agricultural purposes. Before the acquisition of a county quarry, however, the board must determine, by investigation, that through county ownership lime can be obtained at a lower cost than by any other means. (Sec. 202.1)

Lime which is obtained from a county quarry or which has been purchased by the county may be resold to farmers within the county. To permit this, however, farm owners in the county must petition the county board of supervisors to sell at least five thousand tons of lime, or, if less than that quantity is requested, at least fifty of the county's farm owners must sign the request. (Sec. 202.3)

The board of supervisors has the duty to fix the price of the lime sold. The price must equal at least the actual cost of the lime plus an added 10 per cent to cover depreciation of equipment. If there is any expense involved in transporting the lime to the farms, this also must be included in the price. (Sec. 202.9) Farmers are allowed to pay for the lime either in cash or by a special tax secured by an assessment lien. (Sec. 202.4)

To finance the provisions of Chapter 202 of the Code, the board of supervisors has the authority to issue anticipatory warrants; the interest rate may not exceed 3½ per cent per annum. These anticipatory warrants are



not considered a general obligation of the county and are secured only by a special assessment tax levy. (Sec. 202.6)

*Weed eradication*—Although the appointment of a county weed commissioner is mandatory, the commissioner serves at the pleasure of the board. The person selected as commissioner must not be employed otherwise by the county and should be familiar with the control and elimination of the various types of weeds. After his appointment, the commissioner may appoint, with the board's approval, such deputies as are necessary. (Sec. 317.3)

The weed commissioner has supervision of the control and destruction of noxious weeds in the county;<sup>1</sup> however, the ultimate responsibility for enforcement of the noxious weeds provisions of the Code (Chapter 317) is vested in the board of supervisors. (Secs. 317.4, 9) Therefore, the board must prescribe a weed control program annually by resolution, fixing dates on which specified noxious weeds must have been destroyed by land owners. (Sec. 317.13) The program must be published once in the official newspaper of the county. (Sec. 317.14)

The attorney general has held that the destruction of weeds is a governmental function of the county and, hence, the county is not liable for damage to trees, shrubs, and growing crops on private property resulting from the destruction of weeds by use of accepted solutions applied in the form of spray. (Op. Atty. Gen. 1948, p. 242) The Code provides that the title holder of the realty shall bear the loss suffered. (Sec. 317.15)

*Participation in flood and erosion control and watershed improvements*—Whenever the county, soil conservation district, or other political subdivision of the state, or other local agency engages in any flood or soil erosion project or watershed improvement in cooperation with the federal government, the county in which such project or improvement is located has the authority, acting through the board of supervisors, to construct, operate, and maintain the project or improvement on lands controlled by or under the jurisdiction of the county if the project or improvement is dedicated to county use. The board of supervisors also is authorized to furnish financial and other assistance in connection with the project or improvement. In all cases it is assumed that the soil conservation district or the federal government will direct the work and that the county will meet only those obligations necessary to obtain federal aid and will make commitments for the care and maintenance of the project or improvement after its completion. As much of the cost of maintenance that is not covered by federal aid or grant may be assumed by the county. (Secs. 467B.1-.2)

1. This includes noxious weeds growing in cities and towns, along streets and highways, and in abandoned cemeteries. The weed commissioner also has authority to enter upon "any land in his county" for the performance of his duties. (Sec. 317.4)



If the structure or levee needed for the project or improvement is built on a county road, the cost, in whole or in part, must be considered as part of the cost of road construction and charged to the road funds of the county. (Sec. 467B.4)

If a project or improvement has been completed on private lands under an easement granted to the county, only the cost of maintenance may be assumed by the board of supervisors. Such a project or improvement, built on private lands with federal aid but dedicated to the use of the county, must be maintained the same as county-owned property. (Sec. 467B.7)

*Soil conservation in mining areas*—The board of supervisors may establish districts for soil conservation in mining areas within the county if it is essential for the accomplishment of soil conservation and flood control. The board is authorized to require anyone removing surface soil for the purpose of obtaining coal to replace the surface soil as nearly as practicable to its original position. This authority, however, applies only to soil removed after July 7, 1949. (Sec. 467C.2)

*Drainage and conservation*—The Constitution of Iowa authorizes the General Assembly, in its exercise of the police power, to grant boards of supervisors wide powers in the establishment of drainage districts.<sup>2</sup> (Constitution, Art. 1, Sec. 18, as amended 1908) At any session, the board of supervisors has power to create one or more drainage districts in the county, to locate and provide for the construction of any levee, ditch, drain, water course, or settling basin, and to order the straightening, widening, deepening, or changing the course of any natural water course as long as some public utility or benefit to public health, convenience, or welfare will result. (Secs. 455.1-.2) Similarly, the board is authorized to keep in repair any such improvements. (Sec. 455.135(1))

In conjunction with its power to establish levee and drainage districts, convert from intracounty to intercounty districts, establish pumping stations, and issue drainage bonds, the board of supervisors exercises quasi-judicial functions in the conduct of hearings, but its decisions are subject to review by the district court.

*County and district fairs*—A county or district fair or agricultural society

2. See Title XVII, *Certain Internal Improvements* [Chapter 455, "Levee and Drainage Districts and Improvements on Petition or by Mutual Agreement"; Chapter 456, "Dissolution of Drainage Districts"; Chapter 457, "Intercounty Levee or Drainage Districts"; Chapter 458, "Converting Intracounty Districts into Intercounty Districts"; Chapter 459, "Drainage Districts Embracing Part or Whole of City or Town"; Chapter 460, "Highway Drainage Districts"; Chapter 461, "Drainage and Levee Districts with Pumping Stations"; Chapter 463, "Drainage Refunding Bonds"; Chapter 464, "Defaulted Drainage Bonds"; Chapter 465, "Individual Drainage Rights"; Chapter 466, "Drainage Districts in Connection with United States Levees"; Chapter 467, "Interstate Drainage Districts"].



incorporated for the purpose of holding a *bona fide* exhibition of agricultural products, livestock, and farm implements may be entitled to county financial aid. The county board of supervisors is given power to levy a tax (see page 27) to provide a fairground fund to be used for buying or improving fairgrounds, for aiding 4-H club work, and for payment of agricultural and livestock premiums in connection with the fair. However, the tax may be levied only on the condition that the society owns in fee, or leases, at least ten acres of land for fair purposes plus buildings and improvements on this land of a value of at least \$8,000. (Sec. 174.13)

In addition, whenever the board of supervisors is petitioned by 25 per cent of the county's qualified voters to purchase or accept as a gift real estate exceeding \$1,000 in value for county or district fair purposes, the board is authorized to do so when approval of the proposition is granted at a general election. (Sec. 174.14) If the proposal is approved by the electorate, the board is required to make the purchase or accept the gift, but the management of the real estate so acquired is vested in the county or district fair society. (Sec. 174.15)

However, this right of the society to control the real estate may be ended by the board of supervisors whenever well-conducted agricultural fairs are not held annually on the grounds by the fair society. (Sec. 174.16)

The board of supervisors accepts legal title to land in the name of the county if the land is to be used for fair purposes. (Sec. 174.24) If a new fairground site is acquired by the county, the board of supervisors has the power to sell the existing fairground site (if the county holds the title) and structures located on the old site that it would not be practical to move to the new site. The funds received from this sale must be placed in the fairground fund. (Sec. 174.25)

*Miscellaneous agricultural aids*—Appropriations of not to exceed \$300 in any one year may be made by the county board of supervisors for growing experimental corps on county-owned lands. (Sec. 332.3(14)) An annual appropriation not in excess of \$600 also is authorized for the purpose of eradicating bee diseases. Prior to making this allotment of funds, the board must be petitioned by fifteen or more bee-keepers in the county to make the appropriation. The work of eradicating diseases among bees is done under the supervision of the state apiarist. (Sec. 266.23) The county also supplies financial aid to the work of eradicating bovine tuberculosis and Bang's disease. Tax levies for this purpose are discussed on page 22 of this handbook.

#### *County Conservation Board*

If at least two hundred voters in a county petition the board of supervisors to create a county conservation board, the board must submit this



proposition to the county's electorate at the next primary or general election. If a majority of voters favor the creation of a board, the board of supervisors is required to establish a county conservation board within sixty days after the election and appoint five bona fide residents of the county to serve as its members. The terms of office of the original appointees range from one to five years so that on each succeeding year a new member shall be appointed to the board for a term of five years. The board of supervisors must select the members of the conservation board from residents of the county who have demonstrated interest in conservation matters. The members are not entitled to compensation except that they may be paid for actual and necessary expenses incurred in performance of their official duties. (Sec. 111A.2)

The board of supervisors may remove members of the conservation board for cause, but each removal must be by written order. (Sec. 111A.2)

It is the duty of the board of supervisors to provide a suitable office for the conservation board's meetings and for safekeeping its records. (Sec. 111A.3)

The board of supervisors is entitled to receive an annual report from the county conservation board concerning its transactions and operations for the preceding year. (Sec. 111A.3)

Authority is vested in the board of supervisors to give to the conservation board any county land or building not devoted to another inconsistent use if the conservation board requests the land or building for use as parks, recreation facilities, wildlife refuges, or other similar uses. (Sec. 111A.4) Subject to certain restrictions, land may be taken by eminent domain for the purpose of carrying out plans for the acquisition of land advanced by the county conservation board and approved by the state conservation commission. (Sec. 471.4) Also, the board of supervisors in its discretion, may make available to the conservation board county-owned equipment, county-employed operators, and county-owned materials. (Sec. 111A.7)

Upon request of the board of supervisors, the state executive council may deed lands under its jurisdiction to the county for park purposes. A majority recommendation of the state conservation commission is required for approval of this action.

There is no cost to the county for this park land, but when it is no longer used for park purposes it reverts to the state and the county is responsible for restoring the land to a condition approximately the same as when it was received. The county must do this within one year after the land has been reverted. The state may require that the county file a notice of intention every three years. (Sec. 111.32)

In order to pay for the expenses incurred by the conservation board in the performance of its duties and the exercise of its powers, the board of



supervisors may appropriate money from the county general fund. In addition, the board may levy property taxes to support conservation work. (See page 29.) (Sec. 111A.6)

In counties of more than 90,000 population, upon approval of the electors, the board of supervisors may issue bonds in anticipation of the revenue from the levy of the special tax for conservation work. (Sec. 111A.6)



## Chapter 10

# Zoning and Public Safety

CERTAIN RESPONSIBILITIES for zoning of county lands, installation of a police radio broadcasting system, and establishment of fire districts are within the purview of the county board of supervisors.

### *County Zoning*

Recent statutory changes have broadened significantly the board of supervisors' county zoning power so that, with certain exceptions, the board has zoning powers similar to those granted to cities.

*Scope of the zoning power*—Any county in Iowa may adopt zoning regulations at the choice of the county board of supervisors. (Sec. 358A.1) However, no zoning regulation may be applied to any land or building that is used for agricultural purposes as a primary means of obtaining a livelihood (Sec. 358A.2), nor can such a regulation be applied to any area lying within the corporate limits of any city or town. (Sec. 358A.3)

The zoning power vested in the board of supervisors includes the power to regulate and restrict the dimensions of structures, the number of them, the percentage of a lot that may be occupied by a structure, the size of yards and other open spaces, and the density of population in an area. (Sec. 358A.3)

The board may prescribe and charge a reasonable building permit fee. Upon receipt of an application containing all required information that the building will comply with all applicable regulations and upon payment of the required permit fee, the board must issue a permit within seven days.<sup>1</sup> (Sec. 358A.3)

Further, the board may regulate the use of land by requiring that certain areas be confined to residential, trade, or industrial uses. (Sec. 358A.3)

*Exercise of the zoning power*—The county may be divided into such districts as the board may deem best suited for effective regulation and

1. The board of supervisors can amend existing zoning ordinances under Code sections 358A.6 and 358A.7 so as to take advantage of additional power conferred by the 58th General Assembly amendment to section 358A.3 but, of course, there could be no retroactive enforcement as respects existing nonconforming uses. (Op. Atty. Gen. 1960, p. 77)



within each district different regulations regarding the use of property and structural requirements may be applied, but all regulations within any particular district must be uniform for each kind of building. (Sec. 358A.4)

It is requisite, however, that each regulation be made in accordance with a comprehensive plan. The purpose of the regulations must be: (1) to lessen street or highway congestion, (2) to secure protection from fire, panic, and other dangers, (3) to protect health and general welfare, (4) to prevent overcrowding any area, (5) to provide adequate light and air, and (6) to facilitate the task of providing adequate transport, education, water, sewage, and similar resources. (Sec. 358A.5)

Upon deciding to adopt county zoning regulations, the board must appoint a county zoning commission.<sup>2</sup> The duty of this body is to recommend boundaries and appropriate regulations for the districts. The zoning commission must prepare a preliminary report and hold public hearings before submitting its final report to the board of supervisors. (Sec. 358A.8) Upon receipt of the final report, the board prepares regulations and proposed boundaries for the districts. These regulations cannot become effective until public hearings concerning them have been completed. The hearings may be held only after fifteen days' notice of the time and place of the hearings has been published in a newspaper having general circulation in the county. (Sec. 358A.6)<sup>3</sup>

The regulations, restrictions, and boundaries may be amended, modified, or repealed. However, if a protest against any such change is filed by the owners of 20 per cent or more of the area included in the proposed change or of the immediately adjacent area within five hundred feet of the boundaries, the change will not be effective unless approved by the vote of at least 60 per cent of the members of the board of supervisors. The provisions for notice and public hearings apply to any alteration or repeal of the district boundaries or regulations. (Sec. 358A.7)

Action by the 59th General Assembly has expanded the scope of duties of the county zoning commission. Section 373.21 of the Code now provides that counties that have suffered substantial damage as the result of a catastrophe or have urbanized rapidly because of some federal installation are eligible to receive planning assistance from the Iowa development commission. If a county is eligible, the county zoning commission may contract

2. The Iowa Code does not indicate how many members are to be on the commission, their qualifications, term of office, or compensation. The Attorney General has ruled, however, that county zoning commissioners are not entitled to compensation or expenses. (Op. Atty. Gen. 1960, p. 78)

3. The proposed ordinance, change, or amendment must be published, either in full or in sufficient detail to apprise objectors they have something about which to object. (Op. Atty. Gen. 1960, p. 64)



with professional consultants, the Iowa development commission, or the federal government (or any combination of these) for planning assistance.

In order to enforce the adopted regulations, the board of supervisors must appoint an administrative officer who may be a public officer in the county, city, or other lesser unit of government in the county. The administrative officer's salary is left to the board's discretion. (Sec. 358A.9)

The board of supervisors also must appoint a board of adjustment consisting of five members whose initial terms shall range from one to five years. Thereafter, as the terms of the initial members expire, a new member shall be appointed each year by the board of supervisors for a five-year term. These members can be removed for cause by the board of supervisors if written charges are filed and a public hearing is held. (Secs. 358A.10-.11) The board of supervisors, at the time the board of adjustment is created, should adopt regulations permitting the board of adjustment, acting at the request of aggrieved property owners, to make special exceptions to regulations in individual hardship cases. (Sec. 358A.10)

If dwellings within the county but outside the corporate limits of any city or town have private water supplies, or pressure systems, or only sanitary house drains, the board of supervisors, by passing regulations, may require that these improvements meet the state department of health's recommended minimum requirements of the state plumbing code. (Sec. 358A.25)

#### *Police Radio System*

The state commissioner of public safety is authorized to establish a special radio broadcasting system to assist peace officers of the state in law enforcement. (Sec. 750.1) After he has established radio broadcasting facilities in a county, he must notify the board of supervisors; it is their duty to install in the sheriff's office a locked-in radio receiving set as prescribed by the commissioner. (Secs. 750.3-.4) A similar set also must be installed in at least one motor vehicle used by the sheriff; additional sets also may be installed. The cost of the sets and their installation is paid from the county general fund. (Sec. 750.4)

The board of supervisors has the discretionary authority to obtain any additional radio, electronic, and telecommunications systems it deems necessary for the efficient operation of law enforcement agencies. The equipment is to be paid for out of the general fund. Counties may obtain and operate this equipment jointly with a city, town, or other county if that would be more economical or efficient. (Sec. 750.6)

#### *Fire Districts*

If the board of supervisors receives a petition signed by at least 25 per cent of the resident property owners in a proposed fire district, a hearing



must be held within twenty days. Notice of the hearing must be given either by posting bills in three public places within the district or by two successive publications in a newspaper having general circulation in the proposed district. On the day of the hearing, or within ten days of it if good reason for delay exists, the board must pass a resolution establishing the fire district or disallow the petition. (Secs. 357A.1-4)

Following a resolution establishing such a district, the board of supervisors must appoint a competent civil engineer to plat the district tentatively. The engineer's compensation is fixed by the board. (Sec. 357A.5-6)

Following the filing of the plat—normally within thirty days—notice must be given in the same manner as for the first hearing and a hearing must be held before the board of supervisors to consider the tentative plat. The board then, or within ten days, approves or disapproves the plat; the board has authority to alter the boundaries if it sees fit. Within thirty days of approval, an election is held to **select trustees and approve** the special taxes. (Secs. 357A.7-9)

It should be noted that the board is empowered at its option to require bonds of the petitioners to cover the costs of the proceedings. (Secs. 357A.1, 455.10)

The board also has the power and the duty to fill vacancies on the fire district's board of trustees if an election is not held for this purpose. (Sec. 357A.10)

A petition of 35 per cent of the resident voters of the district allows the board of supervisors to dissolve the fire district and settle its affairs by disposing of its property, retiring obligations with the proceeds, and distributing the balance as tax credits to property owners. If, upon dissolution, the assets are not adequate to retire all obligations, the board of supervisors is required to levy up to one and one-half mills on property in the district until all obligations are paid. (Sec. 357A.14)



## Chapter 11

# Education and Elections

THE BOARD OF SUPERVISORS performs certain nominal duties to assist education in the county, and also has some important pre-election and post-election responsibilities.

### *Education*

The chief function of the board of supervisors in relation to education is to act as a levying board for the school districts and the county board of education (see pages 15-17). However, the board also has certain duties in the establishing of library service for the residents of the county and in providing financial assistance for teachers' meetings.

*Libraries*—Several methods of providing library service in the counties have been authorized by the General Assembly. The board of supervisors, of its own volition, may enter into a contract with the board of trustees of any free public library to provide for the library's use by residents of the county outside cities and towns. (Sec. 378.11; Op. Atty. Gen. 1942, p. 145) The question of providing library services to rural residents must be submitted to the voters who do not live in cities and towns if a petition is presented to the board requesting such an election. The number of signatures required is 25 per cent of the votes cast for governor at the last election. A favorable vote requires the board to appoint a board of library trustees who will contract with libraries to provide the required services. (Sec. 378.15)

If a county does not receive library service under contracts with cities and towns as described above, it may construct or lease a building and maintain its own free public library. (Secs. 358B.1, .14)<sup>1</sup> Upon receiving a petition of voters of the proposed county library district equal in number to at least 5 per cent of the votes cast for governor in the last election, the board of supervisors must submit the proposal to the people at the next general or primary election. (Sec. 358B.2) If the voters residing outside cities and towns that maintain their own free libraries approve, the proposition is accepted. The votes cast by residents of each city and town shall be counted

1. The county may do so even if under contract if compliance with section 358B.14 is obtained.



separately so that only those cities and towns approving the proposition shall be included in the county library district. (Sec. 358B.2)

Upon approval of the proposition, the board of supervisors must appoint a nine-, seven-, or five-member board of library trustees. Each member must be a qualified voter in the library district, and the membership should be apportioned among rural and urban areas of the district according to the population of these areas. (Sec. 358B.4) Initial appointments are made at the same time for varying terms so that every two years thereafter one-third of the board is replaced by subsequent appointments for six-year terms by the board of supervisors. (Sec. 358B.5)

An important feature of the provision of the Code is that counties are given the power to join in the formation of library districts. Cities and towns already maintaining free library service, however, may not be included in such library districts unless the people of the city or town have voted to join the district. (Sec. 358B.2)

#### *County Law Library*

If the board of supervisors deems it advisable, it may provide a suitable law library in the county courthouse for the use of the judges, county attorney, county officers and their deputies, and practicing attorneys. The library once established is to be supervised and controlled by the district court judge. (Sec. 332.6)

#### *Teachers' Meetings*

The county superintendent of schools is authorized to arrange for meetings of teachers, the purpose of which is to improve instruction in the county schools. Funds to meet the expenses of these meetings are provided from three sources: state appropriations, examination fees, and an appropriation from the county general fund. In counties that have a population of 30,000 or less, the sum to be appropriated by the board of supervisors at its January session is \$150; if the population of the county is in excess of 30,000, the amount to be appropriated from the general fund for this purpose is \$200. (Sec. 272.5)

#### *Elections*

The board of supervisors has little to do with the actual conduct of elections, but does have important duties relating to canvassing election returns, determining precinct boundaries, and setting up election boards.

*Primary election canvass*—On the second Tuesday following a primary election, the board of supervisors must meet and canvass the returns from each voting precinct of the county. The results of the canvass must be compiled into abstracts showing the number of ballots cast by each political



party for each office, the name of each person receiving votes, and the number of votes cast for each candidate for each office. It should be noted that in the abstract, all numbers must be written out in words. (Sec. 43.49) Each member of the board must sign the abstracts and certify to their correctness; the abstracts are filed with the county auditor. (Sec. 43.50) For all candidates for elective county offices (or offices of a subdivision of the county) these abstracts are the final determination of the candidates for office in the general election. (Sec. 43.51) A certified list of the candidates nominated by each party is to be prepared and the party central committee is entitled to a certified list showing the candidates nominated by its own party as well as a list of those offices for which the party has no nominee. In addition, the names of the candidates for each office must be listed with the number of votes received by each candidate for each office. (Sec. 43.55)

If by one o'clock of the Monday following the board's canvass any candidate whose name appears on the official ballot in a precinct of the county has made a sworn written statement claiming fraud or error in counting or returning the votes cast, the board, if satisfied that reasonable grounds exist for believing a different result would be obtained by a recount, may count the ballots cast in the precincts in question. If the recount produces a result different from that returned by the election judges, the result of the recount shall be substituted for the original count and the recount becomes the final result with no opportunity for further contest provided. (Secs. 43.56-.58)

A separate abstract of the canvass must be prepared for each of the following offices: United States senator, congressional representatives, all state offices, and senators and representatives in the Iowa General Assembly. These abstracts must be certified by the board and forwarded to the Iowa secretary of state. (Sec. 43.60)

Upon completion of the canvass, the original returns are delivered to the county auditor. (Sec. 43.61) The proceedings of the board in conducting the canvass are published showing the names of the nominees, the office for which each is a candidate, and the offices for which no nomination was made by one or more of the political parties participating in the primary. (Sec. 43.62)

*General election canvass*—The board of supervisors, at noon on the Monday following the general election, must canvass the election returns and prepare abstracts showing the number of ballots cast for each office, the name of each person receiving votes, and the number of votes cast for each candidate for each office. (Sec. 50.24) Each abstract of the votes for those candidates who are elected solely by the county's voters (except district judges and senators and representatives in the General Assembly) shall



contain a declaration of the candidates the board has found to have been elected. (Sec. 50.27)

A separate abstract must be prepared by the board for each of the following offices: president and vice-president of the United States, governor and lieutenant-governor, all state offices not otherwise listed in other abstracts, senators and representatives in the United States Congress, senators and representatives of the county to the General Assembly of Iowa, senators in the General Assembly from districts embracing more than one county, judges of the district court, and county officers. (Sec. 50.25) All of these abstracts must be in duplicate except the abstracts of votes for county officers. For those abstracts of which duplicates are made, one copy is forwarded to the Iowa secretary of state and the other is sent to the county auditor. (Sec. 50.26) Upon concluding the canvass, the original returns are filed with the county auditor. (Sec. 50.28)

If no one contests the election within six months, the custodian of the ballots must destroy them by burning them in the presence of two voters, one from each of the two leading political parties. These two voters are designated by the chairman of the board of supervisors. (Sec. 50.13)

*Determination of precinct boundaries*—An election precinct normally is a township if there is no city within the township. If there is a city within the township, that part of the township outside the limits of the city comprises a separate election precinct. (Sec. 49.3) The board of supervisors, however, may divide a township or part of a township into two or more precincts and may abolish any such division that has been made previously. (Sec. 49.4) The council of any city having a population less than thirty-five hundred and the board of supervisors, if each approves, can combine any part of a township outside the city with any ward or precinct within the city to form a single election precinct and can abolish any such precinct previously formed. (Sec. 49.6)

However, the board of supervisors may not form a precinct from territory in two different townships unless a village or incorporated town is located near the township line. In such a case, a precinct may be formed to include the village or town and adjacent territory in the precinct even though it is located in more than one township. The board may change the boundaries of the precinct from time to time as the convenience of the voter requires. (Sec. 49.7-8)

*Polling places*—If a precinct is outside the city limits but is in the same township as the city (or originally was until set off in a separate township), or if a township completely surrounds another township containing a city, the board of supervisors may provide a polling place for such townships or precincts in the courthouse or in other rooms within the city limits. (Sec. 49.10)



It is the duty of the board to number or name the precincts and cause the boundaries to be entered in its records. Also, once each week for three consecutive weeks, notice of the boundaries and numbers of the precincts must be published in a newspaper of general circulation in the county. The last notice, however, must be published at least thirty days before the next general election. (Sec. 49.11)

When no suitable polling place exists within a township that constitutes a voting precinct, a petition requesting a polling place outside the precinct can be submitted to the board of supervisors. The board then must designate a convenient polling place outside the voting precinct. The petition, however, must be filed at least ninety days before an election and must be signed by voters of the precinct equal in number to more than one-half the number of voters who voted for governor in the last general election. (Sec. 49.10)

Once the board has fixed such a polling place, it remains the polling place at all subsequent primary, general, and special elections until the board of supervisors, on its own motion, designates a polling place within the precinct. (Sec. 49.10)

*Election boards*—Each precinct has an election board consisting of three election judges and two clerks.<sup>2</sup> No more than two judges or one clerk can belong to the same political party (Sec. 49.12), and the two political parties drawing the largest and second largest number of votes in the precinct in the last election should be represented. In cities and towns the councilmen serve as election judges as do the trustees of a township; and if more than two councilmen or trustees residing in one precinct belong to the same political party, the board of supervisors must select by lot two of the councilmen to serve as election judges. The third election judge is chosen from the membership of the other leading political party. (Sec. 49.12-.14) Members of election boards must be chosen by the board of supervisors from lists submitted to them by the official county chairmen of the parties which cast the second next largest number of votes in the respective precincts at the last general election. These lists must be filed with the board thirty to forty-five days before each primary or general election. If they are not filed within the prescribed time or if they are incomplete, the board must make the selections without them. (Sec. 49.15) In any precinct using voting machines in which more than three machines are used, the board of supervisors is authorized to appoint one additional judge for each additional machine, but still maintaining the bipartisan political balance. (Sec. 49.12)

The board of supervisors may also appoint, for each primary and general election, three additional election judges and two additional clerks for any

2. In all election precincts with more than one thousand voters, an additional election board may be named. (Sec. 49.12)



election precinct. These added officers serve as members of an "election counting board" that will start counting ballots before the polls have closed. (Sec. 51.1)<sup>3</sup> The board of supervisors, however, must appoint only those who are of good moral character, are well informed, are able to read, write, and speak English, and who reside in the precinct in which the duties are to be performed. (Sec. 51.2) Further, the selection is to be made from the membership of the two parties in the precinct that cast the highest number of votes in the last general election. However, no more than two judges and one clerk may be members of the same party. (Sec. 51.4)

The board of supervisors must provide all election supplies and equipment (such as ballot boxes) needed by this second election board (Sec. 51.8), as well as suitable places for counting ballots. (Sec. 51.12)

*Voting machines*—For those election precincts having their election matters under the control and supervision of the board of supervisors, the board, by majority vote of its membership, may authorize the purchase and use of voting machines. (Sec. 52.2) (See page 30 for tax levy to purchase voting machines.)

*Registration of voters*—The board of supervisors may require registration of voters in any township that has a population of 1,500 or more. (Sec. 47.1) The method of registration may be either the "temporary" plan (Chapter 47 of the Code) or "permanent registration" (Chapter 48). (Sec. 48.22)

*Juror selection*—The election judges of each precinct have a duty to prepare lists of the requisite number of people to serve as grand and petit jurors and as talesmen. (Sec. 609.9) If the election judges fail to perform this duty, the board of supervisors, when performing the canvass of the votes of the precinct, must prepare these lists, certify them, and file them with the county auditor on or before the first Monday in December of the election year. (Secs. 609.10-13)

3. This is in addition to the second election board permitted election precincts which have more than one thousand voters.



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