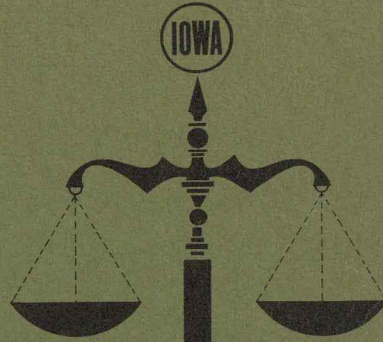


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LEGAL ASPECTS OF DOING BUSINESS IN IOWA

Compiled Under the Direction of

Mason Ladd, Dean
College of Law
The University of Iowa

Dean Zenor, Director
Institute of Public Affairs
The University of Iowa

*This survey on THE LEGAL ASPECTS OF
DOING BUSINESS IN IOWA has been
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FOREWORD

This publication is designed to acquaint the reader with the legal aspects of doing business in Iowa.

It has been prepared by the Institute of Public Affairs and the University of Iowa College of Law.

Accompanying the discussion of each law are references to the Iowa statutes and to various publications that deal more completely with the law. The bibliography contains a list of pertinent publications of the State of Iowa and the University of Iowa.

This publication, however, is not intended to provide precise legal information on each area mentioned. Legal authorities should be consulted as to the application of these laws in specific situations.

Many persons associated with the College of Law and the Institute of Public Affairs have contributed to the preparation of this publication. The original suggestion came from Professor Frank H. Kennedy.

"Legal Aspects" was prepared by Frederic L. Goreham, George L. Norman, James E. Grier, and Robert W. Spachman, research assistants in the Institute of Public Affairs, with the assistance of Professors Clarence M. Updegraff, Frank R. Kennedy, John C. O'Byrne, Allen D. Vestal, and Robert L. Stoyles, Jr. Professor Willard L. Boyd was responsible for the general supervision and direction of the project.

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CORPORATIONS

In 1959 Iowa adopted a modification of the Model Business Corporation Act sponsored by the American Bar Association. Iowa follows the model act in its entirety with the exception of a few deviations that preserve desirable features of previous Iowa law and practices.

Application to Existing Corporations

The new Iowa act does not apply to certain special types of corporations and entities permitted under Iowa statutes, such as cooperatives, non-profit corporations, insurance companies, banks, credit unions, and building and loan and savings and loan associations. Domestic corporations formed after July 4, 1959, have the option of organizing under the new act or under the old Iowa law. However, all foreign corporations that apply for authority to do business within the state after July 4, 1959, are subject to the provisions of the new act. All domestic corporations now in existence and foreign corporations now qualified to do business within the state may elect to subject themselves to the provisions of the new act. After July 4, 1961, all foreign corporations not otherwise excluded from the act will become subject to it. Domestic corporations will not be subject to the act unless they elect to become so.

Foreign Corporations

A foreign corporation that has qualified to transact business in this state enjoys the same but no greater rights and privileges as domestic corporations. The Iowa act contains the provisions of the model code concerning the foreign corporation's name, registered office and agent and failure to maintain such office or agent, and the procedures for a corporation to withdraw from the state and to have its certificate of authority revoked. Any

foreign corporation that transacts business in this state without a certificate of authority is prohibited from maintaining any action, suit, or proceedings in any court in this state.

Information regarding application requirements for authority to transact business in Iowa may be obtained from the Iowa Secretary of State.

Domestic Corporations

The act closely follows the model act on the formation, operation, and dissolution of domestic corporations. In so doing, the Iowa act greatly clarifies and codifies Iowa practice in the field of corporate law.

Filing Fees and Miscellaneous Charges

The act sets the following fees:

- (a) For filing articles of incorporation, amendments, articles of merger or consolidation, or an application by a foreign corporation for authority to transact business in this state, for registration of a trade name by a foreign corporation, and for annual renewal of registered name--\$20.
- (b) For filing an amendment to articles of incorporation of a foreign corporation--\$10.
- (c) For filing an application to reserve a corporate name, a notice of transfer of a reserved corporate name, a statement of the establishment of a series of shares, a statement of cancellation of shares, a statement of reduction of stated capital, annual fee for foreign corporation's registration of trade name, or an application for withdrawal of a foreign corporation--\$5.
- (d) For registering a registered name--\$2 a month between the

date of filing and December 31 of the calendar year in which an application for a registered name is filed.

- (e) For filing a statement of change of address of registered office or change of registered agent, statement of intent to dissolve, a statement of revocation of voluntary dissolution, articles of dissolution, or filing any other statement or report except an annual report--\$1.

Annual License Fees

An annual license fee must be paid at the time the annual report is filed. The fee is imposed on both domestic and foreign corporations based on the stated capital of the corporation. A foreign corporation may elect to report the fair and reasonable value of its property employed and used in Iowa as of January 1 of each year; its license fee will be based on this value. The graduated annual license fees are set forth in the following schedule:

| | | STATED CAPITAL | | FEE | | |
|------|----|----------------|----|------------|----|-----|
| | | Not over | \$ | 20,000 | \$ | 5 |
| Over | \$ | but not over | | 40,000 | | 10 |
| Over | | but not over | | 60,000 | | 15 |
| Over | | but not over | | 80,000 | | 20 |
| Over | | but not over | | 100,000 | | 25 |
| Over | | but not over | | 150,000 | | 30 |
| Over | | but not over | | 200,000 | | 35 |
| Over | | but not over | | 250,000 | | 40 |
| Over | | but not over | | 300,000 | | 45 |
| Over | | but not over | | 350,000 | | 50 |
| Over | | but not over | | 400,000 | | 55 |
| Over | | but not over | | 500,000 | | 60 |
| Over | | but not over | | 600,000 | | 70 |
| Over | | but not over | | 700,000 | | 80 |
| Over | | but not over | | 800,000 | | 90 |
| Over | | but not over | | 900,000 | | 100 |
| Over | | but not over | | 1,000,000 | | 110 |
| Over | | but not over | | 2,500,000 | | 175 |
| Over | | but not over | | 5,000,000 | | 250 |
| Over | | but not over | | 10,000,000 | | 350 |

| | | | | |
|------|-------------|--------------|-------------|-------|
| Over | 10,000,000 | but not over | 50,000,000 | 800 |
| Over | 50,000,000 | but not over | 100,000,000 | 1,200 |
| Over | 100,000,000 | but not over | 200,000,000 | 1,600 |
| Over | 200,000,000 | but not over | 300,000,000 | 2,000 |
| Over | 300,000,000 | but not over | 500,000,000 | 2,500 |
| Over | 500,000,000 | | | 3,000 |

Domestic corporations with no stated capital and foreign corporations with no stated capital and/or no property in Iowa shall pay an annual license fee of five dollars.

References:

Iowa Code 1962, Chapter 496A, as amended by Laws 1963, Chapter 288.

Clarence Cosson, "Iowa Business Corporation Act," 45 Iowa Law Review 12 (1959).

IOWA SECURITIES LAW – BLUE SKY LAW

The responsibility for administering the Iowa Securities Law is vested in the Securities Department, which is headed by a Superintendent of Securities who is responsible to the Commissioner of Insurance. The law gives the Commissioner of Insurance broad powers over the issuance and sale of securities in the state.

The basic plan of the statute is to place responsibility for proper conduct in issuing, selling, and dealing in securities on the persons who seek the capital. The act requires disclosure of all pertinent information concerning the security to the Commissioner of Insurance; he determines whether the security qualifies for registration.

The Iowa Securities Law applies to all securities sold or offered to the public in the state except exempt securities and securities sold in exempt transactions. Among exempt securities are securities of regulated utilities, non-profit corporations organized for religious, educational, fraternal, or reforma-

tory purposes, securities bought and sold on any stock exchange that has been approved by the head of the Securities Department, securities of banks and insurance companies, commercial paper, securities evidencing indebtedness due under conditional sale contracts, Canadian securities, securities of certain cooperative associations, and securities of Economic Development Corporations. Exempt transactions include judicial and fiduciaries' sales, pledgees' and mortgagees' sales to liquidate pledged securities, isolated transactions for the owner's account, stock dividends, employee stock purchase plans, security transfers or exchanges in connection with reorganizations, mergers, or consolidations, and issuance of another security pursuant to conversion rights.

Also exempt are the sale of subscriptions for or securities of a corporation before its incorporation if no commission is received from the sale and if the number of subscribers does not exceed twenty-five.

Another exempt transaction is the sale of securities by the issuer of those securities, to not more than twenty people, within any consecutive twelve-month period, provided no commission is given for the sale, and the sale is reported to the Commissioner of Insurance.

Securities that are not exempt or that are not sold in exempt transactions must be registered by qualification or notification. The basis for registration of a security is that its sale would not be fraudulent or would not work or tend to work a fraud upon the purchaser, or that the enterprise or business of the issuer is not based on unsound principles.

The Insurance Commissioner may limit the price at which registered securities are sold, and, in the case of sales by or on behalf of an issuer, the Commissioner may allow a commission not to exceed twenty per cent of the sale price, which must include all sales expenses. A filing fee of one-

tenth of one per cent of the aggregate offering price of the securities to be registered and sold in Iowa must be paid to the Commissioner of Insurance. The minimum fee is \$25 and the maximum, \$1,000. False or fraudulent statements, or concealment of material facts, knowingly made in an advertisement or prospectus for the purpose of inducing persons to buy securities, constitute a felony punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than five years, or both.

Securities dealers and salesmen are required to register annually with the Commissioner of Insurance. "Good repute" and "competence" are the standards set for acceptance of a registration. First-time applicants may be required to take an examination. Registration is for one year with renewal privileges; the annual registration fee for a dealer is \$50 and for a salesman, \$5. Dealers are required to file a \$5,000 bond.

Sale of Stock on Installment Plan

A corporation may sell stock on an installment plan if the Commissioner of Insurance authorizes it to do so. An unauthorized sale on an installment plan is a misdemeanor punishable by a county jail term of one year or a fine of not less than \$100 nor more than \$1,000, or both. A corporation that is authorized to make such sales must post a bond and pay an annual fee. The Insurance Commissioner determines whether the authorization shall be renewed each year.

Uniform Stock Transfer Act

The Iowa Legislature in 1947 adopted the Uniform Stock Transfer Act.

References:

Iowa Code 1958, Chapters 493A, 501, 502 (as amended by Laws 1963, Chapters 294, 295, 296, 297).

Sterling Alexander and Vernon Grant, Jr., "The Administration of the Iowa Securities Law," 28 Iowa Code Annotated 685.

"Blue Sky Legislation," 23 Iowa Law Review 102 (1937).

PARTNERSHIPS

The common law governs partnerships in Iowa; there is no statutory law of partnerships as such. However, there is a statutory requirement that a partnership that uses a name other than the surnames of the partners must file with the county recorder of the county in which the business is to be conducted a verified statement showing the name, post office address, and residence address of each person who owns or has any interest in the business, and the address at which the business is to be conducted. The recording fee is \$2.

The Uniform Limited Partnership Act has been adopted in Iowa.

References:

Iowa Code 1962, Chapters 545, 547.

T. M. Hutchison, "Enforceability of Iowa Creditors' Judgment Against Partnership and Partners' Assets," 44 Iowa Law Review 643 (1959).

A. N. Polasky, "Planning for the Disposition of a Substantial Interest in a Closely Held Business, Part II - The Partnership Interest," 45 Iowa Law Review 46 (1959).

Edward R. Hayes, "Iowa Corporations and Partnerships: 1942-1952," 38 Iowa Law Review 462 (1953).

"The Farm Operation Agreement - Partnership or Lease," 6 Drake Law Review 37 (1956).

LABOR LEGISLATION

Iowa, like most of the states, has a series of statutory provisions relating to employer-employee relationships. However, if a business is one "affecting interstate commerce" or "producing goods for commerce," some state laws are superseded by federal law. The discussions in this section do not include laws of a technical nature that apply only to businesses of a specialized character, nor do they include federal law or attempt to explain the areas in which federal law supersedes state law.

General Laws

Employer-Employee Relationship

Iowa has the so-called "right to work" law. Under this type of statute an employer may not refuse employment or dismiss a person if the only ground of refusal is that:

1. the applicant is a member of a union, or
2. the applicant is not a member of a union, or
3. the applicant refuses to join a union in the future, or
4. the applicant intends to resign from a union in the future, or
5. the employer has contracted or agreed with another person, firm, association, corporation, or labor organization to exclude persons from employment on the grounds listed above, or
6. the applicant is a member of the National Guard.

It is also a violation of the law if, as a condition of or prerequisite to employment, any person is required to pay dues or fees, make contributions, or pay fines or assessments to any labor union, association, or organization.

Any person, organization, or corporation that violates or aids in violating this law is guilty of a misdemeanor. In addition, the Iowa statute provides that any violation may be restrained by injunction.

Fair Employment Practices

Every person in Iowa is entitled to the opportunity for employment on equal terms with every other person. If an applicant for employment is qualified to perform the services or work required, it is unlawful for any person or employer to discriminate in employment because of race, religion, color, national origin, or ancestry.

It also is unlawful for any labor union or organization or an officer of a labor union or organization to discriminate against any person as to membership because of race, religion, color, national origin, or ancestry.

Any person, employer, labor union or organization, or officer of a labor union or organization convicted of a violation of the Fair Employment Practices Act is subject to a fine of not more than \$100 or imprisonment in the county jail for not to exceed thirty days.

Blacklisting

It is unlawful for any person, agent, company, or corporation, after having discharged an employee from his or its service, to prevent or attempt to prevent, by word or writing of any kind, the discharged employee from obtaining employment with any other employer except by furnishing in writing upon request a truthful statement as to the reason for the discharge.

Prohibited Types of Strikes

It is unlawful for any labor union or its officers, representatives, or members to enter into or carry out by strikes or violence, or threats of either, any contract, agreement, arrangement, combination, or conspiracy for the purpose of forcing or requiring:

1. any person, firm, or corporation to cease using, selling, handling, transporting, or dealing in the goods or products of any other person, firm, or corporation, or

2. any person, firm, or corporation to cease selling, transporting, or delivering goods or products to any other person, firm, or corporation, or
3. any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association, or organization, or
4. an employer to break an existing collective bargaining agreement that the employer may have with any labor union, association, or organization.

The statute also prohibits any labor union or its officers, representatives, or members from causing a stoppage or slow down of work because of a dispute between unions regarding jurisdiction over, or the right to do, the work or a part of the work of the employer.

Violations of the above provisions are misdemeanors. Injunctions may be issued to restrain violations.

Hours and Wages

There are no state minimum wage laws in Iowa.

Deductions from wages for labor organization dues, charges, fees, contributions, fines, and assessments must not be made unless the employee presents to the employer a written assignment; the assignment may be revoked by the employee at any time by giving thirty days' written notice to the employer.

There are no general laws regulating hours of work in Iowa, except the child labor laws.

The Iowa law does limit the working hours of railroad employees and persons who operate motor vehicles. Employees who operate commercial motor vehicles on Iowa highways must be given at least eight hours off duty if they drive twelve hours out of each twenty-four hours. If they drive twelve consecu-

tive hours out of any twenty-four hour period, they must be relieved from duty for ten consecutive hours.

Child Labor

Scope of Act

The Iowa Child Labor Law prohibits employment of a child under the age of fourteen in any industrial or mercantile shop in which eight or more persons are employed, unless the establishment is operated by the child's parents. Children under sixteen may be employed if the employer complies with the following conditions:

1. that the working day does not exceed eight hours per day and forty hours per week, and that the hours of employment are between 7:00 A.M. and 6:00 P.M. with at least one-half hour lunch period;
2. that the employer has obtained a work permit from the superintendent of schools or his representative; and
3. that two lists of the names and ages of all employees under sixteen are kept by the employer, one of which is posted in a conspicuous place.

The law prohibits any child under sixteen years of age from working in or about any hotel, restaurant, cafe, bowling alley, pool room, cigar store, or barber shop, or in any occupation that endangers the individual's health or morals.

Other limitations

It is unlawful to allow any child under sixteen to clean machinery while it is in motion, to operate or assist in operating an elevator, or to operate or assist in operating dangerous machinery. Girls under eighteen cannot lawfully clean machinery while it is in motion, nor may girls under twenty-one be

employed in a capacity that requires them to remain standing constantly.

Boys under eleven and girls under eighteen cannot be employed in any city of 10,000 population or more in or in connection with street occupations, such as distributing circulars or newspapers. Before boys between the ages of eleven and sixteen may be so employed, a work permit must be obtained and a badge authorizing his employment must be issued. Boys under eleven can receive special permission from the school superintendent after recommendation by a judge for such employment.

In cities with 10,000 or more population no person under eighteen can be employed to deliver goods or messages between 10:00 P.M. and 5:00 A.M.

No person under twenty-one can be employed as a driver of a motor vehicle used in the transportation of freight or passengers for compensation between fixed terminals, or over a regular route, or as a driver of a motor vehicle used as a carrier of inflammables or combustibles, or as a public or common carrier of persons.

Administration

Most violations of the child labor law are deemed to be misdemeanors punishable by a fine not to exceed \$100 or by imprisonment for not more than thirty days. The Iowa Labor Commissioner is charged with enforcement of the statute.

Arbitration of Labor Disputes

Although Iowa has two arbitration statutes still in force, they are used only rarely.

The general arbitration statute has not been changed substantially since its enactment in 1851. Its scope is restricted to "all controversies which might be the subject of civil action." Many types of disputes thus are excluded from the act's application.

A labor arbitration act was enacted in 1913, but the tremendous expansion of federal jurisdiction over labor matters in recent years and the limitations included in the Iowa act have restricted its application also.

The overwhelming majority of labor arbitration in Iowa today is achieved through common-law contracts between the parties. Contracts to arbitrate and submission agreements are binding contracts; a defaulting party may be held liable for ascertainable damages for breach of such contracts. After an award is made it is usually enforceable in court. There has been relatively little litigation following arbitration of labor disputes in recent years. Apparently the factors that led the parties to arbitrate in the first place continue to oblige them to abide by the arbitration awards.

Health and Safety Appliances

The Iowa Health and Safety Appliance Law applies to manufacturing and mercantile establishments, including factories, workshops, and mills. It is designed to safeguard employees' health and to prevent industrial injuries. Every manufacturing or mercantile establishment in which five or more people are employed is required to provide toilet facilities for employees' use. Such facilities must be kept clean; there must be at least one for every twenty employees. Men's and women's facilities must be separate. Adequate washing facilities and drinking water must be supplied by the employer. If a change of clothing is required, separate dressing rooms and lockers for male and female employees must be furnished. Where practicable, each female employee is to have a seat at or beside her counter or workbench.

The Iowa law requires that steam boilers be equipped with steam and water gauges and safety valves. As far as practicable, industrial machinery must be equipped with loose pulleys and belt shifters or other safe means for throwing belts on and off pulleys. Protective guards or housing must be installed

around all gears, cogs, belting, shafting, tumbling rods, universal or knuckle joints, set screws, saws, planes, and other machinery that is located or used in such manner as to subject employees to possible injury. When any guard or safety appliance is removed from a machine it must be replaced as soon as possible. All factories in which emery wheels or similar devices are used for rumbling or polishing castings must have sufficient blowers and pipes to protect employees from the dust. However, grinding machines that use water at the point of grinding contact and small emery wheels that are used temporarily for tool grinding do not have to have blowers and pipes. Shops that employ only one man in such work may be exempt, at the Labor Commissioner's discretion, from the provisions requiring blowers and pipes. If the processes performed in a factory result in giving off deleterious gases, the building must be equipped with adequate pipes or flues to provide easy escape for such fumes.

The Labor Commissioner and the mayors and police chiefs of municipalities are charged with enforcing the health and safety appliance laws. Upon discovery of any violation, the Commissioner must give written notice to the employer and allow him between seven and thirty days, depending on the nature of the defect constituting the violation, in which to remedy the defect. The time limit may be extended by the Commissioner if good cause is shown. Anyone violating the provisions of this statute is guilty of a misdemeanor; the maximum penalty is a \$100 fine, except the maximum penalty for the violation of a steam boiler regulation is a \$500 fine.

Any accident involving an employee while working for his employer that results in death or the loss of two or more days' work must be recorded by the employer and a report of the accident forwarded to the Labor Commissioner within forty-eight hours after the accident. No statement contained in the report is admissible in any action arising out of the accident.

Further, the law provides that an employee is deemed not to have assumed the risk if he continues work knowing of a defect if the employer also had knowledge of the defect and it was the employer's duty to furnish safe machinery and a safe place in which to work, unless the employee has the regular duty to repair such defects. Nor is the employee deemed to have waived negligence unless the danger is so evident that a reasonably prudent person would not have continued to work.

Boiler Inspections

The Boiler Inspection law provides for a state inspection and regulation of boilers, tanks, jacket kettles, generators, and other appurtenances used to generate or transmit steam for power or to use steam for heating or steaming. Inspection fees are provided on a graduated scale. The owner or user must display certificates issued to show the inspector's approval. The certificate limits the allowed pressure in the appurtenance. Ten days' written notice of intention to install such appurtenances must be given to the Commission of Labor. Inspection under this chapter can be waived by the Commissioner of Labor upon proof of inspection by a representative of a reputable insurance company and coverage by insurance.

References:

Iowa Code 1962, Chapters 88, 89, 90, 92, 679, 735 (as amended by Laws 1963, Chapter 330), 736, 736A, 736B.

Thomas W. Stewart, Iowa Labor Laws (Revised edition by Clarence M. Updegraff), (Bureau of Labor and Management, State University of Iowa, Iowa City, 1959).

WORKMEN'S COMPENSATION

Iowa's Workmen's Compensation Law is an elective as distinguished from a compulsory statute. Unless rejected by either party in the manner

provided by statute, both employer and employee are presumed conclusively to have elected workmen's compensation coverage. In the absence of effective rejection, workmen's compensation coverage is treated as a part of the employment contract, with the limitation that workmen's compensation liability cannot be contracted away. If both parties have accepted coverage and an employee sustains a personal injury arising out of and in the course of his employment, workmen's compensation is the exclusive remedy against the employer available to the employee, his estate representative, dependents, or next of kin, and no action for damages is available. The employer is subrogated to the rights of the employee against any third party causing the injury. Every Iowa employer, regardless of the number of employees, and interstate employers that have employees who work only in this state, are liable for workmen's compensation, in the absence of a valid rejection.

Although employer and employee are permitted to reject workmen's compensation, rejection is discouraged. If either or both parties reject coverage, the only remedy is a negligence action. If the employer alone rejects coverage and an action at law is brought, the employer is not allowed to avoid liability on the basis of assumption of risk, the fellow servant negligence rule, or contributory negligence, and it is presumed, subject to rebuttal, that the employee's injury was caused by the employer's negligence. If the employee rejects coverage, the employer can use these defenses.

In order for an industrial injury to come within the coverage of the act and be compensable it is necessary that: (1) the injured person be an employee of the person charged with compensation liability, (2) the specific injury be compensable under the act, (3) the injury arise out of and in the course of employment, (4) the injury was not the result of the employee's wilful intent or intoxication, (5) notice of the injury be given within 90 days, and (6) the

employer cannot rebut the presumption of his negligence.

Payments

The maximum liability of the employer for an employee's injury is as follows:

1. The total amount allowed for medical, surgical, and hospital services and supplies, services of special nurses, one set of prosthetic devices, and ambulance charges is not limited. However, if the aggregate of the charges exceeds \$7,500, special application must be made to the Industrial Commissioner.
2. Costs of examination and reimbursement for loss of pay during such examination.
3. Crutches, artificial members, and appliances; however the employer is not liable for more than one permanent prosthetic device.
4. In a case of temporary disability, compensation payments are payable up to 300 weeks; payments are based on two-thirds of the employee's average weekly earnings; and the maximum weekly payments are dependent on the number of children the employee has. An employee who has four or more children is limited to \$50 per week; payments are graduated down to \$34 per week for an employee who has no children.
5. In a case of permanent partial disability, compensation payments are made for a "healing period" according to the same schedule as for temporary disability plus weekly payments based on two-thirds of the employee's weekly earnings up to 500 weeks with a maximum of \$18,500.

6. In a case of permanent total disability, weekly payments are to be based on two-thirds of the employee's weekly earnings for a period not to exceed 500 weeks with a maximum of \$18,500.

If an accident results in an employee's death and there is coverage, the employer is liable for the reasonable expenses of burial up to \$500 and, if there are dependents surviving, for compensation payments up to 300 weeks with a maximum of \$12,000.

The minimum payment for temporary disability, permanent partial disability, permanent total disability, or death benefits is \$18 per week, or the actual amount of average weekly earnings if less than \$18.

Future payments may be commuted to a present worth lump sum payment after approval by the Industrial Commissioner and district court or joint waiver of district court approval.

Credit for Benefits Paid Under Group Plans

If a disabled employee receives any benefits, including medical, surgical, or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under the Workmen's Compensation or Occupational Disease Compensation laws, then the amounts paid to the employee from the group plan are credited to or against any compensation payments made or to be made. This provision does not apply to payments made under any group plan which would have been payable even though there was an injury under the Workmen's Compensation law or an occupational disease under the Occupational Disease Compensation law.

Employers subject to the provisions of the act must insure their liability with an approved insurer unless the Insurance Commissioner allows

self insurance. To obtain self insurance, the employer must demonstrate to the Commissioner his solvency and financial ability to pay the benefits allowed by statute or deposit satisfactory security with the Commissioner. The employee cannot be required to pay premiums for such insurance.

Special provisions in the Iowa statute cover liability for the "second injury" and "occupational disease." The "second injury" provisions are limited in scope to protecting the employer from paying full permanent disability compensation in certain cases in which there has been a specifically enumerated previous injury followed by a permanently disabling second injury. Employers or insurers may have to pay \$100 to a State "second injury" fund for every death compensable under the Workmen's Compensation law. Certain "occupational diseases" are listed in the statute; the employer is not liable for diseases not included in the list.

The Workmen's Compensation Act is administered by the Industrial Commissioner. He has general supervisory powers and all voluntary compensation agreements must be approved by him. If a compensation agreement cannot be reached by the parties, the initial hearing is held before a deputy commissioner. There is a right of appeal from the deputy's decision to the Commissioner; further appeals may be taken to the courts.

References:

Iowa Code 1962, Chapters 85 (as amended by Laws 1963, Chapters 85, 86, 87, and 88), 85A (as amended by Laws 1963, Chapters 88 and 89), 86 (as amended by Laws 1963, Chapters 90 and 91), 87.

Willard L. Boyd and others, The Iowa Law of Workmen's Compensation (Bureau of Labor and Management, State University of Iowa, Iowa City, 1960).

Maurice H. Merrill, "Commentary on the Iowa Workmen's Compensation Act," 17 Iowa Law Review 186, 343 (1932).

Maurice H. Merrill, "Fifteen More Years of Workmen's Compensation in Iowa," 32 Iowa Law Review 1 (1946).

"Iowa Workmen's Compensation Procedure," 45 Iowa Law Review 787 (1960).

"Workmen's Compensation Benefits in Iowa," 45 Iowa Law Review 867 (1960).

For material concerning specific problems under the act, see the Cumulative Index to the Iowa Law Review.

For additional information concerning the application and administration of the act or for a copy of the statute, write to the Industrial Commissioner, State House, Des Moines, Iowa 50319.

UNEMPLOYMENT INSURANCE

The Iowa Employment Security Law applies to any employing unit that employs four or more workers for some portion of a day in each of twenty calendar weeks within a calendar year. It also provides that an individual or business enterprise is liable under the Iowa law if he is liable under the Federal Unemployment Tax Act. In addition, an individual or business enterprise voluntarily may elect to become subject to the law.

The unemployment compensation program is a co-ordinated state and federal plan. The state tax or contribution, at a rate of 2.7 per cent of the total wages paid by an employer, is allowed as a credit against the three per cent federal tax. The Iowa law employs a system of experience rating by which individual employers' contribution rates are varied from the standard rate (2.7 per cent) on the basis of their unemployment risk experience. An employer is eligible for a reduced tax rate after he has been subject to the act for the immediately preceding twelve calendar quarters.

For purposes of reducing the tax rate, Iowa employs the reserve-ratio formula, which is essentially cost accounting. The law establishes different tax rates based on the ratio that the excess of the employer's total contributions over the benefit payments to his employees is to his average annual payroll. The ratio thus established determines the employer's tax rate. The tax rate is reduced when the ratio reaches the levels of two and

one-half per cent, five per cent, seven and one-half per cent, and ten per cent; the tax is eliminated if the ratio reaches the ten per cent level. The law allows voluntary contributions for the purpose of increasing the ratio and obtaining a lower rate, or for holding a rate at the previous year's level.

The law provides for payment of weekly benefits to workers who are unemployed and who meet certain prescribed eligibility requirements. The worker must have been employed for a period including the first four of the last five completed calendar quarters preceding the date on which he files a valid claim for benefits. This is the base period used in computing payments. The amount credited to a worker's account in wage credits is equal to one-third of his quarterly earnings, or his weekly benefit amount multiplied by 7.2 per quarter, whichever is the least. The weekly benefit amount is one-twentieth of his total wages in the calendar quarter in his base period in which his earnings were highest. The maximum payment is \$44 per week. The maximum total amount of benefits payable to any eligible individual during any benefit year may not exceed the total of the wage credits accrued to his account during his base period, or twenty-six times his weekly benefit amount, whichever is least. In order to be eligible the worker must be unemployed, able to work, available for work, and be earnestly and actively seeking work. Availability is determined on a week-to-week basis and each claimant must keep the local employment office currently advised of his availability.

Each employer during the claimant's base period is notified of the claim and is instructed to inform the Commission of any cause of separation from work by the claimant that the employer believes might make the claimant ineligible for benefits. Possible bases for disqualification include:

1. Voluntary quitting not attributable to the employer. This

does not include leaving employment in good faith to accept better employment, which the employee did accept and remained at continuously for not less than six weeks.

2. Discharge for misconduct, which causes the forfeiture of not less than four nor more than nine weeks' benefits.
3. Failure to accept suitable work.
4. Participation in labor disputes.

The law permits an employer to contest a claim in order to protect his tax rate determining ratio. A commission deputy will issue a determination; this is appealable to an appeal referee. This decision is appealable to the Commission and its ruling may be appealed to the district court.

The Iowa unemployment insurance provisions are embodied in Chapter 96 of the Iowa Code. This legislation is administered by the Iowa Employment Security Commission, which consists of three full-time members appointed by the Governor subject to Senate approval. One of the members represents labor, one represents employers, and the third represents the public.

References:

Iowa Code 1962, Chapter 96

Fred Slavick, Voluntary Quit Disqualification in Unemployment Insurance--The Iowa Experience (Bureau of Labor and Management, State University of Iowa, Iowa City, 1958).

"Administration of Benefits Under the Iowa Employment Security Law," 35 Iowa Law Review 79 (1949).

"Employers Subject to the Iowa Employment Security Law," 4 Drake Law Review 28 (1954).

Edward D. Wickersham, Supplemental Unemployment Benefits (Bureau of Labor and Management, State University of Iowa, Iowa City, 1956).

State of Iowa Employers Handbook

State of Iowa Workers Handbook

State of Iowa Employment Security Law

For additional information write the Iowa Employment Security Commission,
1000 E. Grand, Des Moines, Iowa.

TAXATION

Income Tax

The Iowa corporate income tax is imposed on every corporation organized under the laws of this state and on every foreign corporation that does business in Iowa. Any association or organization that reports as a corporation for federal income tax purposes is considered a corporation for Iowa corporation income tax purposes. Banks, financial institutions, and insurance companies are exempt from the tax. Partnerships do not pay an Iowa income tax.

The tax rate is three per cent of the net income, after federal taxes, received by the corporation from business done within the state during the taxable year. If the trade or business of the corporation is carried on entirely within the state, the tax is imposed on the entire net income. If the business activity is carried on partly within and partly without the state, the tax is imposed only on that portion of net income reasonably attributable to the trade or business within the state. The statutory formula for determining the portion of income from sales or manufacturing that is taxable in Iowa provides that the taxable income shall bear the same ratio to the total income as the gross sales within the state bear to the total gross sales. Gross sales within the state is regarded as the gross sales from goods sold and delivered within the state, excluding deliveries for transportation out of the state. If the corporation believes that this method of determining taxable income is unfair, it can

file an objection with the Iowa State Tax Commission and submit an alternative method for computing its taxable income. The Tax Commission has authority to adopt alternative methods.

In computing net income the starting point is the federal taxable income. To this must be added: (1) interest and dividends from foreign securities and from securities of state and other political subdivisions that are exempt from federal income tax, and (2) the Iowa income tax deducted in computing the federal taxable income. The federal income tax paid during the year and interest and dividends from federal securities are subtracted from this total. Also subtract an amount equal to the aggregate credits against federal income tax to the extent these reduce the basis of depreciable property for depreciation purposes. Add an amount equal to any aggregate decrease of credits against federal income tax to the extent such a decrease increases the basis of depreciable property for purposes of depreciation or computing gain or loss on disposition. Then add an amount equal to any deduction taken on federal income tax for "unused investment credits." The Iowa provisions relating to capital gains and losses are the same as the federal income tax law. A corporation that has taken the net operating loss deduction for federal income tax purposes may use the same deduction for the state income tax; if the corporation is subject to the allocation formula, it may deduct only the portion of the deduction and federal income taxes that are allocable to Iowa.

The Iowa income tax may be paid in two installments, each consisting of one-half of the total amount of the tax. The first installment must be remitted with the return, which must be filed by April 30, and the second installment must be paid on or before October 31. Among the penalties applicable for nonpayment are forfeiture of the articles of incorpora-

tion of a domestic corporation, or the permit to do business in Iowa of a foreign corporation.

References:

Iowa Code 1962, Chapter 422 (as amended by Laws 1963, Chapter 258).

1962 Iowa Departmental Rules 531-538.

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73.

Commerce Clearing House, State Tax Reporter - Iowa.

Property Tax

The Constitution of Iowa provides that the property of all corporations for pecuniary profit shall be subject to taxation, the same as the property of individuals. Corporations are subject to a tax on all real and personal property that is not exempted specifically.

Ownership on the first day of January is the basis for determining what property is taxable. Personal property is assessed every year; real estate is valued every four years. In the years in which real estate is not assessed, the assessor lists and assesses any real property that was not included in the previous assessment and any buildings erected since the previous assessment.

In the assessment of property the actual, assessed, and taxable values must be determined. Actual value represents past, present, and prospective productive and earning capacity, market value, and any other factors that affect the value of the property. The assessed value, which is also the taxable value, is equal to sixty per cent of the actual value.¹

¹ The current method of assessing property in Iowa, as directed by the Iowa Tax Commission, is to set the taxable value equal to 27% of the current market value.

A corporation may ask the county or city board of review to review the assessment made by the county or city assessor. The board's decision may be appealed to the district court within twenty days after the board's adjournment. In such a challenge the burden of proof is on the corporation.

A corporation is considered to be a merchant if it holds or has in its control personal property that was purchased for resale. The assessment is based on the average value of the goods during the year preceding the time of assessment. A corporation is considered to be a manufacturer if it holds personal property for the purpose of adding to its value before selling it. Such personal property, whether in a finished or unfinished state, is assessed at its average value during the year preceding assessment. Personal property deemed to be in transit is now exempt from the personal property tax. This includes property in interstate commerce, and in certain private warehouses. Machinery used in manufacturing operations is regarded as real estate for tax purposes.

A corporation is required to list its moneys and credits; these are taxed at a flat rate of five mills on the dollar of actual valuation plus one mill for payment of a Korean war bonus. The first \$5,000, net, of moneys and credits is exempted from taxation. The Code defines "credit" to include every claim or demand due or to become due for money, labor, or other valuable things, every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, title bond, mortgage, or otherwise. Shares of stock of a foreign corporation are also termed credits for tax purposes.

Certain corporations, such as firms that have extensive business connections outside the state, are assessed by the State Tax Commission rather than the local assessors. The Commission uses formulas designed to produce

a fair approximation of taxable property attributable to Iowa, and refers the data to local authorities for collection. Public utility plants are assessed by the State Tax Commission. A corporation is entitled to appeal the Commission's decision to the district court of the county in which it has its principal place of business.

The assessment activities of the State Tax Commission are subject both to the procedural safeguards of hearing at the corporation's option before the Commission, and de novo review in the district court, with further appeal to the State Supreme Court.

References:

Iowa Code, 1962, Chapters 358, 427 (as amended by Laws 1963, Chapter 269), 428-429, 431-438

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73

Commerce Clearing House, State Tax Reporter - Iowa

Open Port Warehousing

Private warehouses may be built in Iowa by any private person, partnership, joint venture, corporation, fiduciary, trust or estate, for the purpose of storing personal property, goods, wares, and merchandise for any length of time while in transit to a final destination outside of Iowa. The personal property in transit in the warehouses is exempt from taxation, and while it is in the warehouse, the merchandise may be bound, divided, severed; broken in bulk, labeled or relabeled, and packaged or repackaged.

Exempt status must be so designated on the books of the warehouse, and these books must be open at all times for inspection by authorized personnel.

Claims for tax exemption must be filed with the assessor on or before February 1 of each personal property assessment year. All claims must be accompanied by a certification of the warehouse operator as to the status on the warehouse books of the property involved.

Reference:

Laws 1963, Chapter 269

Salés Tax

The Iowa retail sales tax is two per cent of the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users. Sales of gas, electricity, heat, water, and communications services are also covered. All retailers of tangible personal property in Iowa must obtain a retail sales tax permit. A permit must be obtained for each separate business location at which retail sales are made. The fee for each permit is fifty cents; there is no renewal requirement.

The tax is not imposed on the article sold; rather, it is a type of gross receipts tax on the total transactions of the business. The tax is imposed on the retailer. He has a duty to reimburse himself by adding the tax, or its average equivalent, to the price of each sale. The seller is liable for the tax whether or not he passes the tax burden on to the consumer.

The law requires every retailer to keep and preserve such records as the State Tax Commission may require to determine the amount of tax for which he is liable. The retailer must file a return quarterly; tax payments are due the first day of the month following the close of the quarter. This retail sales

tax return constitutes a self-assessment. In the absence of cooperation by the retailer, the Commission can estimate his sales and tax after notice and hearing.

The tax does not apply to sales in interstate commerce. If tangible personal property is sold within the state to a seller who is obligated to deliver it to a point outside the state or to deliver it to a carrier or to the mails for transportation to a point without the state, the tax does not apply. When the contract to sell at retail takes place within the state and the seller delivers the goods from a point outside of Iowa directly to the buyer in Iowa, the sale is deemed to be an intrastate sale subject to the tax.

If a manufacturer uses or consumes tangible personal property that he has made, compounded, fabricated, or assembled, he must pay sales tax equal to two per cent of the cost of the manufacture. The cost includes the purchase price of component raw materials plus manufacturing costs. However, sales of tangible personal property to processors and manufacturers are exempt from the tax if the goods, through fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, or such property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail, which may not become a component or integral part of the finished product.

References:

Iowa Code 1962, Chapter 422 (as amended by Laws 1963, Chapters 260-265)

1962 Iowa Departmental Rules 538 - 595

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73

Commerce Clearing House, State Tax Reporter - Iowa

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Use Tax

The use tax is complementary to the sales tax. It is a tax imposed on the purchaser for the privilege of using tangible personal property in Iowa that was not bought in Iowa and on which Iowa sales tax was not paid. The rate of the use tax is two per cent of the purchase price.

A taxable use is the exercise of any right of ownership over tangible personal property in Iowa by an owner. If the property is sold at retail in the regular course of business the sales tax, rather than the use tax, applies. If the property is processed or manufactured into another article of tangible personal property intended to be sold ultimately at retail, the use tax does not apply.

Examples of property that is exempt because it is used in processing include: personal property that forms an integral or component part of a manufactured product intended to be sold ultimately at retail; fuel that is consumed in creating power, heat, or steam for processing or for generating electric current; property used as material and equipment that does not form a component or integral part of a manufactured product but that is used directly in the actual fabricating, compounding, manufacturing, or servicing of tangible personal property intended to be sold ultimately at retail, provided such property is not readily obtainable in Iowa. In determining the "readily obtainable" exemption of a given article, it should be ascertained whether or not similar property in the same general classification could be purchased from a distributor or retailer in Iowa, notwithstanding the fact that such property might be of a different brand or manufacture. If similar equipment of a different brand or manufacture can be obtained through distributors or retailers in Iowa; all property in the same general classification is considered to be readily obtainable

in Iowa and not exempt from the use tax. Property on which the Iowa sales tax has been paid is exempt from the use tax.

If sales or use tax equal to the amount of the Iowa tax has been paid on an article in another state, no further tax is due. If the amount of tax paid by a person to another state on a given article is less than the amount of the Iowa tax, the amount of Iowa tax due is the difference between the tax paid to the foreign state and the tax due under the Iowa law.

Any person, as defined by statute, who purchases tangible personal property from out-of-state sources for use in Iowa subject to the use tax is liable for the tax and must file a Consumer's Use Tax Return. This is required unless the seller is registered with the State Tax Commission and is authorized to collect the use tax for the state. Every interstate seller who maintains a place of business in this state and makes sales of tangible personal property for use in this state must register with the State Tax Commission; thus, he is authorized to collect the use tax. Use tax returns, like sales tax returns, must be filed quarterly; the tax is due within twenty days after the close of the quarter.

References:

Iowa Code 1962, Chapter 423 (as amended by Laws 1963, Chapters 260 and 265)

1962 Iowa Departmental Rules 595-611

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73

Commerce Clearing House, State Tax Reporter - Iowa

Chain Store Tax

The statutory definition of a chain store that is subject to this tax is

a store operated in conjunction with one or more additional stores in which the profit from the operation goes to the same owner. Certain stores are exempt from the tax. Only one of the stores need be in Iowa. The tax is an occupation tax and is not in lieu of any other tax.

The tax rate is based on the number of stores operated in the state.

The tax scale is as follows:

| <u>Number of Stores</u> | <u>Amount of Tax Per Store</u> |
|-----------------------------|------------------------------------|
| 2 - 10 | \$ 5 |
| 11 - 20 | 15 |
| 21 - 30 | 35 |
| 31 - 40 | 65 |
| 41 - 50 | 105 |
| 51 and over | 155 |

References:

Iowa Code 1962, Chapter 424

L. K. Tunks, "The Iowa Tax System," 23 Iowa Code Annotated 73

Commerce Clearing House, State Tax Reporter - Iowa

SECURITY TRANSACTIONS

Real Estate

Real Property Mortgage

Nature. Iowa mortgage law follows the lien theory; that is, the debtor holds title and right of possession to the property and the creditor holds a lien on the property.

Foreclosure. Mortgage foreclosure follows equitable proceedings

in the district court. A mortgage that gives the mortgage holder the right to sell the property in case of default without resort to the courts is not valid in Iowa. Under the established procedure, the court renders a judgment for the amount due and orders the property to be sold according to statutory requirements. If the property sells for less than the amount due on the judgment, the debtor is still liable for the remainder. If there is a surplus from the sale and all other liens have been paid, the debtor is entitled to the surplus.

If the debtor defaults on his obligations under the mortgage he may attempt to deed his equity of redemption to the mortgage holder to avoid foreclosure. This may be effective, but usually any method of cutting off the debtor's rights other than by statutory foreclosure is carefully scrutinized by the courts.

A contract of sale containing a forfeiture provision may be used as a security device. In this situation the seller retains legal title, while the buyer normally has possession. Any forfeiture of such a contract must be done according to statutory procedure, despite provisions in the contract to the contrary. In some instances the Iowa court has treated the purchaser's rights the same as those of a mortgagor, and has required statutory foreclosure proceedings in order to cut off the rights of the purchaser under such a contract.

Redemption. After the foreclosure sale the mortgagor has one year in which to redeem the property. He can do this by paying the amount for which the property sold at the foreclosure sale plus all costs and interest. After redemption the property is free and clear from any unpaid portion of the judgment under which it was sold, although a personal deficiency may still be outstanding against the mortgagor. The

mortgagor has the exclusive right to redeem the property during the first six months and the last three months during the year following the foreclosure sale. Creditors have the right to redeem during the period from six to nine months after the foreclosure sale and may redeem from each other during this period. If the mortgaged property consists of less than ten acres, the parties may agree that the statutory right of redemption be reduced to six months, provided the mortgagee waives any rights to a deficiency judgment after the foreclosure proceedings.

The debtor (mortgagor) has the right to possession of the property during the year following the foreclosure sale. He may transfer his right to redeem, but that right may not be seized on execution.

If the mortgagor should allow the property to waste during his year of possession following the foreclosure sale, the purchaser at the sale may request the court to appoint a receiver to take charge of the property, or an injunction may be issued to require the mortgagor to stop any intentional depletion of the property. If the property is damaged the mortgagor is liable and damage may be recovered by the purchaser or the ultimate owner.

The purchaser at the foreclosure sale receives a sheriff's certificate. If at the end of the one year redemption period no action has been taken by the mortgagor or any creditor to redeem the property, the purchaser is entitled to a sheriff's deed to the property and his interest becomes absolute.

Other Real Property Security Devices

Deed of trust. In Iowa a deed of trust is treated the same as a mortgage, and any foreclosure or sale must be executed in the same manner as for a mortgage.

Deed absolute. A deed that purports to convey the property absolutely, but that actually is intended by the parties to have the same effect as a mortgage, is treated as a mortgage by the courts when it is established by competent evidence that the deed was given as a security device.

Equitable mortgage. When money is loaned or credit is extended in reliance on an oral promise that certain property will secure the transaction, the court may decree an "equitable" mortgage on the property. This will be treated in the same manner as if an actual mortgage had been executed on the property.

Mortgages covering future advancements. This is the "open-end mortgage" and allows the lender to make loans periodically on the same security without calling for an additional mortgage as each loan is made. This type of mortgage is legal in Iowa and is used frequently. When properly recorded such a mortgage, including loans made after execution and recording of later mortgages, is prior to any later mortgage providing the original lender has no actual notice of the subsequent mortgages.

Real Property Recording Act

Nature. Iowa's recording act is "the state of the record at the time of transaction" type. The statute states:

"No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice unless filed in the office of the recorder of the county in which the same lies...." (emphasis supplied)

Purchase-money mortgage. Purchase-money mortgages, like other mortgages and liens, take priority in order of their execution, subject to modifications of the recording act. They have priority, however, over any

judgment lien against the purchaser, any mortgage executed by the purchaser before he took title to the property, and over dower and other rights attaching to his interest on his acquisition of title.

Vendor's lien. If a part of the purchase price remains unpaid, the seller has an implied lien on the property. If the lien is expressly reserved in the deed of conveyance, it is treated in the same manner as a purchase-money mortgage.

Estoppel by deed. If a person who has no title to a piece of property transfers it with warranty and later acquires title to the property, the title belongs to the party to whom he transferred it.

Defense to a Mortgage

Statute of frauds. The Iowa statute of frauds applies to all contracts "for the creation or transfer of any interest in lands. . ." Therefore, a legal mortgage must be in writing. An assignment of such a mortgage may be done orally, however, since this is considered a transfer of a right of action and not a transfer of real property.

Part performance may remove oral contracts for the transfer of land from application of the statute of frauds in Iowa.

Invalidity of the mortgage debt. When a mortgage is given to secure a debt, the debt usually is evidenced by a note and the two go together. Thus the invalidity of the debt is a bar to the foreclosure of the mortgage.

Statute of limitations. The Iowa court has stated that a mortgage cannot be enforced if the debt is barred by the statute of limitations. The statute of limitations on written contracts, which would include promissory notes, is ten years. A special statute of limitations bars actions to foreclose "ancient" mortgages after twenty years. The court has held that the purpose of this special statute is to settle property rights and avoid stale

claims, and not to extend the period for foreclosing mortgages.

Personal Property

Chattel Mortgage

Nature. The form of a chattel mortgage is similar to that used for real property mortgages. However, under a chattel mortgage in Iowa, if there is no stipulation to the contrary, the lender is entitled to possession, while the debtor retains title. Normally, of course, the debtor has possession and the lender is protected by the recording act.

Foreclosure. Foreclosure, unless otherwise agreed upon by the parties, is by notice and sale, or by judicial proceedings. The mortgage holder also could sue on the underlying obligation, usually in the form of a note, and obtain a judgment; levy and sale of the borrower's property would follow and a deficiency judgment would be issued against the borrower if proceeds from the sale did not satisfy the debt. There is no statutory right of redemption in Iowa after personal property has been sold in foreclosure actions.

Other Chattel Security Devices

Pledge. Common law concepts control the execution and validity of pledges in Iowa. However, foreclosure of pledges is controlled by a statute.

Pawns. In Iowa, the regulation and control of pawns and pawnbrokers is a function of local municipal government.

Conditional sale. This type of security device is very similar to a chattel mortgage since its original purpose was to provide the advantages of a chattel mortgage without the necessity of recordation. Now, however, conditional sales must be recorded to be valid against third parties.

The Uniform Conditional Sales Act has not been adopted in Iowa.

Deed of trust. A deed of trust of personal property does not involve the same disadvantages as a deed of trust of real property. A power of sale is valid with respect to personal property in Iowa, without judicial proceedings.

Bill of sale. There is a tendency not to use the absolute bill of sale (as differentiated from conditional sale) as a security device. If it is used, however, it must be recorded to be valid against subsequent purchasers and existing creditors.

Chattel mortgage of after acquired property. A mortgage on after acquired property is valid in Iowa. These mortgages are quite often placed on an inventory of goods that changes constantly. This would seem to complicate identification of the property used as security.

Recording Acts

The conditional sales recording act required recordation of the instrument to be valid against "any creditor or purchaser of the vendee," while the chattel mortgage recording act protects "existing creditors or subsequent purchasers." These two acts have been construed as applying to the same classes of purchaser and creditors.

Attachment and Execution by Other Creditors

Mortgaged personal property not exempt from execution can be attached or execution issued against the mortgagor if, within ten days of the levy, the holder of the mortgage is paid the amount of the mortgage debt plus accrued interest.

Criminal Provision

If a mortgagor of personal property or a purchaser under a conditional bill of sale willfully and with intent to defraud disposes of the property without the written consent of the holder of the instrument, he is guilty of

larceny. Failure to produce the property covered by the instrument is prima facie evidence that the debtor has disposed of the property illegally.

References:

Iowa Code 1962, Chapters 557, 558, 614, 615, 622, 626, 628, 654, 655, 656

"Equitable Mortgages in Iowa," 44 Iowa Law Review 716 (1959)

CREDITORS' REMEDIES

Corporations doing business in Iowa are subject to, and are entitled to avail themselves of, the statutory provisions governing the creditors' remedies of judgment, execution, attachment, garnishment, and proceedings auxiliary to execution. Execution sales of real estate are subject to redemption for a year after the sale. The Iowa exemption laws are rather liberal.

Judgment and Execution

A judgment of an Iowa district court is a lien on the debtor's real estate for ten years after its entry, although the judgment itself remains valid as a basis for execution or a new action for twenty years. Execution reaches most interests of the debtor, legal or equitable, except that execution sales of real estate are subject to the right of the debtor and junior lienors to redeem within the year following the sale. The judgment debtor is entitled to possession during the redemption period.

Attachment and Garnishment

Attachment is a provisional remedy available before judgment as a means of bringing into the custody of the court nonexempt property of the debtor pending the litigation. Attachment is available in Iowa, however, only if one

or more of twelve statutory grounds exists. Quasi in rem jurisdiction may be acquired in litigation against a foreign corporation or a non-resident by attachment of property of the debtor in the state, and notice may be given by publication. Attachment is available also if the debtor has disposed of his property, if he is about to dispose of his property in a manner prejudicial to creditors, if he is about to remove himself permanently out of the county or the state, or if he owes the plaintiff for property obtained under false pretenses.

Garnishment is available either as a mode of attachment or a mode of execution.

Proceedings Auxiliary to Execution

There is statutory authorization for bringing a judgment debtor into court for the purpose of examination. While there is constitutional protection against imprisonment for debt, a debtor may be compelled to appear, to answer questions, and to surrender property in proceedings auxiliary to execution, or pain of suffering the penalties of contempt for disobedience.

Exemptions

A corporation (or any other kind of business association) is not given any exemption by Iowa law. The exemptions for individuals, however, particularly heads of families, are relatively liberal. The Iowa homestead exemption covers the home and lot in a city or the home and forty acres in the country. There is no money ceiling on its value. The homestead exemption, however, cannot be asserted against creditors under contracts antedating the acquisition of the homestead.

Among the notable items of personal property that are exempt are life insurance, which is subject to no statutory limit; personal earnings up to \$35 per week plus \$3 per week for each dependent under eighteen years; an automobile, if used regularly in earning a living; and tools, instruments, or

books used in the debtor's trade or profession.

Stockholder Liability

The Iowa corporation law specifically provided that nothing shall exempt stockholders from individual liability to the amount of unpaid installments on the stock owned by them (or transferred by them for the purpose of defrauding creditors). Execution against a corporation may be levied on the private property of any such individual to that extent. The foregoing provisions do not apply to building and loan or savings and loan associations.

Assignment for the Benefit of Creditors

There is a rather elaborate Iowa statute regulating assignments for the benefit of creditors, which contemplates supervision by the district court. The statute is not regarded as superseding the common law, however, and, as a matter of fact, most general assignments made in this state are outside the statute.

References:

Iowa Code 1962, Chapters 624, 626, 627, 639, 642, 681, 491

J. E. Heiserman, "Procedures Available For Implementation of a Judgment," 42 Iowa Law Review 265 (1957)

Stefan A. Riesenfeld, "Collection of Money Judgments," 42 Iowa Law Review 155 (1957)

Lee B. Blum, "Statutory Redemption After Mortgage Foreclosure," 35 Iowa Law Review 72 (1949)

TRADE REGULATION

Iowa has a half dozen trade regulation statutes, which are fairly typical of state legislation in this area.

Combinations, Pools, and Trusts

The most important of the Iowa trade regulation statutes probably

is the chapter prohibiting combinations to fix prices of commodities or to restrain competition in the sale of commodities. The sanctions imposed include fines, imprisonment of officers, invalidation of contracts, forfeiture of corporate charters, and recoverability of damages by persons injured by violations.

The same chapter of the Iowa statutes prohibits what are called "gift enterprises," which are defined to include the giving of premiums and prizes to induce purchases of merchandise, but the statute is narrowly drawn and was held to be unconstitutionally discriminatory when it was invoked against a trading stamp company. Accordingly, it has not militated against trading stamp operations in the state.

Unfair Discrimination

The Iowa statute prohibits unfair discrimination in sales and in purchases in the state. The sales prohibited include sale of commercial services as well as sales of commodities of commerce, but the statute does not apply to services the rates for which are controlled by any government agency. Moreover, discrimination is prohibited only if it is for the purpose of destroying a competitive business or creating a monopoly, and only if it discriminates between different sections or commodities within the state. Differences that are due to differences in cost are explicitly authorized, and prices may be charged to meet competition in any section or commodity. Sanctions against violations include fine, imprisonment, invalidation of contracts, and revocation of permit to do business in the state. An injunctive remedy also is recognized.

Resale Price Maintenance

Resale price maintenance is authorized by the Iowa fair-trade law; however, the Iowa Supreme Court has held the non-signer provision, which

subjects non-signers to liability in unfair competition for selling below the fair trade price, an unconstitutional delegation of legislative authority.

Options and Bucket Shops

Operation of any business engaged in pretended buying or selling of products on margins without any intention of future delivery is prohibited as a bucket-shop operation.

Registration of Trade-marks, Labels, and Advertisements

The Iowa Law authorizes registration of any label, trade-mark, or form of advertisement that is "of a distinctive character" and not identical or in close resemblance to any previously registered label, mark, or advertisement. The registration is effected by providing copies to the Secretary of State, and the certificate of registration thus obtained is prima facie proof of the adoption of the trade symbol by the registrant. The registration is effective for ten years and is renewable. Injunctive relief and damages are provided for infringement, and unlawful use is also punishable as an offense.

Unfair Cigarette Sales Act

Iowa has a sales-below-cost statute but its scope is limited to sales of cigarettes. Both wholesale and retail sales are governed by the act. The cost of cigarettes for the purpose of the statutory prohibition is the invoice or lowest replacement cost plus the cost of doing business. In the case of a wholesaler, the cost of doing business is rebuttably presumed to be four per cent of the basic cost; in the case of a retailer, the cost of doing business is rebuttably presumed to be eight per cent of the basic cost of the cigarettes. Sales made in good faith to meet competition are protected by a saving clause in the statute. The statute authorizes injunctions at the instance of the State Tax Commission or any injured

person to prevent violations, and the State Tax Commission may suspend or revoke the sales permit of any violator.

References:

Iowa Code 1962, Chapters 547, 548, 550, 551, 552, 553

"The Iowa Cigarette Sales Act," 35 Iowa Law Review 440 (1950)

LOCAL ORDINANCES AND PLANNING AND ZONING

Municipal Ordinances

The legislature has given cities and towns power to make and enforce ordinances not inconsistent with the laws of the state. Ordinances may include all those necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort, and convenience of the municipalities and their inhabitants.

Cities and towns may adopt building codes and ordinances for the regulation of all construction, major repairs, and remodeling, installation of electrical, heating, ventilating, air-conditioning, and plumbing fixtures apparatus, and equipment. Cities and towns can establish by ordinance building lines on private or public property for the protection of public health or safety, and may prohibit the erection of any building or other structure between such lines and the street or highway line. All cities that have populations of six thousand or more must adopt by ordinance a set of plumbing regulations and provide for the inspection of plumbing installations. Other cities and towns may adopt such regulations.

References:

Iowa Code 1962, Chapters 366 (as amended by Laws 1963, Chapter 233) and 368

Home Rule for Cities and Towns

The Iowa legislature has enacted a home rule statute. It purports to confer broad discretion upon cities and towns in enacting ordinances and in managing their own affairs. This statute has been challenged in the courts. The ultimate determination as to the scope and constitutionality of this act is not yet known.

Reference:

Laws 1963, Chapter 235

Municipal Zoning

Cities and towns are authorized to regulate and restrict the location and use of buildings, structures, and land for trade and industry. The city or town council may divide the city or town into districts for this purpose. All regulations and restrictions must be uniform on each class or kind of buildings throughout each district, although the regulations in one district may differ from those in other districts. In making zoning regulations reasonable consideration must be given to the character of the area, its peculiar suitability for particular uses, conserving the value of buildings, and encouraging the most appropriate use of land throughout the city or town.

If zoning is adopted a zoning commission and a board of adjustment must be appointed. The zoning commission recommends the boundaries of the original districts and appropriate regulations and restrictions; the board of adjustment is an appeal board. Final control over zoning regulations is exercised by the city or town council.

A business that is interested in doing business in a particular locality should investigate the local zoning ordinances, both general and specific.

Reference:

Iowa Code 1962, Chapter 414

County Zoning

By creating a county zoning commission to advise it, the board of supervisors of any county may regulate the use of land and structures located within the county but lying outside of the corporate limits of any city or town. The board may charge a reasonable building permit fee. If the applicant shows that the proposed structure will comply with the applicable regulations, the board must issue the permit.

The board may divide the county, or any area or areas within the county, into districts in order to enact and enforce zoning restrictions and regulations. The regulations must be made with reasonable consideration for the character of the area and the peculiar suitability of the area for particular uses.

Also, the board may adopt building codes and provide for the regulation and inspection of all construction, major repairs and remodeling, and the installation of electrical, heating, ventilating, air conditioning, and plumbing fixtures, apparatus, and equipment. The supervisors also are authorized to provide for the manner in which these regulations and inspections shall be determined, established, and enforced, and how they may be amended, supplemented, or changed.

Building codes adopted under this authorization do not apply within the limits of any incorporated city or town or to farm houses or other farm buildings which are adapted primarily for agricultural purposes.

The county zoning authority does not extend to farms or their appurtenances.

References:

Iowa Code 1962, Chapter 358A (as amended by Laws 1962, Chapter 218)
"County Zoning in Iowa," 45 Iowa Law Review 743 (1960)

Regional and Metropolitan Planning Commissions

The governing bodies of the cities and counties of Iowa, and those of adjoining states if authorized to do so, may create regional or metropolitan planning commissions. School districts and other local units of government may participate in these commissions. The commissions have the task of making comprehensive studies and plans for development of the area. The purpose is to eliminate planning duplication and promote economy and efficiency in the coordinated development of the area.

Reference:

Laws 1963, Chapter 110

NATURAL RESOURCES

In most sections of Iowa, shortage of water has not been an obstacle to the location of new industries or to the expansion of existing ones. Furthermore, there is considerable evidence that additional supplies for

industrial expansion can be developed from both surface and underground sources.

The Iowa Natural Resources Council has jurisdiction over public and private waters in the state and the land adjacent to these waters. The law requires industrial users to obtain a permit from the Council if (1) the corporation has its own water supply inside the city limits of a municipality and its projected water use would exceed by more than three per cent the highest daily beneficial use prior to May 16, 1957; or (2) if the corporation diverts, stores, or withdraws more than 5,000 gallons per day from any source of supply other than a municipal water system.

To obtain a permit the corporation must apply in writing to the Council. The permit fee is \$15. The application must state the designated beneficial use for which the permit is sought, the specific limits as to quantity, time and place, and the rate of diversion, storage, or withdrawal of waters. A hearing is held in the county in which the permit is sought and the Water Commissioner rules on the application. If the corporation is aggrieved by the ruling, it may appeal to the Council and then to the District court.

A permit may be granted for any period of time not exceeding ten years. The right of the corporation to the use of water terminates when it ceases for three consecutive years to use it for the specific beneficial purpose authorized in the permit. The corporation may sell, transfer, or assign its permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit. However, the permit does not constitute ownership or absolute rights of use of such waters, since the waters remain subject to the principle of beneficial use and the orders of the Council.

A permit will not be granted if the proposed use will impair the effect of pollution control laws. Pollution of the water of any river, stream, or

pond is a criminal offense in Iowa, punishable as a misdemeanor and abatable as a nuisance. Pollution is also subject to regulation by the State Department of Health, whose orders in such matters are enforceable by contempt proceedings with the fine not to exceed \$1,000. Pollution of the water of a stream is also an interference with private riparian rights and may be actionable in damages or the basis for injunctive relief to abate the private nuisance.

A permit will not be granted where the use will impair the navigability of any navigable watercourse. No dam is to be constructed, maintained, or operated on Iowa streams unless a permit has been obtained from the Council. The Council has considerable discretion in granting such permits and is directed by statute to determine and promote methods of constructing and equipping dams that will conserve and protect public and private riparian rights.

References:

Iowa Code 1962, Chapters 455A, 135 (as amended by Laws 1963, Chapter 66), 469

"Water Use and Control," 41 Iowa Law Review (Winter 1956 Symposium issue)

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Jeffrey O'Connell, Iowa's New Water Law (Agriculture Law Center, College of Law, State University of Iowa, 1960)

"Has Recent Legislation Limited Private Riparian Rights in Iowa," 8 Drake Law Review 59 (1958)

INDUSTRIAL DEVELOPMENT

Municipal Support of Industrial Projects

The 1963 legislature authorized cities and towns to provide land, buildings, improvements, and any necessary real and personal properties to any industry for the manufacturing, processing, or assembling of any agricultural or manufactured product, if local capital is not otherwise available. These facilities may be acquired by construction, purchase, gift, or lease. Projects may be located up to eight miles outside of municipal limits, within the state. No land can be acquired for this purpose by condemnation through eminent domain. The entire cost to the city or town of acquiring such facilities must be paid out of the proceeds from the sale of revenue bonds. These revenue bonds must be issued in accordance with general state laws and after an election authorizing their issuance. Any revenue bonds issued for this purpose are payable solely out of the revenues derived from the leasing of the facilities. The Iowa Supreme Court has upheld the validity of this act.

Cities and towns are not authorized to operate any manufacturing facilities acquired under this legislation, but may lease them for such rentals and upon such terms and conditions as the governing body may determine. In no case, however, can the agreed upon rentals be less than the average rental costs per square foot for similar facilities in the competitive commercial area. Also, cities and towns that acquire facilities under this legislation must make payments in lieu of taxes to all political subdivisions authorized to levy taxes on the property if it were privately owned.

Municipalities smaller than 5,000 may not have more than two such holdings. Larger municipalities are also entitled to two, plus an additional one for each additional 10,000 population.

Reference:

Laws 1963, Chapter 247

Development Credit Corporations

Iowa bankers and business leaders have pioneered in organizing development credit corporations that will make loans and investments in areas where conventional financial institutions will not.

The purpose of the credit corporations is to promote industrial growth within the state of Iowa by helping new and expanding businesses.

Development credit corporations are quasi-public in nature and are able to secure money at low interest rates. Procuring funds at low rates permits them to loan at relatively low rates even though there is more risk involved than is incurred by conventional financial institutions.

There are three sources of income for most of the credit corporations. Those sources are equity capital from stockholders, loans from member financial institutions, and loans from nonmember sources. Most of the funds come from member financial institutions, who agree to lend money to the development credit corporation when needed up to a fixed amount. That fixed amount is normally a small percentage of the members' capital and surplus or corresponding balance sheet items. As the credit corporations need funds they call for loans from each member in the same proportion that the maximum lending limit of each bears to the aggregate lending limit of all members.

Loans are made to small or unproved firms that do not qualify for loans from conventional financial institutions. If a member financial institution would make a loan to the applicant then the credit corporation will not. The state-wide scope of their activities enables credit corporations to diversify their risks widely, not only geographically but also as to industries. They

serve as a board of appeals for risky propositions which banks and insurance companies are unable to accept.

Expert managerial and financial advice is available to both the credit corporations and their borrowers. The credit corporations' large number of members and directors act without compensation as new business developers and supply an experienced force of administrative agents.

References:

Laws 1963, Chapter 290

Public Docks

Any city or town bordering upon a navigable waterway may create a department of public docks, under the direction of a dock board. The department can prepare or have prepared a comprehensive general plan for the improvement of the municipality's harbor and waterfront, making provision for the needs of commerce and shipping, and for the use of riverfront property or other property whether abutting the riverfront or not and whether located in the municipality or not. The plan includes providing for industrial and manufacturing purposes. It also may provide for the construction of docks, basins, piers, wharves, warehouses, tunnels, belt railways, cranes, machinery, dock apparatus, etc.

The dock board may purchase or acquire by condemnation or other lawful means such personal property and abutting or non-abutting lands (inside or outside the municipality) as may be necessary for use in the provision, development, full utilization, and in the construction of any publicly owned harbor, waterfront, dock, etc. as provided for in the plan adopted by the board.

Dock boards have exclusive charge and control of the wharf property

belonging to the municipality. They also have exclusive charge and control of the building, rebuilding, altering, repairing, operating, and leasing of such property. Leases may be made for industrial and manufacturing purposes.

The municipal council has the power to levy a property tax, not exceeding one-half mill, for these purposes. In cities that have a population of less than 30,000, an additional tax of up to one-half mill may be levied. If the dock board deems it necessary or advisable to issue bonds in support of these activities, they may petition the council to issue either dock bonds or revenue bonds.

Reference:

Iowa Code 1962, Chapter 384 (as amended by Laws 1963, Chapter 243)

PUBLIC UTILITIES REGULATION

In 1963 Iowa enacted its first statute governing the regulation of public utilities by the state. Before this, regulation was left to individual communities.

The 1963 act provides that the Iowa Commerce Commission will regulate the rates and services of public utilities. "Public utilities" are defined as any person, partnership, business association, or corporation owning or operating facilities for furnishing communication services or electricity to the public, for compensation, or for furnishing gas or water, for compensation, via piped distribution systems.

Certain telephone companies, municipally-owned utilities, unincorporated villages owning distribution systems, and cooperative associations are not subject to rate regulation.

Except for the duties and jurisdiction conferred upon the State Commerce Commission by the 1963 act, all rights of municipal corporations to franchise

and regulate use of streets, alleys, and other public property, and all rights acquired by franchise or agreement are preserved.

Every public utility is required to furnish reasonably adequate services at reasonable rates and charges in accordance with tariffs filed with the Commerce Commission.

Reference:

Laws 1963, Chapter 286

BIBLIOGRAPHY

This bibliography includes sources of additional information relating to specific problems involved in doing business in Iowa.

STATE OF IOWA PUBLICATIONS:

Iowa Departmental Rules.

This volume contains the rules and regulations of the various state agencies.

Rules and Regulations of the State Tax Commission

Annual Report of the Iowa Employment Security Commission,

Employment Security Commission

Iowa Labor Review, Employment Security Commission

Annual Report of the State Banking Department

Natural Resources Council Bulletin, Natural Resources Council

Annual Report, Insurance Department

Annual Report of Iowa State Commerce Commission, Iowa

State Commerce Commission. This report contains the administrative decisions of this agency for the year.

Biennial Report of County Finances, Auditor of State

Iowa Development Digest, Development Commission

Published monthly by the Iowa Development Commission,
250 Jewett Building, Des Moines, Iowa 50309

Copies of these publications can be obtained by writing the respective agencies.

PUBLICATIONS OF THE UNIVERSITY OF IOWA:

The Iowa Law Review is published quarterly by the College of Law. Subscription \$5.50 per year. For further information address the College of Law, The University

of Iowa, Iowa City, Iowa 52241

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30 Byington Road, Iowa City, Iowa 52241

Iowa Transit, an engineering magazine published eight times
a year by the Associated Students of Engineering, \$2.00
per year. Address: Iowa Transit, College of Engineering,
The University of Iowa, Iowa City, Iowa 52240

The Bureau of Business and Economic Research has the
following publications available:

An Analysis of Iowa Income Payments by Counties (1950) \$1.50

Iowa Basic Data, 1950, \$1.50

The Iowa Business Digest is published monthly, except
September, by the Bureau of Business and Economic Research,
College of Business Administration. A summary of trends
in Iowa business and articles concerning economic problems,
this publication can be obtained by writing the Bureau of
Business and Economic Research, The University of Iowa,
Iowa City, Iowa 52240

The Bureau of Labor and Management has the following publications
available. Single copies of these are furnished without charge to Iowa
residents, and to others at the cost indicated.

Walter L. Daykin, Free Speech Rights of Management, 1955, 25 cents

Clifford M. Baumbach, Merit and Seniority as Factors in Promotion
and In-Grade Progression, 1956, 25 cents

Howard M. Vollmer and Jack A. Kinney, Identifying Potential
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Edward D. Wickersham, Supplemental Unemployment Benefits: Legislative Implications of Some Recent Unemployment Benefits Agreements, 1956, 25 cents

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Thomas W. Stewart, Iowa Labor Laws, Revised 1959, 50 cents

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