

PAGE COUNTY ATTORNEY

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MEMORANDUM

TO: Page County Board of Supervisors
FROM: Carl M. Sonksen
Page County Attorney
RE: Board of Supervisor agenda and minutes
DATE: May 19, 2023

My office was contacted by Supervisor Holmes earlier this week regarding some issues involving the Board of Supervisors agenda and Board of Supervisors minutes. His concern as expressed to me was that the board had made decisions about how the agenda should be done as well as how the minutes should be done and had directed the Auditor's office to do so and he believed the Auditor is not following the board's directives.

I contacted the Attorney General's office and spoke with an assistant AG who handles civil matters and we spoke about the issues and what code sections controlled these issues as well as a formal AG opinion that spoke directly to the board minutes matter. Attorney General Opinion 82-1-13 is attached to this memo for reference. The two issues in question are addressed below.

1. Board of Supervisors Agenda

Iowa Code 331.504 provides for the duties of the Auditor as clerk to the board:

The auditor shall:

1. Record the proceedings of the board. The minutes of the board shall include a record of all actions taken and the complete text of the motions, resolutions, amendments, and ordinances adopted by the board. Upon the request of a supervisor present at a meeting, the minutes shall include a record of the vote of each supervisor on any question before the board.
2. Maintain the books and records required to be kept by the board under section 331.303.
3. Sign all orders issued by the board for the payment of money.
4. Record the reports of the treasurer of the receipts and disbursements of the county.
5. Maintain a file of all accounts acted upon by the board with the board's action on each account. If the board allows an expenditure from an account, the auditor shall indicate the amount of expenditure and the bill or claim for which the expenditure is allowed.

6. Furnish a copy of the proceedings of the board required to be published as provided in section 349.18

7. Number each claim consecutively in the order of filing and enter the claim in the claim register alphabetically by the name of the claimant and including the date of filing, the number of the claim and its general nature, the action of the board, and if allowed, the fund from which the claim is paid. A record of the claims allowed at each session of the board shall be included in the minute book by reference to the numbers of the claims as entered in the claim register.

8. File for presentation to the board all unliquidated claims against the county and all claims for fees or compensation, except salaries fixed by state law. The claims, before being audited or paid, shall be itemized to clearly show the basis of the claim and whether for property sold or furnished for services rendered or for another purpose. An action shall not be brought against the county relating to a claim until the claim is filed as provided in this subsection and the payment refused or neglected.

Iowa Code Section 21.4 in pertinent part provides the statutory authority for the requirement that board agendas be published at least 24 hours prior to the board meeting:

21.4 Public notice.

1. a. Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

b. Each meeting shall be held at a place reasonably accessible to the public and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impracticable. Special access to the meeting may be granted to persons with disabilities.

2. a. Except as otherwise provided in paragraph "c", notice conforming with all of the requirements of subsection 1 shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.

The Auditor has no statutory duty to prepare or disseminate the agenda for the Board of Supervisors. For at least the past thirty-five years the Page County Auditor's office has prepared and disseminated the board agenda for publication as a courtesy for the Board of Supervisors.

My understanding is that the current internal policy of the Page County Auditor's office is to have time prior to that 24-hour deadline to assure that given office workload, the agenda is distributed in a timely manner for publication.

Any concerns or issues regarding the manner in which notice of the agenda is organized, prepared, and disseminated is a matter for agreement between the board and Auditor's office but is not a statutory duty of the Auditor nor a duty that the board has authority to impose upon the Auditor.

2. Auditor as Clerk to Board/Minutes of proceedings of Board of Supervisors

As previously noted, the duties of the Auditor as clerk to the board of supervisors are found in Iowa Code Section 331.504:

331.504 Duties as clerk to the board.

The auditor shall:

1. Record the proceedings of the board. The minutes of the board shall include a record of all actions taken and the complete text of the motions, resolutions, amendments, and ordinances adopted by the board. Upon the request of a supervisor present at a meeting, the minutes shall include a record of the vote of each supervisor on any question before the board.
2. Maintain the books and records required to be kept by the board under section 331.303.
3. Sign all orders issued by the board for the payment of money.
4. Record the reports of the treasurer of the receipts and disbursements of the county.
5. Maintain a file of all accounts acted upon by the board with the board's action on each account. If the board allows an expenditure from an account, the auditor shall indicate the amount of expenditure and the bill or claim for which the expenditure is allowed.
6. Furnish a copy of the proceedings of the board required to be published as provided in section 349.18.
7. Number each claim consecutively in the order of filing and enter the claim in the claim register alphabetically by the name of the claimant and including the date of filing, the number of the claim and its general nature, the action of the board, and if allowed, the fund from which the claim is paid. A record of the claims allowed at each session of the board shall be included in the minute book by reference to the numbers of the claims as entered in the claim register.
8. File for presentation to the board all unliquidated claims against the county and all claims for fees or compensation, except salaries fixed by state law. The claims, before being audited or paid, shall be itemized to clearly show the basis of the claim and whether for property sold or furnished for services rendered or for another purpose. An action shall not be brought against the county relating to a claim until the claim is filed as provided in this subsection and the payment refused or neglected.

In addition, Iowa Code section 349.16 in pertinent part provides a list of what shall be published with respect to the board of supervisor meetings:

349.16 What published.

There shall be published in each of the official newspapers at the expense of the county during the ensuing year:

1. The proceedings of the board of supervisors, as furnished by the county auditor, excluding from the publication of those proceedings the canvass of the various elections, as provided by law; the complete text of any questions or propositions submitted to the registered voters of the county by the board of supervisors, which shall be published with the required notice of a general or special election; and witness fees of witnesses before the grand jury and in the district court in criminal cases.

The items required for publication in Iowa Code Section 349.16(1) shall be published within one week following adjournment of the board. Iowa Code section 349.18 in pertinent part provides the authority for such requirement:

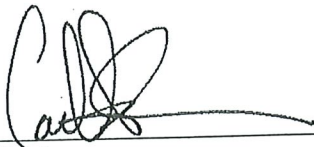
349.18 Supervisors' proceedings — each payee listed — publication.

1. All proceedings of each regular, adjourned, or special meeting of a board of supervisors, including the schedule of bills allowed, shall be published immediately after the adjournment of the meeting.
2. The publication of the schedule of the bills allowed shall include a list of all claims allowed, including salary claims for services performed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim, except that the publication of claims shall comply with the following:
 - The names of persons receiving relief shall not be published.
 - The salaries paid to persons regularly employed by the county shall only be published annually showing the total amount of the annual salary.
 - If the reason for the claims is the same, two or more claims made by the same vendor, supplier, or claimant may be consolidated if the number of claims consolidated and the total consolidated claim amount are listed in the statement. However, the board shall provide at its office upon request an unconsolidated list of all claims allowed.
3. a. The county auditor shall furnish a copy of the proceedings to be published, within one week following the adjournment of the board.

The attached Iowa Attorney General Opinion 82-1-13 provides interpretive authority with respect to the question of who determines the text and format of the matters required for publication, including the minutes of the proceedings of the board of supervisors.

In summary it states that "We are of the opinion that it is not permissible to publish a summary of resolutions and minutes of the proceedings of the board of supervisors. Such proceedings must be published in full. We are further of the opinion that it is the responsibility of the county auditor to determine the text and format of the matters required for publication."

It is the opinion of my office that in reading the code sections noted above in conjunction with Attorney General Opinion 82-1-13, the text and format of the Board of Supervisor minutes are determined by the auditor for publication as required by statute.



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5. An officer may stop and inspect any boat if he has a reasonable and articulable suspicion that it is not in compliance with applicable safety standards, and

6. An officer may make safety inspection without probable cause or a reasonable articulable suspicion if the officer complies with the criteria set forth in *Delaware v. Prouse* and *State v. Hillenheim* for on the road motor vehicle inspections.

January 27, 1982

COUNTIES AND COUNTY OFFICERS; BOARD OF SUPERVISORS; AUDITOR: §349.16, 1981 Code. It is not permissible to publish a summary of resolutions and minutes of the proceedings of the board of supervisors. It is the responsibility of the county auditor to determine the text and format of the matters required for publication. (Fortney to Andersen, Audubon County Attorney, 1/27/82) #82-1-13

Mr. Brian P. Andersen, Audubon County Attorney: You have requested an opinion of the attorney general regarding the publication of the proceedings of the board of supervisors. You have inquired whether it is necessary to publish the minutes of the meetings or whether it is permissible to publish a summary of resolutions and parts of the minute book. You also inquire as to whether the board or the county auditor determines the text and format of the matters required to be printed.

We are of the opinion that it is not permissible to publish a summary of resolutions and minutes of the proceedings of the board of supervisors. Such proceedings must be published in full. We are further of the opinion that it is the responsibility of the county auditor to determine the text and format of the matters required for publication.

Section §49.16, The Code 1981, provides, in pertinent part:

There shall be published in each of said official newspapers at the expense of the county during the ensuing year:

(1) The proceedings of the board of supervisors, excluding from the publication of said proceedings, its canvass of the various elections, as provided by law; witness fees of witnesses before the grand jury and in the district court in criminal cases.

This office has on a number of occasions interpreted the above statute to require a complete and non-summarized publication of the board's proceedings. We most recently espoused this view in Op.Att'y.Gen. #80-5-12. In that opinion, we reaffirmed a prior opinion, 1968 Op.Att'y.Gen. 428, holding that county zoning ordinances must be published in full. In Op.Att'y.Gen. #80-5-12, we stated:

The purpose of publication of county business in an official newspaper is to furnish the citizen a convenient method of ascertaining just what business is being transacted by the board of supervisors, and how it is being transacted. See §618.3, The Code 1979; Op.Att'y.Gen. #80-1-3. Publication in full of zoning ordinances in final form as adopted by a county's governing body may be the only way that a citizen will have notice of laws with which they must comply. See 1910 Op.Att'y.Gen. 223; 1970 Op.Att'y.Gen. 17.

This opinion went on to note that §349.16 is the only publication requirement with which a county must comply. The opinion argues that since a county was not in any other manner subject to publication, collection, or codification requirements, a summarized version of a county zoning ordinance would be inadequate notification to county residents. These statements must be modified with passage of Acts, 1981 Session, chapter 117. The counties are now required to collect and publish all ordinances in code form. See §301(9) of chapter 117. However, this function must only be performed once every five years. We further note that while corresponding sections of the Code 1981 were amended by chapter 117, no amendment of §349.16 was made.

We also stated the following in Op. Att'y. Gen. #80-5-12:

In *Choate Publishing Company v. Schade*, 225 Iowa 324, 328, 280 N.W. 540, 542 (1938), The Iowa Supreme Court held that the publication of a summary version of the grant of homestead exemptions by the board of supervisors was "a substantial compliance with the provisions of the statute." (Section 6411, The Code 1935, the predecessor of §349.16, The Code 1979.) The use by the court of the term "substantial compliance" indicates that the statute requires something more than a summary publication to effect actual compliance. The court in *Choate* determined that under the circumstances presented, publication falling short of actual compliance was permissible, particularly when the cost of publication in full would negate any savings to county residents which the homestead exemption was enacted to benefit. The approval of specific homestead exemptions would not have the county-wide impact that the adoption of a comprehensive zoning ordinance would, however, and all citizens of the county should have an interest in and bear any cost burden in the publication of an ordinance equally. We believe that to effect publication in this instance that would give a taxpayer or resident full and complete information requires publication of the entire body of any ordinance adopted. See 1970 Op. Att'y. Gen. 17.

We reaffirm the foregoing statements.

The previous administration took the same view we express here. In 1970 Op. Att'y. Gen. 17, the question was raised whether an air pollution control agreement among a number of political subdivisions, including a county, must be published in full pursuant to §349.16. This office stated:

... the entire body of the agreement will have to be published as a part of the proceedings of the board of supervisors under §349.16 and 349.18 of the 1966 Code of Iowa. In a November 21, 1967 opinion of the attorney general concerning the publication of zoning ordinances it was stated that "subject to the excluded items, the statute (349.16) is mandatory and requires that the proceedings [of the board of supervisors] be published." The purpose of the publication is to inform the taxpayers of what is being done by their representative. Since the proposed agreement does not fall into one of the exclusions of §349.16, 1966 Code of Iowa, it is mandatory that such proposal or agreement be published.

We have discovered an early opinion from this office which recognizes the concerns of economy which you espouse and which endorses the use of a summary of proceedings. 1911—1912 Op. Att'y. Gen. 777 dealt with the board of supervisors' assessment of telegraph and telephone companies and railroad and express companies. Therein the following language is found:

It would seem to me that both of these orders are clearly proceedings of the board, within the meaning of the term and used in code supplement

section 441, and hence, it would follow that they should be published in some form. However, I am inclined to think that it would not be necessary to publish the matter in full, and it may be that the same could be abstracted in such a way as to comply with the law and yet make the publication must less expensive to the county.

To the extent that this early interpretation of the forerunner of §349.16 conflicts with the later interpretations, we believe it is clearly erroneous. We base this conclusion on the express language of §349.16(4). In contrast to §349.16(1), quoted above, subdivision four requires the board to publish "a *synopsis* of the expenditures of township trustees for road purposes as provided by law." [Emphasis supplied.] The legislature chose to utilize the term "synopsis" in §349.16(4). That word is omitted from §349.16(1). This is significant. If a summary of the proceedings of the board of supervisors was contemplated by §349.16(1), the language employed would so provide.

With regard to your inquiry related to responsibility for publishing the board proceedings as required by §349.16, Acts 1981 Session, chapter 117 provides:

The board shall:

- (6) Select official newspapers and cause official publications to be made in accordance with chapters 349 and 618.

§302(6).

The auditor shall:

- (6) Furnish a copy of the proceedings of the board required to be published as provided in section 349.18.

§503(6).

Section 349.18 provides:

All proceedings of each regular, adjourned, or special meeting of boards of supervisors, including the schedule of bills allowed, shall be published immediately after the adjournment of such meeting of said boards, and the publication of the schedule of the bills allowed shall show the name of each individual to whom the allowance is made and for what such bill is filed and the amount allowed thereon, except that names of persons receiving relief from the county poor fund shall not be published. The county auditor shall furnish a copy of such proceedings to be published, within one week following the adjournment of the board.

The auditor is charged with the role of clerk to the board of supervisors. See Acts, 1981 Session, chapter 117, §503(1). As such, the auditor is to "record the proceedings of the board." It is the auditor who performs the function of memorializing the official acts of the board. The auditor maintains the records of the board. While this is admittedly a close question, we are of the opinion that determining the format and text of what is given to the newspapers for official publication more closely falls within the statutory duties of the auditor. The board is charged with selection of official newspapers and seeing that its proceedings are in fact published. However, in the role of the clerk to the board it is the auditor who maintains the official record. This officer should logically control the text and format of the publication of proceedings in the same manner he or she controls the text and format of official minutes.

In conclusion, it is not permissible to publish a summary of resolutions and minutes of the proceedings of the board of supervisors. It is the responsibility of the county auditor to determine the text and format of the matters required for publication.

January 27, 1982

ELECTIONS; ELECTRONIC VOTING MACHINES: Chapter 49, §§49.12, 49.25, 49.43; Chapter 52, §52.27. Code sections relative to voting machines should be applied to govern the use of electronic voting systems. (Pottorff to Whitcome, Director of Elections, Office of the Secretary of State, 1/27/82) #82-1-14(L)

January 29, 1982

GAMBLING: Amusement Concession: License Revocation — §§99B.1(14), 99B.2(1), 99B.3 and 99B.4, The Code 1981, as amended by 1981 Session, 69th G.A., ch. 44, §4. According to section 99B.2(1) as amended, a gambling license can not be issued by the department of revenue for any location for which a previous gambling license or liquor license was revoked within the preceding two years. This location restriction does not apply to an amusement concession license revoked by the department of revenue. An amusement concession license is issued by the department for a particular game and not for a specific location. The revocation of a license for an amusement concession that was located at a fair does not preclude use of the fairgrounds by other legal amusement concessions, with proper authorization from the fair sponsor, notwithstanding this location restriction. (Richards to Poppen, Wright County Attorney, 1/29/82) #82-1-15(L)

January 29, 1982

TAXATION: Property Acquisitions By Tax Exempt Political Subdivisions. §427.1(1), The Code 1981; 12 U.S.C. §1714 (1980). Real property acquired by the Federal Housing Administration through foreclosure proceedings continue to be subject to the real property and drainage taxes that would have been payable had the property remained in private ownership. (Schuling to Jensen, Monona County Attorney, 1/29/82) #82-1-16(L)

January 29, 1982

TAXATION: Failure to Timely Apply for Industrial Real Estate New Construction Tax Exemption. Sections 427B.3 and 427B.4, The Code 1981. A claimant for the industrial real estate new construction tax exemption who fails to timely file an application for exemption as set forth in §427B.4 for the actual value added to the industrial project is not eligible to receive the exemption for the entire five year period set forth in §427B.3. (Griger to Riffel, Bremer County Attorney, 1/29/82) #82-1-17(L)