

LEGISLATIVE GUIDE TO LEGALIZING ACTS



TABLE OF CONTENTS

Note to Reader:

Research is conducted by the Legal Services Division of the Iowa Legislative Services Agency in an objective and nonpartisan manner. Although a Legislative Guide may identify issues for consideration by the General Assembly, nothing contained in a Guide should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author:

This Guide was written by Douglas Adkisson, Senior Legal Counsel, Legal Services Division of the Legislative Services Agency, who received his law degree from the University of Iowa in 1986. Mr. Adkisson has worked for the Legal Services Division of the Legislative Services Agency since 1986. He has staffed the Committee on Agriculture in the Senate and House since that time.

Mr. Adkisson can be reached by phone at (515) 281-3884 or by e-mail at:
dadkiss@legis.state.ia.us

December 2000

Legislative Guide to Legalizing Acts	1
I. Introduction	1
II. Legislative Power to Legalize Acts.	1
III. Applicable Case Law	1
A. Legalizing Acts in General.	1
B. Constitutional Issues.....	1
1. Requirement That Laws Be Generally Applicable.....	2
2. Requirement That General Laws Have Uniform Application.	2
C. Vested Rights and Prior Litigation.	3
D. Types of Legalizing Acts.....	3
1. Local Legalizing Act.	3
2. General Legalizing Act.	4
IV. Procedures for Legalizing Acts.	4
A. General Legalizing Acts.....	4
B. Special Legalizing Acts.....	5
1. Publication, No Expense to State.....	5
2. Proof of Publication.	5
3. Printing Costs.	5
4. Background Information.	6
5. Subsequent Amendment.....	6
V. Summary.	6



I. Introduction.

This Legislative Guide discusses the constitutional and statutory basis for legalizing acts and the interpretation those provisions have been given by the Iowa Supreme Court. The Guide also discusses the procedures to be followed to introduce a bill for a legalizing act. References to the Iowa Code are to the 2001 Edition of the Iowa Code.

II. Legislative Power to Legalize Acts.

The power of a General Assembly to legalize prior official or private actions is very broad and derives from its inherent lawmaking authority, subject to limitation by the state and federal constitutions.¹ The Iowa Code contains nine Code chapters (585 through 592 and 594A) in Title XIV dealing with the legalization of certain public and private actions. Code chapter 585 concerns the publication of proposed acts to legalize the official proceedings of public bodies such as boards of supervisors or city councils. The remaining chapters of Title XIV, subtitle 4, legalize specific actions which were in some respect defective as a result of changes in Iowa law. For example, Code section 586.1 legalizes official acts of notaries public performed more than 10 years earlier, during the time that they held over in office without qualifying after the expiration of the preceding term, if the notaries have since qualified.

III. Applicable Case Law.

A. Legalizing Acts in General.

In *City of Muscatine v. Waters*,² the Iowa Supreme Court stated the general reasons for and limitations on legalizing acts as follows:

Generally, curative acts are made necessary by inadvertence or error in the original enactment of a statute or in its administration. Action under the statute is usually taken in good faith and no rights are jeopardized by the validation of the prior good faith action. . . . If defects are jurisdictional or relate to substantive contract rights, they cannot ordinarily be cured by a healing act.

The Court also noted the general rule that a legalizing act may be passed whenever the irregularity to be corrected consists of the doing of an act, or the doing of some act in a manner which the Iowa General Assembly might have authorized by prior law.³ However, the distinction between legislation which attempts to cure acts of public officers void due to mistake and legislation which seeks to legalize official acts void for lack of authority is not recognized in Iowa.⁴

B. Constitutional Issues.

Two of the most frequently used challenges to a legalizing act are that it is in violation of Article III, section 30, or Article I, section 6, of the Iowa Constitution. Article III, section

¹ See *Iowa Electric Light & P. Co. v. Incorporated Town, Etc.*, 264 N.W. 84, 86 (Iowa 1935), and cases cited therein.

² *City of Muscatine v. Waters*, 251 N.W.2d 544, 548 (Iowa 1977).

³ *Id.* at 549.

⁴ *Chicago, R.I. & P. Ry. Co. v. Rosenbaum*, 231 N.W. 646, 648 (Iowa 1930).



Legalizing Acts

30, requires that "in [certain cases of tax assessment and collection] and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State." Article I, section 6, requires that all general laws have uniform application and that the General Assembly may not grant to any citizen or class of citizens privileges or immunities which do not equally belong to all citizens.

1. Requirement That Laws Be Generally Applicable.

A local or special act is one which only operates upon particular persons and private concerns.⁵ The negative actions associated with local legislation include the giving of exclusive privileges to some, inequality of laws, confusion, and logrolling by legislators.⁶ In determining whether a general law could have been made applicable to an action which was the subject of a legalizing act, courts consider the nature and purpose of the legislation and conditions and circumstances under which it was enacted.⁷

These issues were raised in *Iowa Electric Light & P. Co. v. Incorporated Town, Etc.*,⁸ regarding an act to legalize a municipal contract which had been held void by the Iowa Supreme Court for lack of statutory authority on the part of the city. The Court recognized that the legalizing act in question was a local law but determined that a general law suited to the necessities of the municipality would have no greater operation than the local law in question and would serve no advantage over the local law in terms of protecting against the evils of local legislation. Therefore, since a general law would not be applicable, no constitutional violation existed in the local law.⁹ The Court did acknowledge the principle that a legalizing act could be held invalid because it did not have general application in a situation where a general law could have been made applicable.¹⁰ However, there appears to be a fair amount of deference given to the Iowa General Assembly in determining whether a general law is indeed applicable.¹¹

2. Requirement That General Laws Have Uniform Application.

A legalizing or curative act, like any piece of legislation, must not confer a privilege which does not also belong to all citizens. However, this requirement is not strict. The Iowa Supreme Court has upheld an act regarding an assessment of taxes for bridges, even though the act was limited in its applicability to bridges between Iowa and another state, because within that category of bridges the act was unlimited in its application. Therefore, no violation of Article III, section 30, of the Iowa Constitution occurred.¹² If a classification is reasonable and the law operates equally upon all

⁵United States Expr. Co. v. Ellyson, 28 Iowa 370, 375 (1869).

⁶McGregor v. Baylies, 19 Iowa 43, 45 (1865).

⁷Iowa Indep. Bankers v. Board of Governors of F.R.S., 511 F.2d 1288, 1299 (D.C. Cir. 1975).

⁸Iowa Electric Light and P. Co. at 264 N.W. 84 (Iowa 1935).

⁹Id. at 87.

¹⁰Id. at 89.

¹¹See Richman v. Board of Supervisors, 42 N.W. 422, 426 (Iowa 1889).

¹²Frost v. State, 172 N.W.2d 575, 580 (Iowa 1969).



persons within the class, no violation of Article III, section 30, or Article I, section 6, exists.¹³

C. Vested Rights and Prior Litigation.

In *Iowa Electric Light & P. Co.*, the Iowa Supreme Court also addressed the issue of whether a prior adjudication that the actions of the municipality were void prevented the General Assembly from legalizing them at a later date. The Court concluded that it did not:

*What the legalizing act undertook to accomplish was to validate the very thing which the Supreme Court, by its decision, had held invalid, not from its inception, but to make it legal and valid and binding as and of the date that the act went into effect. . . . It is not in any degree an attempt on the part of the Legislature to recall the decision of the Supreme Court; on the other hand, it is a valid exercise of its constitutional prerogative and sovereign power over one of its agencies of local government of its own creation. It is a wholesome rule, in that it stops endless litigation and quiets property rights and is in the interest of the public good.*¹⁴

The Court noted that the general rule that the Iowa General Assembly has no power to change a decree of court does not have universal application. "The rule applies to private and individual rights, and not in full force, if at all, to actions affecting municipal or quasi municipal corporations" or other political subdivisions.¹⁵ However, in *Schwarzkopf v. Sac County Board of Supervisors*, the Court, facing a situation in which the litigation over the official act which was the subject of a legalizing act was not concluded, held that although a party has no right to a particular outcome of litigation and, therefore, a legalizing act may affect litigation already in progress, a legalizing act cannot deprive a person of a right which vests due to the litigation becoming final.¹⁶

D. Types of Legalizing Acts.

Two distinct methods exist by which the General Assembly may legalize the proceedings of a public body.

1. Local Legalizing Act.

The first, referred to here as a local legalizing act, consists of an act which seeks to legalize the official proceedings of the governing body of a political subdivision, such as a board of supervisors, board of school directors, or city council or which seeks to legalize any warrant or bond issued by those official bodies.¹⁷ House File 2097, 1992 Iowa Acts, chapter 1007, is an example of a local legalizing act. It involved the imposition of a physical plant and equipment levy by the Mid-Prairie Community School District. The levy was properly adopted by the board of directors of the school district but, due to a printing error, the ballots upon which the voters approved the levy listed the tax to be raised at three cents per \$1,000 of assessed valuation instead of

¹³Richards v. City of Muscatine, 237 N.W.2d 48, 61 (Iowa 1975).

¹⁴Iowa Electric Light & P. Co. at 90.

¹⁵Id.

¹⁶Schwarzkopf v. Sac County Board of Supervisors, 341 N.W. 2d 1, 8 (Iowa 1983).

¹⁷Iowa Code § 585.1.



Legalizing Acts

67 cents per \$1,000 of assessed valuation as approved by the board. The tax went into effect and was certified at the higher rate. The primary effect of the local legalizing act was to remove the shadow of invalidity from the action of the board which was otherwise in accordance with its authority.

2. General Legalizing Act.

The second method by which the General Assembly may legalize the proceedings of a public body will be referred to here as a general legalizing act. A general legalizing act consists of a change in the statutory authority of a public body and the retroactive application of that change. Iowa Code chapters 586 through 594A contain general legalizing acts, an example of which was involved in *Schwarzkopf*.¹⁸

The Iowa Supreme Court in *Schwarzkopf* applied the rationale of *Richman v. Board of Supervisors*, in which the Court held that even though the board of supervisors lacked the statutory authority to approve a levy due to the failure of the applicants to file the required petition, this lack of statutory authority could be modified later by the Iowa General Assembly, to the situation where a board of supervisors granted an easement in 1976 to a water company to run a pipeline under a county road.

The action granting the easement was challenged in court, but prior to a final decree in the litigation, the General Assembly in 1979 amended section 320.4 of the Iowa Code to expand the authority of boards of supervisors to grant easements of this nature. In 1981, also prior to the completion of litigation, the General Assembly placed section 589.29 into the Iowa Code, which made the amendment to Code section 320.4 retroactive to any actions taken by boards of supervisors prior to the effective date of the amendment. The Court held that this was a general legalizing act which was a permissible exercise of legislative power and upheld the enactment of Code section 589.29.

There is no question that the General Assembly can retroactively cure defects in existing statutes or modify existing statutes to restrict or expand their reach.¹⁹ In practical effect, what the Court did was uphold a subsequent change in the statute conferring additional jurisdiction on all boards of supervisors to grant easements and the even later action by the General Assembly making the change in the easement authority of all boards of supervisors retroactive.

IV. Procedures for Legalizing Acts.

A. General Legalizing Acts.

For general legalizing acts of the type referred to in *Schwarzkopf*, no special procedures for introducing the bill are necessary.

¹⁸*Schwarzkopf* at 1.

¹⁹*Id.* at 4.



B. Special Legalizing Acts.

In the case of a local legalizing act, special procedures must be followed prior to the introduction of the bill.

1. Publication, No Expense to State.

Code section 585.1 requires that a bill which seeks to legalize the official proceedings of certain official bodies must first be published in some newspaper within the territorial limits of the public corporation whose proceedings are proposed to be legalized and then introduced as published. Code section 585.2 requires that if no newspaper is published within the territorial limits, publication must be in a newspaper of general circulation in the county. Code section 585.3 requires the bill to be published under the caption "Proposed bill for the legalization of the proceedings (or bonds or warrants) of (name of official body)."

Code section 7A.19 requires that a bill seeking to legalize the acts of an official body in regard to any matter of public nature or for any person or persons, company, or corporation shall be printed at no expense to the state. This means that the official body seeking to have its actions legalized must pay for the printing of the bill in the house in which it is introduced.

When the Legislative Services Agency, Legal Services Division, receives a request for a legalizing act, the bill will be drafted and a copy provided to the sponsor who is responsible for having the proposed legalizing act published in accordance with Code section 585.1. After publication, the bill as drafted will be proofed against the bill as published and generally will be modified technically to conform to the published version. Although time-consuming, this procedure provides the best mechanism for satisfying the requirement that the bill is to be introduced as it was published, given the tendency of many newspapers to make minor editorial changes in the language of the bill.

2. Proof of Publication.

Two proofs of publication need to be acquired by the sponsor of the bill, one for each house. Proof of publication must accompany the bill packet when it is sent down from the Legislative Services Agency, Legal Services Division, for filing. The governmental subdivision requesting the legalizing act is responsible for the cost of publication. Proof of publication must be published in a house's journal before that house can debate the bill.²⁰

3. Printing Costs.

The governmental subdivision requesting the legalizing act is also responsible for the cost of printing the bill under Code section 7A.19, which must be paid to the principal administrative officer of the house in which the bill will be filed. The finance officer of the appropriate house should be contacted to determine the exact form and amount of the payment.²¹

²⁰ Iowa Code § 585.1.

²¹ Iowa Code § 585.4.



Legalizing Acts

4. Background Information.

When a request for a legalizing act is made, the sponsor should provide the Legislative Services Agency, Legal Services Division, with the name of one or more persons who can be contacted to provide background information on the need for the legalizing act. This will assist the drafter in determining the proper form for the bill.

5. Subsequent Amendment.

Once a proposed legalizing act is published as introduced, the bill may be amended in the manner of other bills so long as the amendment does not substantially change the subject matter of the bill.²²

V. Summary.

A reading of the case law on legalizing acts gives the distinct impression that the Iowa Supreme Court will give the General Assembly a great degree of discretion in legalizing the actions of official bodies. It appears that the Court is generally willing to abide by the legislative determination that a general law is not applicable in a particular situation even in the face of a reasonably unambiguous constitutional provision regarding local or special legislation.

The case law on legalizing acts does recognize three situations in which legalizing acts may be invalidated. The first, in the case of local legalizing acts, involves the situation where a general law could have been used to accomplish the goals of the legalizing act. The second, in the case of either a local or a general legalizing act, is where the act infringes on vested rights or contract rights, such as where a person is entitled to a particular outcome as a result of satisfactory performance on a contract and that outcome is thwarted by the action sought to be legalized. The third is the situation where a private person has had rights vested by the conclusion of litigation.

However, attempts to invalidate legalizing acts on these grounds appear to have had fairly limited success in action. As far back as the *Richman* case (1889), the Court has shown a willingness to validate local legalizing acts regarding taxation which upset issues apparently settled by litigation, such as the determination that a particular tax assessment by the county was void, even though a good argument was made that the property owners subject to the revived assessment had their right to be free of an invalidly made assessment settled by the prior litigation.

Nonetheless, some general principles can be drawn from the cases cited in this Legislative Guide regarding appropriate subjects for local and general legalizing acts.

First, local legalizing acts are mainly appropriate in those "no harm, no foul" situations, such as the Mid-Prairie Community School District situation, where through inadvertence or error an action was taken out of compliance with the legal requirements, but in which no opposition exists from the persons affected by the action. In this case, the legalizing act is merely ratifying the good faith actions of the official body and the circumstances are such that a general law would not be of use.

²²Iowa Code §§ 585.1 and 585.5.



Second, if the situation to be legalized is one which may apply to more than one official body, such as that described in the *Schwarzkopf* case, a general legalizing act is probably more appropriate. Furthermore, a general legalizing act may be the only way to proceed to avoid challenges on the constitutional grounds of the general applicability of laws mentioned earlier.

Third, although not explicit in the case law on this subject, that entity that made the mistake which necessitated the legalizing act, or in whose favor the legalizing act operates, should be considered in determining whether the proposed legalizing act should be of a local or general nature. If the mistake involved private action later sought to be ratified by local government with the local government action legalized by the General Assembly, a general legalizing act may be more appropriate. This follows the reasoning that where one private entity made a mistake, there are likely more, and all persons falling into that category should probably be treated equally, rather than conferring a benefit on only one of several similarly situated persons.

0439RR