

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM: Member contribution rate for pension accumulation fund. Iowa Code §§ 97A.5, 97A.7, 97A.8 (2001). Section 97A.8(1)(f)(8) does not preclude the trustees of the pension accumulation fund from increasing the member's contribution rate in a year in which the General Assembly has not enhanced the member's pension benefits. The increase in rate must be necessary to cover any increase in cost to the retirement system resulting from statutory changes if the increase cannot be absorbed within the contribution rates otherwise established by section 97A.8. The trustees, after approving such increases, have discretion to reduce them if future actuarial evaluations support a rate reduction consistent with chapter 97A. (Kempkes to Techau, Commissioner, Department of Public Safety, 2-13-02) #02-2-2(L)

February 13, 2002

Commissioner Kevin W. Techau
Iowa Department of Public Safety
Wallace State Office Bldg.
LOCAL

Dear Commissioner Techau:

Your predecessor requested an opinion about the Public Safety Peace Officers' Retirement, Accident, and Disability System, Iowa Code ch. 97A (2001) and, in particular, the pension accumulation fund. She asked whether the fund trustees may increase the member's contribution rate in a year in which the General Assembly has not enhanced pension benefits. If so, she asked whether the fund trustees after approving such increases may reduce them if future actuarial evaluations indicate support for a rate reduction.

Chapter 97A establishes a system, administered by a board of trustees, to provide pension and other benefits to members. *See* Iowa Code § 97A.2; *see also* Iowa Code §§ 97A.5, 97A.6; 1992 Iowa Op. Att'y Gen. 22 (#91-4-5(L)). Funding for the system rests upon contributions from the State and from members, as well as from the board's investments. Iowa Code §§ 97A.7, 97A.8. Like other pension plans, the system rests upon certain actuarial assumptions and estimates. Thus, the board's actuary periodically values the assets and liabilities of the fund, and the board, in light of this valuation, shall "[c]ertify the rates of contribution payable by [the State] in accordance with section 97A.8." Iowa Code § 97A.5(11)(b). *See* Iowa Code § 97A.11.

Section 97A.8(1)(f)(8) -- the focus of your opinion request -- provides in part:

[B]eginning July 1, 1996, and each fiscal year thereafter, an amount equal to the member's contribution rate times each member's compensation shall be paid to the . . . fund from the earnable compensation of the member. For the purposes of this

subparagraph, the member's contribution rate shall be [9.35] percent. *However, the system shall increase the member's contribution rate as necessary to cover any increase in cost to the system resulting from statutory changes . . . enacted . . . after January 1, 1995, if the increase cannot be absorbed within the contribution rates otherwise established pursuant to this paragraph, but subject to a maximum employee contribution rate of [11.3] percent. After the employee contribution reaches [11.3] percent, [60] percent of the additional cost of such statutory changes shall be paid by the employer under paragraph "c" and [40] percent of the additional cost shall be paid by employees under this paragraph.*

(emphasis added).

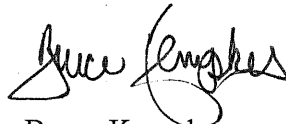
Legislatures often fund the cost of increased pension benefits with corresponding increases in member and employer contributions. *See generally Wagoner v. Gainer*, 279 S.E.2d 636, 641-42 (W. Va. 1981); 60A Am. Jur. 2d *Pensions and Retirement Funds* § 1623, at 953-54 (1988). Section 97A.8(1)(f)(8) specifies that the system shall increase the member's contribution rate (subject to maximum percentages) to cover *any* increase in cost to the system resulting from statutory changes enacted after January 1, 1995, "if the increase cannot be absorbed within the contribution rates otherwise established pursuant to this paragraph . . ." *See Iowa-Illinois Gas & Elec. Co. v. City of Bettendorf*, 241 Iowa 358, 41 N.W.2d 1, 4-5 (1950) ("any" is a synonym of "all" and commonly means without limitation or restriction); 1998 Iowa Op. Att'y Gen. ____ (#97-8-1(L)); 1996 Iowa Op. Att'y Gen. 84 (#96-4-1(L)). Thus, section 97A.8(1)(f)(8) permits a rate increase to cover any statutorily prescribed increase in cost to the system, even if the statute creating the increased cost was enacted in years prior to the necessary rate increase.

Our conclusion does not mean that the system, after approving an increase to the member contribution rate, may not later reduce that rate if future actuarial evaluations support a rate reduction consistent with chapter 97A. The trustees, as fiduciaries of the system, must preserve the assets of the fund for the payment of pensions. *See Iowa Code* § 97A.5(13)(b) (pension fund "shall be held in trust for the benefit of the members of the system and the members' beneficiaries"). Accordingly, chapter 97A broadly vests them with "[t]he general responsibility for the proper operation of the system" and with rule-making authority "as may be necessary or appropriate for the transaction of its business." *See Iowa Code* §§ 97A.5(1), (4), 97A.7(1). *See generally* 581 Iowa Admin. Code ch. 24. Because the fund undergoes constant change -- members come and go, investments go up and down -- chapter 97A permits the trustees the flexibility needed to carry out their fiduciary duties to current as well as former employees. *See generally Patton v. Municipal Fire & Police Retirement System*, 587 N.W.2d 480, 482 (Iowa 1998) (court construes pension statutes liberally to promote their legislative purposes and objectives).

Commissioner Kevin W. Techau
Page 3

In summary: Section 97A.8(1)(f)(8) does not preclude the trustees of the pension accumulation fund from increasing the member's contribution rate in a year in which the General Assembly has not enhanced the member's pension benefits. The increase in rate must be necessary to cover any increase in cost to the retirement system resulting from statutory changes occurring after January 1, 1995, if the increase cannot be absorbed within the contribution rates otherwise established by section 97A.8. The trustees, after approving such increases, have discretion to reduce them if future actuarial evaluations support a rate reduction consistent with chapter 97A.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Kempkes". The signature is written in a cursive style with a large, stylized initial "B".

Bruce Kempkes
Assistant Attorney General

COUNTIES: Prisoner reimbursement. Iowa Code §§ 356.7, 356.30 (2001). A county with insufficient jail space that pays other counties to house its prisoners may seek reimbursement from the transferred prisoners for the cost of their room and board. (Kempkes to Edmondson, Washington County Attorney, 7-2-02) #02-7-1(L)

July 2, 2002

Ms. Barbara A. Edmondson
Washington County Attorney
P.O. Box 841
Washington, IA 52353

Dear Ms. Edmondson:

A county may incarcerate its prisoners in other jurisdictions. *See Woodbury County v. City of Sioux City*, 475 N.W.2d 203, 206 (Iowa 1991). "If [a] prisoner cannot be confined in [the county] jail, he must be somewhere else, and the county is responsible for necessities furnished him, if the circumstances were such that the prisoner could not be confined in jail." *Miller v. Dickinson County*, 68 Iowa 102, 26 N.W. 31, 32 (1885). *Accord Smith v. Linn County*, 342 N.W.2d 861, 862 (Iowa 1984).

You have requested an opinion about a county with insufficient jail space that pays other counties to house its prisoners who, we understand, have been convicted of crimes. You ask whether the county may seek reimbursement from the transferred prisoners for the cost of their room and board in the other counties.

I. Applicable law

Iowa Code chapter 356 (2001) is entitled Jails and Municipal Holding Facilities. County sheriffs have charge of their jails and the prisoners therein, Iowa Code §§ 356.1, 356.2, and jailkeepers shall furnish prisoners with bedding, clothing, towels, fuel, medical aid, meals, and water, Iowa Code § 356.5. Under section 356.7(1), a county sheriff

may charge a prisoner who is eighteen years of age or older and who has been convicted of a criminal offense or sentenced for

contempt of court for violation of a domestic abuse order *for the room and board provided to the prisoner while in the custody of the county sheriff*. Moneys collected by the sheriff under this section shall be credited to the county general fund and distributed as provided in this section. If a prisoner who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order fails to pay for the room and board, the sheriff may file a room and board reimbursement claim with the district court as provided in [section 356.7(2)]

(emphasis added). Section 356.7(2)(f) provides that the sheriff “may file a room and board reimbursement claim with the clerk of the district court which shall include . . . [t]he amount of room and board charges the person owes.” Under section 356.7(2)(g), “[i]f the sheriff wishes to have the amount of the claim for charges owed included within the amount of restitution determined to be owed by the person, [the reimbursement claim shall include] a request that the amount owed be included within the order for payment of restitution by the person.”

II. Analysis

You have asked whether a county paying the cost of room and board for convicted prisoners transferred to other counties for the purpose of serving their sentences may seek reimbursement from the transferred prisoners for that cost.

Section 356.7(1) authorizes a county to charge convicted prisoners for the cost of their room and board “while in the custody of the county sheriff.” Although the term “custody” has several meanings, Black’s Law Dictionary 384 (6th ed. 1990), the Supreme Court of Iowa has specified its meaning for purposes of section 356.7(1):

Actual custody refers to physical restraint, meaning detention, confinement or imprisonment; constructive custody refers to legal restraint, including work-release, probation or parole. “Legal” custody may thus connote constructive custody

Another meaning that may be ascribed to the term “legal” custody is the . . . authority given the sheriff [in the precursor to Iowa Code section 356.7(1)] for holding prisoners in custody.

State v. Schmitt, 290 N.W.2d 24, 28 (Iowa 1980) (emphasis added).

“Custody” in section 356.7(1) thus means legal custody, not actual or physical custody. One of our prior opinions essentially reached the same conclusion in addressing an analogous issue. *See* 1982 Iowa Op. Att’y Gen. 418 (#82-5-9(L)) (county which transfers prisoners to other

Ms. Barbara A. Edmondson

Page 3

counties has responsibility under chapter 356 to pay for their room and board). *Cf.* Iowa Code § 904.701(1) (inmate performing hard labor outside institution “shall be deemed at all times to be in the actual custody of the superintendent of the institution”). Accordingly, a county paying the cost of room and board for convicted prisoners transferred to other counties for the purpose of serving their sentences may seek reimbursement from the transferred prisoners for that cost.

We note that section 356.7(1) limits reimbursement to costs for room and board only and that “costs” in this context would likely equate with a county’s actual costs for room and board. *Cf.* 1996 Iowa Op. Att’y Gen. 59, 63-64 (lawful custodians may only recover actual cost incurred in copying requested public records); 1996 Iowa Op. Att’y Gen. 9, 12 (in cases of mixed private-public use of public property, public officer or employee should fully reimburse public entity by paying actual cost of mileage allocable to private purposes). *See generally* Iowa Code § 4.1(38) (statutory words and phrases shall be construed according to context and approved English usage); Black's Law Dictionary 33 (1979) (“actual costs” means exact sum expended).

III. Summary

A county paying the cost of room and board for convicted prisoners transferred to other counties for the purpose of serving their sentences may seek reimbursement from the transferred prisoners for that cost.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Kempkes".

Bruce Kempkes
Assistant Attorney General

MUNICIPALITIES; PUBLIC RECORDS: Publishing minutes of city council meetings. Iowa Code §§ 21.3, 137.6, 372.13 (2001). A city clerk must cause the publication of the minutes of a city council meeting in a newspaper within fifteen days after the city council meets. (Kempkes to Lundby, State Senator, 7-10-02) #02-7-3(L)

July 10, 2002

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

Dear Senator Lundby:

You have requested an opinion concerning the minutes of a city council meeting, which "shall be published" in a newspaper "within fifteen days of a regular or special meeting of the council." You ask whether publication must occur within fifteen days after a meeting or, alternatively, within fifteen days after the city council approves the minutes.

Iowa Code chapter 372 (2001) is entitled Organization of City Government. Section 372.13 establishes the city council, which, among other things, "shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law." Iowa Code § 372.13(3). Section 372.13(6) sets forth an important duty of the clerk:

Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claim. Matters discussed in closed session pursuant to [Iowa Code] section 21.3 shall not be published until entered on the public minutes. However, in cities having more than [150,000] population the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and

the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a simple misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

(emphasis added). *See generally* Iowa Code § 21.3 (governmental bodies shall keep minutes of public meetings as public records open to public inspection), § 372.13(5) (city councils shall maintain records of their proceedings).

Pointing to its first sentence, you have asked whether section 372.13(6) requires publication of the minutes of the proceedings within fifteen days after a meeting of the city council or, alternatively, within fifteen days after their approval by the city council. In answering this question, we emphasize that this opinion does not purport to resolve whether any past actions may have violated section 372.13(6), which provides for a criminal penalty upon its violation. *See* 1978 Iowa Op. Att’y Gen. 199, 200; 1972 Iowa Op. Att’y Gen. 564, 565.

In 1961, the law required the clerk to arrange for publication of a “condensed statement of the proceedings” immediately following a council meeting. *See* Iowa Code § 368A.3(3) (1958). An opinion request that year asked whether the clerk needed to obtain council approval of the statement before arranging for its publication -- which, in light of the council’s regular monthly meetings, would normally necessitate a one-month delay in publication. *See* 1962 Iowa Op. Att’y Gen. 27. This office explained that “no provision, express or implied, imposes upon the clerk the duty of having the minutes approved prior to publication.” *Id.* at 28.

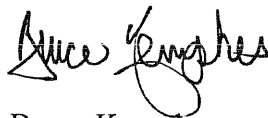
We see nothing in the current language of section 372.13(6) that requires us to withdraw or modify our 1961 opinion. Section 372.13(6) provides that “[w]ithin fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council . . . to be published” As a matter of logic, “the minutes of the proceedings of the council” can only refer to the most recent “regular or special meeting” held by the council. *See generally Woodbury County v. Sioux City*, 475 N.W.2d 203, 205 (Iowa 1991) (court strives to give statute a sensible, practical, and workable construction). Thus, a clerk must cause publication of the minutes within fifteen days after the meeting whose proceedings are detailed in those minutes. Any other conclusion renders meaningless the fifteen-day deadline and permits publication of minutes long after meetings take place. We do not ascribe such an intent to the General Assembly in passing section 372.13(6). *See generally Carolan v. Hill*, 553 N.W.2d 882, 885 (Iowa 1996) (court does not construe statute in a way that produces absurd or impractical results).

The Honorable Mary A. Lundby
Page 3

Section 372.13(6) does not require council approval of the minutes before the clerk causes their publication. *See generally Lucina v. Maxwell*, 501 N.W.2d 531, 533 (Iowa 1993) (court cannot, under guise of statutory construction, enlarge or otherwise change a statute); *Dingman v. City of Council Bluffs*, 249 Iowa 1121, 90 N.W.2d 742, 746 (1958) (court cannot write into statute words which are not there). If a council so chooses, it could arrange its schedule to approve the minutes in time for its clerk to meet the fifteen-day deadline. If, however, a council does not approve the minutes before their publication, it may, when necessary, correct them at a subsequent meeting. *See Mann v. City of Lemars*, 109 Iowa 251, 80 N.W. 327, 328 (1899).

In summary: A city clerk must cause the publication of the minutes of a city council meeting in a newspaper within fifteen days after the city council meets.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Kempkes". The signature is written in dark ink and is positioned above the printed name.

Bruce Kempkes
Assistant Attorney General

COUNTIES AND COUNTY OFFICERS: Board of Supervisors; Veteran Affairs Commission; payment of expenses and review of certified claims. Iowa Code §§ 35B.6, 35B.7, 35B.10, 35B.13, 35B.14, 35B.17 (2001). County commissions of veteran affairs must pay for training the executive director, or designee, and burial expenses of any indigent veteran up to the level established by the supervisors. The supervisors must provide funds for the maintenance of the graves of veterans and their spouses and children, if other provisions for such maintenance are not in place. Appropriations for grave markers and other allowable benefits, as delineated in Code section 35B.14, are discretionary. After funds are appropriated, county supervisors possess limited power to review certified claims for the purpose of preventing results based upon biased or unreasonable judgment; they must confine their review to the record, which consists of the certified list of names and amounts, applications, investigation reports, and case records; and they may overturn decisions of county commissions only if the evidence clearly preponderates against the decisions. A board of supervisors may, through enactment of an ordinance, obligate the county to provide veterans with services and benefits which are discretionary under chapter 35B. (Scase to Ferguson, Black Hawk County Attorney, 10-22-02) #02-10-1(L)

October 22, 2002

Mr. Thomas J. Ferguson
Black Hawk County Attorney
B-1 Courthouse Bldg.
Waterloo, IA 50703

Dear Mr. Ferguson:

You have requested an opinion addressing the relationship between the county board of supervisors and the county commission of veteran affairs, formerly known as soldiers' relief commission. Specifically, your questions concern the degree of discretion afforded to the county board of supervisors in appropriating funds for the purposes identified in Iowa Code chapter 35B and approving specific claims after funds have been appropriated. In addition, you ask whether an ordinance adopted by the Black Hawk County Board of Supervisors creates an obligation upon the county which exceeds its statutory obligation. These questions require a review of Iowa Code chapter 35B (2001).

Chapter 35B requires the establishment of county commissions of veteran affairs in each county. Members are veterans appointed by the county board of supervisors. Iowa Code §§ 35B.3, 35B.4, 35B.6(4), 331.321(1)(g) (2001). The primary function of the commission is to act upon claims for the veterans' assistance benefits provided for by chapter 35B. As you observe, the terms of several sections of 35B appear to obligate the county to provide certain benefits, and to leave the county discretion to provide other benefits. In light of this variation, you ask "what obligation does the board of supervisors have to provide or appropriate funds for benefits to veterans under the code."

We find three sections of chapter 35B obligating the appropriation of funds. The first relates to training. Subject to the approval of the county supervisors, a county commission has the power to employ an executive director. Iowa Code § 35B.6(1)(a) (2001). Two or more counties may agree to share the services of an executive director. Iowa Code § 35B.6(2). Section 35B.6(1)(b) provides that the executive director or, if no executive director is appointed, a commissioner or clerical assistant must complete a course of initial training provided by the State Veterans Affairs Commission, as well as one commission training course each year. “The expenses of training shall be paid from the appropriation authorized in section 35B.14.” Iowa Code § 35B.6(1)(b). This provision clearly contemplates that county commissions must pay for the training expenses of the executive director, or alternate board member or employee, and that county supervisors must appropriate a reasonable amount therefor. See Iowa Code § 4.1(30)(a) (2001) (“‘shall’ imposes a duty”). We note that, because the payment is to be made from the section 35B.14 appropriation, it is subject to the same requirements for review as other section 35B.14 claims. See discussion at pages 5-7, infra.

Burial expenses and the cost of maintenance of graves also appear to be mandatory obligations of the county under chapter 35B. Code section 35B.13 provides:

The commission is responsible for the internment in a suitable cemetery of the body of any veteran, . . . or the spouse, surviving spouse, or child of the person, if the person has died without leaving sufficient means to defray the funeral expenses. The commission may pay the expenses in a sum not exceeding an amount established by the board of supervisors.

Section 35B.15 indicates that “[b]urial expenses shall be paid by the county in which the person died.” Finally, section 35B.17 provides that the “county board of supervisors shall each year appropriate and pay” the owners of cemeteries in which veterans are buried “a sum sufficient to pay for the care and maintenance of the lots on which they are buried in all cases in which provision for such care is not otherwise made . . .”

We believe that section 35B.13 imposes a funding obligation. Section 35B.13 provides that a commission “is responsible for the internment in a suitable cemetery of the body of any veteran . . . or the spouse, surviving spouse, or child of the person, if the person has died without leaving sufficient means to defray the funeral expenses” and “may pay [those] expenses in a sum not exceeding an amount established by the board of supervisors.” (emphasis added). Previous opinions of this office have characterized this section as creating a mandatory benefit, which must be provided to eligible veterans. 1942 Iowa Op. Att’y Gen. 38 (“The purpose of the legislature in placing the burial expense on the county where the deceased was a resident [see Code section 35B.15] is undoubtedly to avoid any controversy that might arise as to the legal

settlement of the deceased in determining which Soldiers Relief Commission would be liable for the burial expense”); 1912 Iowa Op. Att’y Gen. 378 (“in order to be entitled to have [burial] expenses paid from the [soldiers’ relief] fund the deceased soldier must have been indigent”); see also Black’s Law Dictionary 1312 (1990) (“responsible” means liable or legally accountable or answerable).

We observe, however, that this obligation is not unlimited. Section 35B.13 expressly limits the amount which a commission may expend for burial costs to “a sum not exceeding an amount established by the board of supervisors.” In addition, we note that sections 35B.13 and 35B.15 refer to “interment” and “burial” expenses, rather than to “funeral” expenses. Under this terminology, a county board of supervisors may reasonably set the limit on this expenditure at a level sufficient to cover the cost of basic interment, excluding additional funeral costs. See Iowa Code § 35B.14 (referencing funeral expenses as a discretionary benefit for which the supervisors may appropriate funds) and § 566A.1A(9) (defining “interment”) (2001).

Similarly, section 35B.17 provides that the supervisors “shall” appropriate and pay funds for cemetery maintenance for the graves of veterans and their spouses and children, if other provisions for such maintenance are not in place. By definition, the term “shall” imposes a duty.” Iowa Code § 4.1(30)(a) (2001). Therefore, we must conclude that grave maintenance is an obligation of the county.

Two additional sections of chapter 35B delineate discretionary appropriations. Section 35B.16 provides that the “county commission of veteran affairs may furnish a suitable and appropriate metal marker for the grave of each veteran . . . who is buried within the limits of the county.” By utilizing the term “may,” the legislature has designated grave markers as a discretionary, rather than mandatory, benefit. Iowa Code § 4.1(30)(c) (“may” in statutes confers a power, unless otherwise defined). If a commission elects to provide this benefit, “expenses shall be paid from any funds raised as provided in [chapter 35B].” Iowa Code § 35B.16 (2001).

Section 35B.14 includes a much broader list of items for which county funds may be appropriated, providing:

The board of supervisors of each county may appropriate moneys for the food, clothing, shelter, utilities, medical benefits, and funeral expenses of indigent veterans, as defined in section 35.1, and their indigent spouses, surviving spouses, and minor children not over eighteen years of age, having a legal residence in the county.

The appropriation shall be expended by the joint action and control of the board of supervisors and the county commission of veteran affairs.

Under the terms of section 35B.14, the supervisors are afforded discretion in appropriating funds for listed goods and services. Iowa Code § 4.1(30)(c) (“may” in statutes confers a power, unless otherwise defined). You ask whether this discretion allows the supervisors “not to appropriate funds for one or more of the purposes identified in [this] section.” The terms of section 35B.14 do not require the appropriation of funds for the listed benefits. Therefore we conclude that the supervisors do have discretion not to appropriate funds for one or more of the listed benefits. We believe, however, that county supervisors have a responsibility to be reasonable in the exercise of this discretion through the budget approval process.

The annual budget for the veteran affairs commission is established by the board of supervisors, based upon an estimate prepared by the commission.

The commission shall meet monthly and at other times as necessary. At the monthly meeting it shall determine who are entitled to benefits and the probable amount required to be expended. The commission shall meet annually to prepare an estimated budget for all expenditures to be made in the next fiscal year and certify the budget to the board of supervisors. The board may approve or reduce the budget for valid reasons shown and entered of record and the board’s decision is final.

Iowa Code § 35B.7 (2001). As we discussed in a previous opinion, this section requires the supervisors to provide legitimate justification if they reduce the budget estimate provided by the commission.

[W]e believe the statute is straightforward: the supervisors review the commission’s budget and either approve it or reduce it for valid reasons. While the statute gives the supervisors considerable discretion regarding the budget, [they are] required to state the grounds for making any reductions to the budget, and those grounds must be “valid.”

1988 Iowa Op. Att’y Gen. 38 (#87-5-1(L)). See generally Smith v. Newell, 254 Iowa 496, 117 N.W.2d 883, 887 (1962) (county supervisors may not unreasonably refuse to approve county officer’s appointments by relying upon frivolous, trivial, minimal, arbitrary, or capricious grounds); 1986 Iowa Op. Att’y Gen. 29, 32 (“even when the supervisors are given a certain

degree of statutory approval authority over elected county officers' functions, that authority must be exercised in a limited and reasonable manner"); 1980 Iowa Op. Att'y Gen. 664, 665-66 (if county supervisors possessed unlimited authority to refuse claims submitted by another elected county officer, they might improperly interfere with or unduly hinder that officer's official duties); Black's Law Dictionary 1550 (1990) ("valid" means having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside; founded on truth of fact; capable of being justified, supported, or defended; not weak or defective; of binding force; legally sufficient or efficacious).

Further, once the budget for the commission is approved, provisions within chapter 331 limit the supervisors ability to reduce appropriations to the commission. "The board shall appropriate, by resolution, the amounts deemed necessary for each of the different county officers and departments during the ensuing fiscal year." Iowa Code § 331.434(6) (2001). Although adjustments in appropriations do not necessarily require a budget amendment, "a decrease in appropriations for a county officer or department of more than ten percent or five thousand dollars, which ever is greater, shall not be effective unless the board sets a time and place for a public hearing on the proposed decrease," and publishes notice of the hearing. Id.

You next request guidance regarding whether the Board of Supervisors is authorized to deny claims for discretionary benefits after the claims have been processed by the commission and the applicants found eligible. In presenting the question, you acknowledge that we previously discussed the issue in 1956 Iowa Op. Att'y Gen. 11, and ask whether the current section 35B.14 requirement for joint action and control of expenditures alters our opinion.

Several code sections address the claim-review process. Section 35B.7 provides that the commission, at its monthly meeting, "shall determine who are entitled to benefits and the probable amount required to be expended." Similarly, section 35B.9 provides

At each regular meeting the commission shall submit to the board of supervisors a certified list of those persons to whom benefits have been authorized and the amounts so awarded. The amount awarded to any person may be increased, decreased, or discontinued by the commission at any meeting. New names may be added and certified thereat.

Under section 35B.10, "[a]ll claims certified by the commission shall be reviewed by the board of supervisors and the county auditor shall issue warrants in payment of the claims." Finally, section 35B.14 indicates that the appropriation made thereunder "shall be expended by the joint action and control of the board of supervisors and the county commission of veteran affairs."

The 1955 opinion which you reference interpreted the statutory precursor to section 35B.10 in this manner:

... "Review" indicates re-examination of a proceeding, already concluded, for the purpose of preventing a result which appears not to be based upon the exercise of an unbiased and reasonable judgment.

* * *

[W]e are of the opinion that the power of the Board of Supervisors in review is ministerial and contemplates re-examination of the relief claims allowed by the soldiers' relief commission and certified by it to the Board of Supervisors "for the purpose of preventing a result which appears not to be based upon unbiased and reasonable judgment." However, such review must be confined to the record before it. . . . [This record consists of] the certified list of names and amounts, applications, investigation reports, and case records, and [the county supervisors] may overturn the decision of the soldiers' relief commission only if on examination of the record it can be said that the evidence clearly preponderates against the decision.

1956 Iowa Op. Att'y Gen. 114, 116. Cf. 1980 Iowa Op. Att'y Gen. 664, 665-66 (county supervisors must oversee budget to ensure that claims submitted by other elected county officials are within that official's approved budget and that those claims are for a legitimate purpose).

We reaffirmed the 1955 opinion in 1987, and found that its "conclusion is consistent with other opinions of this office regarding the supervisors' authority to review claims submitted by other county officers." 1988 Iowa Op. Att'y Gen. 38 (#87-5-1(L)); citing [1986 Iowa Op. Att'y Gen. 29] (supervisors may not disapprove claims submitted by elected county officer on ground that claim exceeds line item); and [1982 Iowa Op. Att'y Gen. 389 (#82-4-2(L))] and [1980 Iowa Op. Att'y Gen. 664] (supervisors cannot refuse claim submitted by county officer if claim is within approved budget and for a lawful purpose). We concluded that, although the supervisors must review each claim, the "supervisors approval and review is subject to a reasonableness standard." Id.

The 1955 and 1987 opinions clearly articulate the responsibility of county supervisors reviewing claims for benefits certified by county commissions. The provision of Code section 35B.14 giving the supervisors joint control over the expenditure of funds appropriated under that section, was in place at the time of the latter opinion. See Iowa Code § 250.14 (1987). Attorney General Opinions should be relied upon as law until they are overruled, revised, withdrawn,

Thomas J. Ferguson
Black Hawk County Attorney
Page 7

upset by court decision, or affected by subsequent legislation. 1986 Iowa Op. Att’y Gen. 125 (#86-11-1(L)); 1982 Iowa Op. Att’y Gen. 197, 198. We see no reason to withdraw these longstanding opinions.

Finally, you have provided a copy of the Black Hawk County ordinance addressing veterans’ benefits. As you note, the ordinance includes specific eligibility requirements and indicates the maximum level of specific types of benefits to be provided. You ask whether “this ordinance creates any further obligation for the county to provide benefits which would not otherwise exist under the code.” Generally, opinions of this office focus upon questions of state law of general significance and we decline to offer advice regarding the application of local ordinances. See 61 Iowa Admin. Code 1.5(3)(d). Therefore, we do not attempt to resolve your specific inquiry. We can, however, offer general observations regarding the authority of the board of supervisors to enact local legislation effecting veterans’ benefits.

Pursuant to home rule authority, “[a] county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.” Iowa Code § 331.301(1) (2001); see Iowa Const., art. III, § 39A. “A county may exercise its general powers subject only to limitations expressly imposed by state law.” Iowa Code § 331.301(3) (2001).

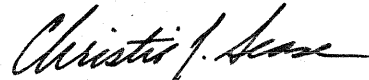
Iowa Code chapter 35B requires the formation of a county commission of veteran affairs and establishes a framework for the provision of benefits to veterans. Funding for chapter 35B benefits is provided by the county general fund. Iowa Code § 331.427(2)(h) (2001). As discussed above, terms of section 35B.14 vest the board of supervisors with discretion regarding the appropriation of funds for the veterans’ benefits enumerated in that section. We do not believe that an ordinance which affirmatively obligates the county commission to provide all or some of the benefits set forth in section 35B.14 would be “inconsistent” with the statute. See Iowa Code § 331.301(4) (2001) (“An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.”). However, to the extent that an ordinance expands the county’s obligation to provide specific veterans’ benefits, we believe that the ordinance would have the force and effect of law and the county would be bound to proceed under its terms. City of Grimes v. Polk County Board of Supervisors, 495 N.W.2d 751, 754 (Iowa 1993) (properly promulgated county ordinances are extensions of state statutes and may impose mandatory duties). If the board decided to exercise the statutory discretion not to fund some of the benefits, an amendment of the ordinance would be required.

In summary, we conclude that county commissions of veteran affairs must pay for training the executive director, or designee, and burial expenses of any indigent veteran up to the level established by the supervisors. The supervisors must provide funds for the maintenance of

Thomas J. Ferguson
Black Hawk County Attorney
Page 8

the graves of veterans and their spouses and children, if other provisions for such maintenance are not in place. Appropriations for grave markers and other allowable benefits, as delineated in Code section 35B.14, are discretionary. After funds are appropriated, county supervisors possess limited power to review certified claims for the purpose of preventing results based upon biased or unreasonable judgment; they must confine their review to the record, which consists of the certified list of names and amounts, applications, investigation reports, and case records; and they may overturn decisions of county commissions only if the evidence clearly preponderates against the decisions. A board of supervisors may, through enactment of an ordinance, obligate the county to provide veterans with services and benefits which are discretionary under chapter 35B.

Sincerely,



Christie J. Scase
Assistant Attorney General