

FINAL REPORT

**REVIEW OF CIVIL PENALTY PROCESS
INTERIM STUDY COMMITTEE**

**Presented to the Legislative Council
and the Iowa General Assembly**

March 1992

Prepared by the Legislative Service Bureau

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AUTHORIZATION AND APPOINTMENT

The Review of Civil Penalty Process Interim Study Committee was established by the Legislative Council to "review civil penalty process, including due process standards, uniformity of penalties, parameters established by Code, and equity of application." The Committee was initially authorized one meeting date, but was later authorized a second meeting by the Legislative Council for further inquiry.

Members of the Committee were:
Senator John Peterson, Co-chairperson
Representative David Hibbard, Co-chairperson
Senator Al Sturgeon
Senator Richard Vande Hoef
Representative Ron Corbett
Representative Donald Knapp

COMMITTEE PROCEEDINGS

Meeting of October 16, 1991

The Committee held its first meeting on October 16, 1991, and heard testimony from several individuals regarding the civil penalty process as it currently exists in Iowa. Several speakers also provided the Committee with proposals or recommendations for how the civil penalty administrative process could be improved.

Mr. Walter Johnson, Deputy Labor Commissioner, discussed the civil penalty process as it is employed in Occupational Safety and Health Act (OSHA) cases and other areas. Mr. Johnson also described the procedure followed in hearings before the employment appeals board. Mr. Johnson focused on the settlement process which precedes the formal contested case proceeding.

Mr. Allan Stokes, Environmental Protections Division, Department of Natural Resources discussed the imposition of civil penalties pursuant to Iowa Code Chapter 455B, relating to the Department's jurisdiction. In addition, he testified about the

procedures followed by the Department in assessing, mitigating or settling, and imposing civil penalties.

Mr. Roger Nowadsky, Des Moines City Attorney, explained the unique nature of a city's role in the civil penalty process in that cities both assess and are subject to the process. He stressed the need for the General Assembly to make statutory changes in order to obtain uniformity and proportionality in the civil penalty process.

Mr. Randall Wilson, Director, Iowa Civil Liberties Union (ICLU) stated the concern of the ICLU that civil penalties are being used to supplant traditional means of due process or criminal sanctions. He testified that the General Assembly should not enact civil statutes that are used to punish criminal actions but do not provide criminal due process protections.

Ms. Susan Seitz, Chairperson of the Administrative Law Section of the Iowa State Bar Association, offered several ideas to increase due process protections in the civil penalty system, including employing an impartial decision maker in the contested case process. She testified that it is possible to implement improved due process procedures without adverse affects to the system.

Following testimony, the Committee discussed whether it was appropriate to complete its deliberations and make recommendations at this meeting or whether additional information would be necessary. It was the consensus of the Committee that additional information would be necessary before recommendations could be made and that a second meeting date be requested from the Legislative Council.

Meeting of December 30, 1991

The second meeting of the Committee was held on December 30, 1991. Ms. Amy Christensen Couch, an attorney and former administrative law judge, described the statutory authority for implementation and the procedures for assessment and appeal of civil penalties used by the Department of Natural Resources. Ms. Couch also presented the Committee with proposals to improve the system including increasing the maximum civil penalty amount to bring more cases within the administrative process that are now only subject to the judicial process.

Mr. Lynn Feddersen, General Manager of Vander Haag's, Inc. discussed the company's experience with OSHA inspections which had been conducted on the premises and suggested that a time period be allowed in which a minor infraction could be remedied rather than imposition of a fine.

Mr. Ron Rowland, Department of Agriculture and Land Stewardship, discussed his impressions regarding the need for civil penalty authority to be

provided the Department for enforcement of the Pesticide Act. Currently, according to Mr. Rowland, the Department has only the extreme sanctions of license revocation or suspension available to enforce the Pesticide Act.

Mr. James Meehan, a consulting engineer representing the Cedar Valley Manufacturers Association, testified regarding inconsistencies in the determination of a violation under OSHA. Mr. Meehan also provided suggestions for improving the function of the civil penalty system, including adoption of certain Iowa Rules of Civil Procedure particularly the rules on adjudication of law points and summary judgment which would allow for disposition of violations which the person against which the penalties are assessed believes are meritless.

MATERIALS

The Committee was presented with and considered various materials, which are on file in the office of the Legislative Service Bureau, including the following:

1. "The Administrative Civil Penalty Process", a description of the process utilized in Iowa, by Amy Christensen Couch.
2. "I.O.S.H.A. Penalty Case Histories", a description of one individual's experiences with the Iowa OSHA, by Jim Meehan.
3. Research memorandum on the civil penalty process prepared by the Legislative Service Bureau.
4. "A Bill for An Act Providing De Novo Judicial Review of Administrative Actions Imposing Civil Monetary Penalties", a proposed review of Civil Penalty Process Study Committee bill by Co-chairperson David Hibbard.

RECOMMENDATION

The Committee discussed the testimony received at the two meetings and made the following recommendation: that the Legislative Service Bureau compile a list of proposals and recommendations made during the course of the Committee's meetings by speakers or members of the Committee to be presented to the Committee members for further consideration during the session regarding proposals for legislation. This listing is on file with the Legislative Service Bureau.