

M E M O R A N D U M

TO: ADMINISTRATION COMMITTEE OF THE LEGISLATIVE COUNCIL
FROM: LEGISLATIVE SERVICE BUREAU
RE: RESPONSE TO REQUEST FOR INFORMATION RELATING TO CONSTITUTIONAL TITLE REQUIREMENTS AND SENATE FILE 395
DATE: OCTOBER 7, 1985

Dear Administration Committee Members:

This memorandum is in response to the request for information given to the Legislative Service Bureau by Council member Representative Delwyn Stromer at the Council's meeting of September 19.

What follows is a general discussion of the requirements for titles on bills, an explanation of how these requirements may or may not affect bill titles such as the one attached to Senate File 395, and a listing of the various alternatives which may exist to the present requirements and procedures.

It is our hope that this material will respond to the concerns behind the initial request for information.

I. CONSTITUTIONAL REQUIREMENTS:

Article III, Section 29 of the Iowa Constitution reads as follows:

ACTS--ONE SUBJECT--EXPRESSED IN TITLE. SEC. 29.

Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

This provision has been interpreted as setting out two separate requirements:

1. The ONE SUBJECT RULE refers to the content of the legislation and limits it to "one subject, and matters properly connected therewith . . ."

2. The SUFFICIENCY RULE refers to the manner in which the subject of the bill is made apparent by the title and requires that it be "expressed in the title . . ."

II. JUDICIAL CONSTRUCTION:

In interpreting these two requirements of Section 29, the courts have stated that the purposes of the ONE SUBJECT RULE and the SUFFICIENCY RULE are:

1. To facilitate orderly legislative procedure.
2. To prevent "logrolling" which could result from attaching unrelated and unpopular riders to bills certain of passage.
3. To prevent surprise and fraud upon the people and legislature.

Any premise, then, to the challenging of a title under this constitutional section would be the claim that one of these purposes was not met by the legislature's failure to limit a title to one subject or adequately apprise the reader of the subject in the title. However, such a challenge is easier stated than granted. Judicial construction of these two requirements has revealed that the courts see their duty as one to view a piece of legislation, if possible, in such a way as to uphold the law and avoid declarations of unconstitutionality.

Major cases decided in this area evidence, by their holdings, this duty perception of the court. Examples provided by specific cases include:

1. "It is unimportant that an act contains matters usually contained in separate acts or more logically classifiable as pertaining to different subjects where matters are germane to the general subject."
2. "Acts are to be given construction to permit one act to embrace all matters reasonably connected with the subject expressed in the title and not utterly incongruous."
3. "This section [of the constitution] is to be liberally constructed rather than interpreted in a narrow, technical or critical manner."
4. "Where the constitutionality of a title is merely 'doubtful' or 'fairly debatable' the courts will not interfere."

In at least this area of the law, then, the courts will give the legislature a very strong "benefit of the doubt." (For a complete listing of case law on the provision, see attached Appendix "A".)

III. PRESENT TECHNIQUE:

In light of these constitutional requirements and case holdings, the legislature has adopted a general approach to the process of drafting bill titles. This process (and accompanying

recommendations and concerns) is set out in the Iowa Bill Drafting Guide. (See attached Appendix "B".) This process has served well in the past, with a very limited number of title challenges being upheld by the courts. However, there is concern that the general approach of the process may come under increasing scrutiny if the trend toward omnibus legislative bill drafts continues. Specifically of concern, is the inherent tension between the two basic requirements of ONE SUBJECT and SUFFICIENCY.

These two requirements are often at odds in drafting titles. If the drafter is too general in writing a title, the bill may be subject to a challenge as to the sufficiency of title. Conversely, a title too specifically drafted may be subject to a one subject rule objection. An increasing use of the combination of general and specific language will have to be instituted -- with close attention paid to the needs of a title in relation to both constitutional requirements.

IV. EXAMPLE IN BILL FORM -- SENATE FILE 395:

Senate File 395 was a bill that had as its premise the raising of revenues in a selective manner. The beginning title (Appendix "C") and the final title (Appendix "D") were both fairly lengthy and attempted to use the bill drafting guide technique of introducing the subject matter in broad terms ". . . state and local revenues . . ." while at the same time going on to give notice of which areas of the subject matter were being discussed in the bill.

It would seem that any general challenge to the bill's title based on ONE SUBJECT could have been raised regarding the original title as well as the final title. During last session, a title opinion of Senate File 395 was requested of the Office of the Attorney General. (A copy of that opinion is attached as Appendix "E".) Whether the title of Senate File 395 will in fact hold up to constitutional scrutiny is, in the final analysis, a decision for the court. However, in light of the judicial construction practices of the past, the opinion of Deputy Attorney General Brent Appel seems quite reasonable.

Perhaps a more pressing issue is whether or not the court will increasingly hear challenges based not specifically on ONE SUBJECT or SUFFICIENCY, but rather because they feel that the generally stated subject matter of a title is too broad to accurately apprise individuals of what the bill will be dealing with. If so, then stricter construction of a title for ONE SUBJECT and SUFFICIENCY might result.

V. BACKGROUND AND ALTERNATIVES:

Iowa's Article III, Section 29 was adopted, along with the rest of our constitution, in 1857. Almost all other states have also adopted some form of constitutional requirements for titles of

bills, while the federal government has not -- leading to numerous practices which would be repugnant to the purposes of the Iowa Constitution. Of the states which have provided constitutional requirements, the majority use similar concepts and terms to those contained in Iowa. Other states' practices do frequently differ from Iowa's in terms of whether or not the same rule exists for all bills. For example, in Iowa the constitutional provision applies across the board. In other states, however, appropriations or revenue bills are often exempted from the requirements of title or given a different set of requirements all together. (See attached Appendix "F".) When other states have adopted provisions similar to Iowa's, the majority has also followed similar case law development.

VI. ALTERNATIVES:

In anticipation of the question as to what, if any, alternatives might exist to the present practice, I would like to provide a short listing and explanation of some, but probably not all, of the options which may be open to the legislature.

1. AMENDMENT TO CONSTITUTION:

a. Making the requirements for a title more stringent than presently contained in Section 29. Perhaps the easiest avenue along these lines would be increasing the required linkage between items in a bill and the expressed subject matter of the title. For example, the present requirement allows "matters properly connected therewith." The legislature could amend that language to provide that it would require that included matters be (directly or clearly or expressly) related.

b. Exempt certain "problem" bills from the application of the provision. For instance, following the lead of some other states (see Appendix "G" as to provisions of the Oklahoma Constitution), a constitutional amendment could provide that the requirements relate to all bills except appropriations, revenue and Code editing and revision, or these types of bills could be excepted from the present provision and new requirements for them could be imposed.

c. Simply remove the provision completely, following the example of the federal Congress where little attention is paid to titles.

2. AMENDMENT TO IOWA CODE:

Legislation could be passed that would include a new provision in chapter 2 of the Code. The section could place additional restrictions on titles (or just the titles of certain types of bills). The Iowa Constitution, by court interpretation, provides only "floor requirements" below which the state cannot fall. It does not restrict the state from imposing further restrictions so long as they add to (or at least do not detract from) the basic requirements and purposes of the constitutional provision.

3. SELF-POLICING:

Adoption of formal and mandatory "in-house" rules of the Senate and House relating to the form or acceptability of titles to bills (or certain bills), which would have to be met before any final vote could be taken on the measure.

*4. TEST CASE:

Although the Iowa courts will not issue advisory opinions, an action to have the court adjudicate points of law relating to the requirements might be attempted. However, based upon a review of case law, it is doubtful whether the courts will consider a case beyond the point at which the particular action can be decided, thus probably not reaching all points of law the legislature may wish to have discussed.

* Further information concerning the particular issue of test cases, in relation to the recent case regarding item veto power of the Governor, has been requested and is attached as Appendix "H".

EXCERPTS FROM IOWA CODE ANNOTATED (SUPPLEMENT)

§ 29. Acts—one subject—expressed in title

Law Review Commentaries

Bill drafting; constitutional form. 8 Drake L.Rev. 66 (1958).

Homerule: City legislation. Sam E. Scheidler, 22 Drake L.Rev. 294, 319 (1973).

Item veto amendment to Iowa Constitution. 18 Drake L.Rev. 245 (1969).

Notes of Decisions

Aircraft 51

Tort claims 50

I. IN GENERAL

1. Construction and application

This section is to be given a liberal construction to permit one act to embrace all matters reasonably connected with subject expressed in title and not utterly incongruous thereto. *Motor Club of Iowa v. Department of Transp.*, 1978, 265 N.W.2d 151.

To comply with this section, it is sufficient if all provisions relate to one subject indicated in title and are parts of it or incidental to it or reasonably connected with it or in some reasonable sense auxiliary to subject of statute. *Id.*

Statute allowing joint ownership of electric facilities by cities, electric cooperatives, and investor-owned electric utility corporations does not violate provision of State Constitution requiring all laws to have a uniform operation. *Sampson v. City of Cedar Falls*, 1975, 231 N.W.2d 609.

This section should be given liberal construction to permit one act to embrace all matters reasonably connected with subject expressed in title and not utterly incongruous thereto. *Webster Realty Co. v. City of Fort Dodge*, 1970, 174 N.W.2d 413.

This section is to be liberally construed rather than interpreted in a narrow, technical or critical manner. *Frost v. State*, 1969, 172 N.W.2d 575.

Section 710.12, was void for violation of I.C.A. Const. Art. 3, § 29, requiring expression of subject matter in the title of the act, where title did not mention penalty, though the provision in question did not make criminal anything that was previously legal under former section, which was repealed upon enactment of the new provision. *State v. Nickelson*, 1969, 169 N.W.2d 832.

Title of act is sufficient under this section providing that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title, if all provisions relate to the one subject indicated in the title and are parts of it or incidental to it or reasonably connected with it or in some reasonable sense auxiliary to subject of the statute. *Lee Enterprises, Inc. v. Iowa State Tax Commission*, 1968, 162 N.W.2d 730.

The provision of this section that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title, should be liberally construed so as to embrace all matters reasonably connected with the title and which are not incongruous thereto or have no connection or relation therewith. *Id.*

The provision of this section that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title, was designed to prevent surprise in legislation by having matter of one nature embraced in a bill whose title expressed another. *Id.*

Provision of this section that every act embrace but one subject, and matters properly connected therewith, and that such subject be expressed in the title should be liberally construed so one act may embrace all matters reasonably connected with, and not incongruous to the subject expressed in the title. *Graham v. Worthington*, 1966, 259 Iowa 845, 146 N.W.2d 626.

Ordinarily, in matters of government or public policy, or in exercise of the police power, one legislative body cannot by its legislation bind hands of a future legislature respecting the same subject matter. *Id.*

Provision of this section that every act embrace but one subject, and matters properly connected therewith, and that such subject be expressed in the title should be liberally construed so one act may embrace all matters reasonably connected with, and not incongruous to subject expressed in title. *Long v. Board of Sup'rs of Benton County*, 1966, 258 Iowa 1278, 142 N.W.2d 378.

Provision of this section for one-subject rule was designed to prevent riders from being attached to bills that are popular and so certain of adoption that riders will secure adoption, not on their own merits, but on merits of measure to which they are attached. *Id.*

In determining whether act complies with provision of this section that every act embrace but one subject and matters properly connected therewith it is unimportant that act contains matters usually contained in separate acts or more logically classifiable as pertaining to different subjects where matters are germane to general subject. *Id.*

With respect to provision of this section that every act embrace but one subject, and matters properly connected therewith, and that subject be expressed in title, courts have duty to construct an act, if possible, in such a way as to uphold law and avoid declaration of unconstitutionality. *Id.*

Provision of this section that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in title should receive broad and liberal construction and not a narrow, technical, critical construction. *Green v. City of Mt. Pleasant*, 1965, 256 Iowa 1184, 131 N.W.2d 5.

This section must be liberally construed. *Doyle v. Kahl*, 1951, 242 Iowa 153, 46 N.W.2d 52.

This section should receive a broad and liberal construction. *Knorr v. Beardsley*, 1949, 240 Iowa 828, 38 N.W.2d 236.

House File 431, an act making appropriations to various departments and amending the election and campaign finance laws, is unconstitutional and void in its entirety because the act embraces more than one subject and matters

properly connected therewith. The fact that both subjects are expressed in the title prevents a choice between them and a severance of the void part. *Op. Atty. Gen. (Coleman), June 18, 1975.*

2. Purpose

Primary purpose of constitutional requirement that subject matter be expressed in title of act is to prevent surprise and fraud upon people and legislature. *Long v. Board of Sup'rs of Benton County, 1966, 258 Iowa 1278, 142 N.W.2d 378.*

Another purpose of constitutional provision for one-subject rule is to facilitate orderly legislative procedure. *Id.*

Primary purpose of this section for one-subject rule is to prevent logrolling in enactment of laws, practice of several minorities combining their several proposals as different provisions of single bill, and thus consolidating their votes so that majority is obtained for omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately. *Id.*

3. Requirements as to title

Question whether title of act expresses subject matter of act is to be determined on basis of title of act and is unaffected by name given code chapter or section. *State v. Bahl, 1976, 242 N.W.2d 298.*

Fact that the title of an act contains matter not of the subject of the act, does not bring it in conflict with this section. *Knorr v. Beardsley, 1949, 240 Iowa 828, 38 N.W.2d 236.*

5. — Matters connected with subject expressed

Sections of act underlying chapter authorizing joint ownership of electric facilities by cities, electric cooperatives, and investor-owned electric utility corporations embrace but one subject and matters properly connected therewith, and the title fairly expresses the subject of the act. *Sampson v. City of Cedar Falls, 1975, 231 N.W.2d 609.*

Title of interstate bridge act authorizing state highway commission to acquire, purchase and construct interstate bridges, approaches thereto and sites therefor, to reconstruct, complete, improve, repair, remodel, control, maintain, and operate interstate bridges, to establish tolls and charges for use of interstate bridges, to borrow money and issue bonds payable solely from revenues derived from operation of interstate bridges and to refund bonds payable from such revenues did not violate this section proviso that every act shall embrace but one subject expressed in title. *Frost v. State, 1969, 172 N.W.2d 575.*

This section providing that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title, should be liberally construed so one act may embrace all matters reasonably connected with the subject expressed in the title and not utterly incongruous thereto. *Lee Enterprises, Inc. v. Iowa State Tax Commission, 1968, 162 N.W.2d 730.*

This section should be construed to the end that one act may embrace all matters "reasonably connected" with the subject expressed in the title. *Widney v. Hess, 1951, 242 Iowa 342, 45 N.W.2d 233.*

The Soldiers' Bonus Act entitled an act authorizing state to become indebted in amount of \$85,000,000 and providing for issuance and sale of bonds to procure funds and pay service compensation to persons who served in armed forces between certain dates, providing for additional compensation to persons under disability, providing for tax to pay bonds, providing for application of any surplus to retirement of indebtedness created, and providing for submission of act to the people, did not violate this section. *Knorr v. Beardsley, 1949, 240 Iowa 828, 38 N.W.2d 236.*

I.C.A. § 35A.13 et seq. entitled an act relating to payment of service compensation to persons who served in armed forces as provided in the Soldiers' Bonus Act, providing manner of sale of bonds by prohibiting sale of part of the bonds and by appropriating \$50,000,000 to service compensation fund, did not violate this section. *Id.*

The title of an act need express only the subject of the act and not the matters properly connected therewith in order to comply with this section, and the inclusion of matters properly connected therewith in the title does not violate this section. *Id.*

6. — Index, title need not be

This section providing that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title does not require that title be an index or epitome of the act or its details, and the subject of the bill need not be specifically and exactly expressed in the title. *Lee Enterprises, Inc. v. Iowa State Tax Commission, 1968, 162 N.W.2d 730.*

The title to an act does not have to be an abstract, analysis, synopsis, catalogue, summary or index of the act itself but it may embrace all matters reasonably connected with subject expressed in title, and not incongruous thereto. *Doyle v. Kahl, 1951, 242 Iowa 153, 46 N.W.2d 52.*

7. — Plurality of subjects

Under single subject clauses in constitutions, an ungermane provision of an act generally renders the whole act void as the court cannot say which, if either, of the two unrelated parts of the act the legislature would have enacted had the legislature voted on the two parts separately. *Green v. City of Cascade, 1975, 231 N.W.2d 882.*

With the exception of divisions relating to housing code, home-rule act embraced only one subject and matters properly connected therewith. *Id.*

To constitute duplicity of subject within provision of this section that every act embrace but one subject and matters properly connected therewith, act must embrace two or more dissimilar and discordant subjects that by no fair intentment can be considered as having any legitimate connection with or relation to each other; there is no violation of constitutional mandate where matters treated in act fall under some one general idea and are so connected with each other, either logically or in popular understanding, as to be part of or germane to one general subject. *Long v. Board of Sup'rs of Benton County, 1966, 258 Iowa 1278, 142 N.W.2d 378.*

9. Construction of statutes as affected by title

Where, between time that home-rule act was passed with certain nongermane provisions relating to housing code and time that those provisions were to become effective, General Assembly had deleted the housing code provisions, home-rule act did not violate single subject provision of Iowa Constitution even though, as originally adopted, it did embrace more than one subject. *Green v. City of Cascade*, 1975, 231 N.W.2d 882.

10. Codes and revisions

I.C.A. § 633.49, enacted as part of an act entitled an act to revise, amend and codify the statutes in relation to the estates of decedents, comes within the broad designation given the entire act and is not violative of this section, requiring subject of an act to be expressed in title thereof, notwithstanding that statutory provision dealing with validity of foreign wills constituted new matter. *Widney v. Hess*, 1951, 242 Iowa 342, 45 N.W.2d 233.

A codification or revision does not relate to more than one subject, and a title expressing that subject is not insufficient for failure to specify each subject to which the statute, as revised, relates. *Id.*

13. Partial invalidity

Mere fact that expressed duties may modify previous duty and affect another subject matter does not require specific reference to it in proposed bill within requirement of this section that subject matter of act be expressed in title of act.

Long v. Board of Sup'rs of Benton County, 1966, 258 Iowa 1278, 142 N.W.2d 378.

Where act is single as to its objective, or seeks to obtain a single object or purpose, then if part of act is unconstitutional, such part cannot be separated from constitutional part if they are connected and dependent upon each other so that if you reject the unconstitutional part you destroy the legislative intent, then the whole act must fall. *Kruidenier v. McCulloch*, 1966, 258 Iowa 1121, 142 N.W.2d 355, certiorari denied 87 S.Ct. 79, 385 U.S. 851, 17 L.Ed.2d 80, opinion supplemented 261 Iowa 1309, 158 N.W.2d 170.

Where reason for order which suspended motorist's license and motor registration was clearly embraced in title of I.C.A. § 231A.1 et seq. even if other provisions of act were not embraced in its title, motorist could not benefit, since act states that any provisions which may be unconstitutional shall not affect the balance thereof. *Doyle v. Kahl*, 1951, 242 Iowa 153, 46 N.W.2d 52.

If permanent school fund provisions of the Soldiers' Bonus Act I.C.A. § 35A.10, is a distinct subject not expressed in the title as required by this section, such alleged fact would not render the remainder of the act invalid, since such provision is severable from remainder of the act. *Knorr v. Beardsley*, 1949, 240 Iowa 828, 38 N.W.2d 236.

14. — Invalidation of provisions not covered by title

The amendment to § 279.3, relating to the appointment of a secretary and treasurer of a school board, is unconstitutional and a separate subject matter and not expressed in the title. The remainder of the Act, including § 279.3 prior to its amendment, is constitutional, at least as this article applies to the other sections because all of said sections relates to a single subject matter: elections. *Op. Atty. Gen. (Lipsky)*, Oct. 16, 1975.

The legislature has effectively mandated the removal of children from the Annie Wittenmyer Home, Davenport, and impliedly suspended the operation of certain sections, by expressly providing for such removal and providing an inadequate appropriation in an appropriations act for that institution. *Op. Atty. Gen. (Cusack)*, June 19, 1974.

(1) Ordinarily newsboys, doctors, lawyers, dentists, plumbers, landlords, etc., would be "debt collectors" within the meaning of I.C.A. § 7.102 if they engage directly or indirectly in collecting "debts" as defined in the act for themselves, their employers or others. (2) The notification and fee payment provision of I.C.A. §§ 6.202 and 6.203 do not apply to creditors and debt collectors who were in business more than

30 days prior to July 1, 1974. On the face of it persons becoming debt collectors on or after June 1, 1974, would have to comply with the notification and fee payment. (3) However, this requirement that persons becoming debt collectors on or after June 1, 1974, must give notification and pay the fee while others previously in business are exempt is unconstitutional as arbitrary and discriminatory. Section 6.203 is unconstitutional also on the further ground that it imposes a tax which is not mentioned in the title of the Act. *Op. Atty. Gen. (Garrett)*, June 18, 1974.

II. PARTICULAR STATUTES

31. Validity of particular statutes

Title of statute which was officially described as an act relating to flight of aircraft over lands and waters of State and prohibiting operation of aircraft while under influence of intoxicating liquor or drugs or in careless or reckless manner was nearly as explicit as statute itself and expressed subject of statute. *State v. Bahl*, 1976, 242 N.W.2d 298.

Title of home-rule act clearly expressed the subject matter contained therein as required by Constitution. *Green v. City of Cascade*, 1975, 231 N.W.2d 882.

Title of statute stating that its purpose was to suppress vending of articles of indecent and immoral use was sufficiently broad to encompass articles designed or intended for preventing conception and statute did not contravene Constitution on theory that it was duplicitous and embodied more than one subject. *State v. Social Hygiene, Inc.*, 1968, 261 Iowa 914, 156 N.W.2d 288.

Korean Veterans' Bonus Law is constitutional. *Faber v. Loveless*, 1958, 249 Iowa 593, 88 N.W.2d 112.

35. Counties

I.C.A. § 340.6 providing that courthouses be kept open for transaction of business on Saturday mornings was related and germane to expressed subject of compensation of county officers, deputies and clerks and act relating to such compensation was partially not unconstitutional under this section for allegedly embracing more than one subject. *Long v. Board of Sup'rs of Benton County*, 1966, 258 Iowa 1278, 142 N.W.2d 378.

36. Courts, judges, and jurors

Acts 1984 (70 G.A.) ch. 1275, an act providing for the enforcement of certain alcoholic liquor and beer laws, is, in part, unconstitutional as a violation of Art. III, § 29 of the Iowa Constitution since § 7 of the act, as it pertains to the jurisdiction of magistrates to hear §§ 321.281

and 123.49(2)(h) violations, is not sufficiently expressed in the title *Op. Atty. Gen. (Huffman)*, Oct. 29, 1984.

10. Highways

Section of measure appropriating funds to highway commission providing that permanent resident engineers' offices shall not be relocated was not unconstitutional on theory that it would create an unconstitutional diversion of the primary road fund or for having embraced multiple subject matter in its content. *State ex rel. Turner v. Iowa State Highway Commission*, 1971, 186 N.W.2d 141.

12. Motor vehicles and motor carriers

Imposition of motor vehicle registration fee, (§ 321.109) even though it is in the nature of a tax to raise earmarked funds, is reasonably related to, connected with, or auxiliary to subject contained in title of Motor Vehicle Act to comply with constitutional provision requiring subject matter of act to be expressed in its title. *Motor Club of Iowa v. Department of Transp.*, 1978, 265 N.W.2d 151.

I.C.A. § 321A.1 et seq., which relates to giving of proof of financial responsibility and security by owners and operators of motor vehicles who have been involved in an accident resulting in personal injuries, does not violate requirements of this section, although the act allegedly provided for additional penalty for driving while intoxicated and for forfeiture of bail. *Doyle v. Kahl*, 1951, 242 Iowa 153, 46 N.W.2d 52.

Section 307.10(5) delegating to the transportation commission power to adopt rules governing the length of trucks is not unconstitutional under this article, but is within the ambit of transportation, the one subject of the Act, and the power is adequately expressed in the title. *Op. Atty. Gen. (Rigler)*, Jan. 20, 1976.

43. Municipalities

Statute authorizing joint ownership of electric facilities by cities, electric cooperatives, and investor-owned electric utility corporations is not unconstitutional on theory that it permits city to issue bonds for distant power plant which cannot be said to be within the "local affairs" of city. *Sampson v. City of Cedar Falls*, 1975, 231 N.W.2d 609.

Act [I.C.A. § 419.1 et seq.] authorizing cities and towns to acquire, construct and lease industrial buildings, authorizing issuance of revenue bonds for purpose of securing and developing industry and providing for payment of certain sums in lieu of taxes to state and political subdivisions is not invalid on ground that it embraces more than one subject and matters, land and equipment, not expressed in title. *Green v. City of Mt. Pleasant*, 1965, 256 Iowa 1134, 131 N.W.2d 5.

48. Schools and school districts

Under constitutional provision that subject of act shall be expressed in title, which is to be liberally construed, title declaring that act was "an act to provide for establishment and operation of area of vocational schools and area community colleges" created reasonable assumption that it would be necessary to issue bonds and raise taxes to support the educational activities, and it was not necessary for title to specifically include the power to tax, incur indebtedness and to issue bonds. *Stanley v. Southwestern Com-*

munity College Merged Area (Merged Area XIV), in Counties of Adair, et al., 1971, 184 N.W.2d 29

Act relating to area vocational schools and community colleges dealt with one general subject to as not to violate constitutional requirement that every act embrace but one subject. *Id.*

49. Taxation and public funds

Urban renewal law, I.C.A. § 403.1 et seq., which was titled "An Act to Provide for the Rehabilitation, Clearance, and Redevelopment of Slums and Blighted Areas in Cities and Towns" and which dealt exclusively with planning, achieving, and financing urban renewal did not run afoul constitutional requirement that every legislative act embrace but one subject and matters properly connected therewith and that subject be expressed in title. *Webster Realty Co. v. City of Fort Dodge*, 1970, 174 N.W.2d 413.

Title complies with this section providing that every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. *Lee Enterprises, Inc. v. Iowa State Tax Commission*, 1968, 162 N.W.2d 730

50. Tort claims

Political subdivisions of state such as cities, school districts and counties were neither agencies of the state nor corporations as those terms were employed and defined in Iowa Tort Claims Act (I.C.A. § 25A.1 et seq.) and such were not included within its clear intent and purpose. *Graham v. Worthington*, 1966, 259 Iowa 845, 146 N.W.2d 626.

Where Iowa Tort Claims Act expressly waived common-law governmental immunity of the state as to certain claims for torts of officers, agents or employees of the state or of any department, agency, board, bureau or commission of the state, together with certain governmental corporations, and matter of payment was logically a part of those provisions of the title of the Act conferring jurisdiction to determine certain claims, inclusion of state officers, agents or employees within body of the Act was germane to and not incongruous with general subject expressed in the Act's title. *Id.*

51. Aircraft

Statute which makes it unlawful for any person to operate aircraft while under influence of intoxicating liquor and drugs or in careless or reckless manner so as to endanger life or property of another embraces but one subject, the proscription of dangerous operation of aircraft. *State v. Bahl*, 1976, 242 N.W.2d 298.

EXCERPT FROM 1983 IOWA BILL DRAFTING GUIDE

Titles. As noted in this guide, the Constitution and statutes of Iowa require that every act shall embrace but one subject, and matters connected with it; which subject shall be expressed in the title. Furthermore bills designed to amend, revise, codify, or repeal a law must refer to the numbers of sections or chapters of the Code to be amended or repealed, but it is not necessary to refer to the section or chapter numbers in the title. The title of a bill shall contain a brief statement of the purpose of the bill, however all detail matters properly connected with the subject expressed may be omitted from the title.

The above requirements have been liberally construed by the courts, however care must be taken in writing titles to legislative bills. Generally speaking titles should be broad, while at the same time giving notice of the general subject of the bill. This will allow for the insertion in the bill of provisions which have a natural connection with the subject matter of the bill while at the same time complying with the constitutional and statutory provisions. The title should not be an index or table of contents for the bill.

A title which details the provisions of a bill invites trouble since the unconscious omission of one detail from a specific title may result in the provision being declared void. On the other hand, legislators often request that a specific title be drawn to a bill, hopefully in order to prevent amendments from being offered to the bill which are not germane to the subject matter of the bill. When such a request is made the bill drafter should be careful in writing the title.

As previously noted in this guide, it is often a good course of action to note in the title certain provisions that are contained in a bill. Thus a title may contain a general description of the contents of a bill followed by a statement that a bill contains a particular provision. The type of provision that probably deserves the most emphasis is the penalty provision. The courts of Iowa have been strict in holding that penalties must be noted within a title of a bill. Other provisions which should probably be noted are retroactive or long-delayed effective dates, the imposition of taxes, and appropriations.

Sections of the Code affected by the bill need not normally be noted in the title of the bill. It has been the practice in Iowa to omit references to sections amended in the title of the bill. If needed, a reference to the popular name or some other words descriptive of a law may be used, as in: "amending the administrative procedures Act". Examples of titles can be found in the appendix.

Avoid use of "clarifying", "correcting" and similar judgmental words which may be inaccurate. The title should be objective.

SENATE FILE 395: ORIGINAL TITLE

SENATE FILE _____

BY COMMITTEE ON WAYS AND MEANS

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to state and local revenues by providing for
 2 the private sale of wine containing more than five percent
 3 but not more than seventeen percent alcohol by weight,
 4 imposing a tax on wine to be sold, allowing cities and
 5 counties to impose certain local option taxes, exempting
 6 certain farm machinery and equipment from the state sales,
 7 services and use tax, providing for the continued phase
 8 out and repeal of all property taxes on personal property,
 9 limiting the amount of reimbursement paid to local
 10 jurisdictions for property tax exemptions allowed for
 11 certain machinery, equipment and computers which are
 12 assessed as real property, repealing the county government
 13 assistance and municipal assistance funds, and providing
 14 penalties, appropriations and effective dates.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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FINAL TITLE: SENATE FILE 395

SENATE FILE 395

AN ACT

RELATING TO STATE AND LOCAL REVENUES BY PROVIDING FOR THE PRIVATE SALE OF WINE CONTAINING MORE THAN FIVE PERCENT BUT NOT MORE THAN SEVENTEEN PERCENT ALCOHOL BY WEIGHT, IMPOSING A TAX ON WINE TO BE SOLD, ALLOWING CITIES AND COUNTIES TO IMPOSE CERTAIN LOCAL OPTION TAXES, EXEMPTING AND PROVIDING REFUNDS UNTIL THE EXEMPTION BEGINS OF THE SALE OR LEASE OF CERTAIN FARM MACHINERY AND EQUIPMENT, INCLUDING CERTAIN REPLACEMENT PARTS, AND CERTAIN INDUSTRIAL MACHINERY, EQUIPMENT AND COMPUTERS, INCLUDING CERTAIN REPLACEMENT PARTS, FROM THE STATE SALES, SERVICES AND USE TAX, PROVIDING FOR SETTING ASIDE OF REVENUES TO PAY SUCH REFUNDS AND NOT INCLUDING CERTAIN INCREASES IN REVENUES IN COMPUTING THE STATE PERCENT OF GROWTH FOR PURPOSES OF CHAPTER 442, AMENDING THE STATE SALES, SERVICES AND USE TAX TO IMPOSE THE TAX ON THE RENDERING OR FURNISHING OF ADDITIONAL SERVICES, AND ON SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY, TO ALTER CERTAIN DEFINITIONS, AND TO PROVIDE EXEMPTIONS AND LIMIT OTHERS, INCREASING THE TAX ON TOBACCO PRODUCTS AND ON CIGARETTES AND LITTLE CIGARS, IMPOSING AN INVENTORY TAX ON CIGARETTES AND LITTLE CIGARS, UNUSED TAX STAMPS AND METERED IMPRINTS AND GRANTING ONE-TIME CREDIT PURCHASE ON CIGARETTE TAX STAMPS, PROVIDING FOR THE PHASE OUT AND REPEAL OF ALL PROPERTY TAXES ON PERSONAL PROPERTY, AND PROVIDING PENALTIES, APPROPRIATIONS AND EFFECTIVE DATES, MAKING PERMANENT THE EXEMPTION FROM PROPERTY TAXATION OF CERTAIN POLLUTION CON-

(continued on next page)

TROL PROPERTY, PROVIDING FOR THE SPECIAL VALUATION OF CERTAIN MACHINERY, EQUIPMENT AND COMPUTERS ACQUIRED AFTER A CERTAIN DATE AND LIMITING THE APPLICABILITY OF THE PRESENT SPECIAL VALUATION TO THAT PROPERTY ACQUIRED BEFORE A CERTAIN DATE, AMENDING THE LOTTERY LAW TO PROVIDE FOR FIFTY PERCENT OF THE PROJECTED ANNUAL REVENUE FROM THE SALES OF LOTTERY TICKETS OR SHARES BE USED FOR PAYMENT OF PRIZES, AND IMPOSING THE STATE SALES, SERVICES AND USE TAX ON THE SALES OF LOTTERY TICKETS AND SHARES, ELIMINATING THE PROHIBITION ON THE MANUFACTURE OF ELECTRONIC AND COMPUTERIZED GAMBLING DEVICES, PROVIDING A NEW JOBS TAX CREDIT FOR COMPUTING THE INDIVIDUAL AND CORPORATE TAX LIABILITIES OF CERTAIN BUSINESSES THAT CREATE NEW JOBS WITHIN THE STATE, PROVIDING THAT FOR PURPOSES OF PROPERTY TAXATION THE TERM "COMPUTER" DOES NOT INCLUDE POINT OF SALES EQUIPMENT AND PROVIDING PENALTIES AND APPROPRIATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

GENERAL ASSEMBLY: STATUTES: Subject Matter. Art. III, § 29, Constitution of Iowa, Senate File 395, 71st G.A. (1985). Senate File 395, an act related to state and local revenues, may contain provisions concerning local option taxes and wine sale without violating Article III, § 29. (Appel to Miller, State Representative, and Taylor, Ritsema, and Vande Hoef, State Senators, 5/1/85) #85-5-1

May 1, 1985

The Honorable Thomas H. Miller
State Representative
State Capitol
L O C A L

The Honorable Ray Taylor
The Honorable Douglas Ritsema
The Honorable Richard Vande Hoef
State Senators
State Capitol
L O C A L

Dear Gentlemen:

We are in receipt of your request for an opinion regarding the constitutionality of various provisions of S.F. 395, a recently enacted measure generally relating to state and local revenue matters. Specifically, you ask whether inclusion in the bill of provisions establishing a dual system of wine sales and providing for local option taxes violates Article III, section 29, of the Iowa Constitution. Article III, section 29 requires that all provisions in any bill passed by the General Assembly relate to one subject. In our view, the inclusion of both the wine sales and local option tax provisions in the revenue measure meets the minimum requirements of Article III, § 29.

Honorable Thomas H. Miller
 Honorable Ray Taylor
 Honorable Douglas Ritsema
 Honorable Richard Vande Hoef
 Page 2

I.

The legal environment established by Article III, § 29 is not demanding. A party attacking an Act of the legislature on constitutional grounds must overcome a strong presumption of constitutionality. When faced with a constitutional challenge, a court will seek to uphold the statute from constitutional attack. Keasling v. Thompson, 217 N.W.2d 687, 689 (Iowa 1974). A court will hold a statute unconstitutional only where there is literally no constitutionally adequate approach or interpretation. Id. See also Hearth Corporation v. C-B-R Development Company, Inc., 210 N.W.2d 632, 636-7 (Iowa 1973); State v. Vick, 205 N.W.2d 727, 729 (Iowa 1973).

In addition, the courts traditionally have been reluctant to void legislation on grounds that the General Assembly violated constitutional provisions which structure the legislative process. See e.g., Sampson v. City of Cedar Falls, 231 N.W.2d 609 (Iowa 1975) (provision authorizing joint public-private ownership of utilities related to bill concerning municipal utilities); State ex rel Turner v. Iowa State Highway Comm., 186 N.W.2d 141 (Iowa 1971) (relocating resident engineer offices sufficiently related to highway funding); Webster Realty Co. v. City of Fort Dodge, 174 N.W.2d 413 (Iowa 1970) (various urban renewal provisions embrace one subject). As one author of an exhaustive survey of "one subject" rule cases has observed:

The most remarkable fact that emerges from the investigation is that, while the rule has been invoked in hundreds of cases, in only a handful of cases have the courts held an act to embrace more than one subject.

Rudd, No Law Shall Embrace More Than One Subject, 42 Minn.L.Rev. 389, 477 (1958).

It thus appears that a reviewing court, while always seeking to uphold statutes from constitutional attack, will be especially differential to the legislature when it considers "one subject" rule challenges. Primary responsibility for enforcement of the constitutional values embodied in Article III, § 29 rests with the legislature, whose members are sworn to uphold the constitution. See 1980 Op.Att'yGen. 5, 8-9 (Shantz to Rush).

Honorable Thomas H. Miller
Honorable Ray Taylor
Honorable Douglas Ritsema
Honorable Richard Vande Hoef
Page 3

II.

Constitutional analysis of legislation challenged under the "one subject" rule is a two step process. First, the subject of the bill must be determined. Second, the relationship between the challenged provisions and the subject must be examined to determine whether the connection is sufficient to meet minimal constitutional requirements.

In an opinion published in 1979, we considered the question of whether inclusion of usury provisions in a bill authorizing credit unions to provide share drafts was constitutional. 80 Op.Att'yGen. 5 (Shantz to Rush). We sustained the constitutionality of the legislation, noting that usury and share drafts were both related to the broad subject of "commerce." The 1979 opinion stands for the proposition that the subject of a bill may be broadly characterized in order to arrive at an interpretation that removes any potential "one subject" defect.

We today reaffirm the expansive approach to subject definition. Applying the established analysis to S.F. 395, we believe the subject may be broadly characterized as "state and local revenues." Indeed, the bill itself is entitled "An act relating to state and local revenues. . . ." See S.F. 395 (Committee on Ways and Means) at 1..

The next question is whether the wine sales and local option tax provisions are sufficiently related to the broad general subject of "state and local revenues" to satisfy Article III, § 29. In reviewing the relationship, the Iowa Supreme Court has held that bills must be upheld from "one subject" challenge unless the provisions through "no fair intendment can be considered as having any legitimate connection or relation to each other (emphasis supplied)." Long v. Supervisors of Benton County, 142 N.W.2d 378, 381 (1966). Where the constitutionality is merely "doubtful" or "fairly debatable," the courts will not interfere. Id.

Using the extremely differential Long standards, we believe it is clear that the local option tax provision would survive a constitutional attack under Article III, § 29. Beyond question, a local option tax authorization has at least a "fairly debatable" relationship to the subject of state and local revenues.

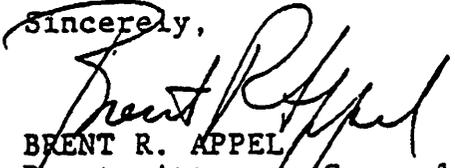
The question whether the wine sales provisions have a constitutionally sufficient relationship to the subject of state

Honorable Thomas H. Miller
Honorable Ray Taylor
Honorable Douglas Ritsema
Honorable Richard Vande Hoef
Page 4

and local revenues is more difficult. However, the issue is whether the wine sales provisions have any conceivable relationship to the general subject. We think it does. While the precise fiscal effect of the new wine sales and tax policies is not clear, the new provision will have some impact, for better or worse, on state revenues. Therefore, the provisions of S.F. 395 which allow taxable wine sales at private outlets has a connection with the general subject of "state and local revenue."

III.

We do not suggest that the legislative process might not have more closely approached the constitutional ideal if S.F. 395 were divided into two or more separate bills. As we have stated in our 1979 opinion, the courts, for sound institutional reasons, have not insisted on the ideal in reviewing challenges under Article III, § 29. See 80 Op.Att'yGen. at 8. Rather, the courts have indicated that they can police only a minimum standard, a low floor beneath which combinations of subjects are so alien that their marriage in a single bill will not be tolerated. Id. In our opinion, S.F. 395 meets the minimum constitutional requirement that the courts would be willing to impose on the coordinate branch of government.

Sincerely,

BRENT R. APPEL
Deputy Attorney General

BRA/cjc

CONSTITUTIONAL "ONE SUBJECT"
PROVISIONS

CONSTITUTIONAL ONE-SUBJECT PROVISIONS										
CONCERNING LAWS GENERALLY					CONCERNING APPROPRIATION ACTS					
States	Citation	Date of Adoption	Limits Act to One	Laws Excepted:	Citation	Date of Adoption	Contents of General Appropriations Act	Other Appropriations Acts Limited to	Other Provisions	
Alabama	Art. IV Sec. 45	1865	Subject	General Appropriation Bills, General Revenue Bills and Bills Adopting a Code, Digest or Revision of Statutes	Art. IV Sec. 71	1875	Specified	One Subject	Prior General Law Must Authorize Position and Salary	
Arizona	Art. IV pt. 2 Sec. 13	1912	Subject	None	Art. IV pt. 2 Sec. 20	1910	Specified	One Subject		
Arkansas	None*		Subject		Art. V Sec. 30	1874	Specified	One Subject		
California	Art. IV Sec. 24	1849		None	Art. IV Sec. 34	1849 (1922)*	Specified (Budget Bill)	One Item for a single purpose	Except emergency, Budget Bill must be acted upon first	
Colorado	Art. V Sec. 21	1876	Subject	General Appropriation Bills	Art. V Sec. 32	1876	Specified	One Subject		
Connecticut	None				None					
Delaware	Art. II Sec. 16	1897	Subject	Bills Appropriating Money for Public Purposes	None					
Florida	Art. III Sec. 16	1868	Subject	None	Art. III Sec. 30	1886			Laws appropriating salaries of certain officers may contain no other subject	
Georgia	Art. III Sec. VII Par. VIII	1877	Subject	None	Art. III Sec. VII Par. IX	1877	Specified	One Subject		
Idaho	Art. III Sec. 16	1890	Subject	None	None					
Illinois	Art. IV Sec. 18	1870	Subject	None	Art. IV Sec. 16	1848			Laws appropriating salaries of certain officers may contain no other subject	
Indiana	Art. IV Sec. 19	1851	Subject	None	None					
Iowa	Art. III Sec. 29	1857	Subject	None	None					
Kansas	Art. II Sec. 16	1859	Subject	None	None					
Kentucky	Sec. 61	1891	Subject	None	None					
Louisiana	Art. III Sec. 16	1845	Object	None	None					
Maine	None				None					
Maryland	Art. III Sec. 29	1867	Subject	None	None					
Massachusetts	None				None					
Michigan	Art. V Sec. 21	1850	Object	None	None					
Minnesota	Art. IV Sec. 27	1857	Subject	None	None					
Mississippi	None				Art. IV Sec. 69	1890	Specified	One Subject		
Missouri	Art. III Sec. 23	1875	Subject	Bills Enacted Under Third Exception of Art. III, Sec. 37 (Limitation on State Debts and Bond Issues) and general appropriation bills	None					
Montana	Art. V Sec. 23	1889	Subject	General Appropriation Bills and Bills for Codification and Revision of the Laws	Art. V Sec. 38	1889	Specified	One Subject		
Nebraska	Art. III Sec. 14	1875	Subject	None	Art. III Sec. 22	1876			Laws appropriating salaries of certain officers may contain no other subject	
Nevada	Art. IV Sec. 17	1864	Subject	None	None					
New Hampshire	None				None					
New Jersey	Art. IV Sec. 7 Par. 4	1844	Object	Laws Enacted to Compile, Consolidate, Revise, or Rearrange Statutory Law	None					
New Mexico	Art. IV Sec. 16	1911		General Appropriations Bills and Bills for Codification or Revision of Laws	Art. IV Sec. 16	1911	Specified	One Subject		
New York	Art. III Sec. 15	1846	Subject	General Laws (Provision Applies Only to Private and Local Bills)	None					
North Carolina	None				None					

North Dakota	Art. II Sec. 61	1889	Subject	None	Art. II Sec. 62	1889	Specified	One Subject	
Ohio	Art. II Sec. 16		Subject	None	None				
Oklahoma	Art. V Sec. 57	1907	Subject	General Appropriations Bills; General Revenue Bills; & Bills Adopting a Code, Digest or Revision of Statutes	Art. V Sec. 56	1907	Specified	One Subject	Various Salaries Cannot be Increased in General Appropriation Bill
Oregon	Art. IV Sec. 20	1859	Subject	None	None				
Pennsylvania	Art. III Sec. 3	1874	Subject	General Appropriation Bills	Art. III Sec. 15	1874	Specified	One Subject	
Rhode Island	None				None				
South Carolina	Art. III Sec. 17	1868	Subject	None	None				
South Dakota	Art. III Sec. 21	1889	Subject	None	Art. XII Sec. 2	1889	Specified	One Subject	
Tennessee	Art. II Sec. 17	1870	Subject	None	None				
Texas	Art. III Sec. 35	1846	Subject	General Appropriation Bills	None				
Utah	Art. VI Sec. 23	1895	Subject	General Appropriation Laws and Bills for Codification and General Revision of Laws	None				
Vermont	None				None				
Virginia	Art. IV Sec. 52	1902	Object	None	None				
Washington	Art. II Sec. 19	1889	Subject	None	None				
West Virginia	Art. VI Sec. 30	1872	Object	None	Art. VI Sec. 51 (c)	1872 (1917) ¹	Specified	A Single work object or purpose	Budget Bill prepared by Board must be acted upon first
Wisconsin	Art. IV Sec. 18	1848	Subject	General Bills (Provision Applies Only to Private or Local Bills)	None				
Wyoming	Art. III Sec. 24	1890	Subject	General Appropriation Bills and Bills for the Codification and General Revision of Laws	Art. III Sec. 34	1890	Specified	One Subject	

¹Adopted a general one-subject provision in 1868, but has since repealed it.

²Substantially revised during this year.

APPLICABLE STATUTORY PROVISIONS OF
OKLAHOMA.**§ 56. General appropriation bills—Salaries—Separate appropriation bills**

The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative, and judicial departments of the State, and for interest on the public debt. The salary of no officer or employee of the State, or any subdivision thereof, shall be increased in such bill, nor shall any appropriation be made therein for any such officer or employee, unless his employment and the amount of his salary, shall have been already provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

§ 57. Subjects and titles—Revival or amendment by reference—Extent of invalidity

Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length: Provided, That if any subject be embraced in any act contrary to the provisions of this section, such act shall be void only as to so much of the law as may not be expressed in the title thereof.

PENDING "ITEM VETO" CHALLENGE TO SENATE FILE 570 (Law No. CL 062 36310)

Plaintiffs

Defendant

State Senators-Junkins
Hutchins
Welsh

Governor Terry E. Branstad

State Representatives- Avenson
Arnold
Connors
Welden

GENERAL BASIS OF CLAIM:

Art III, section 16 of the Iowa Constitution provides Governor with the power to disapprove any item of an appropriations bill (item veto). The 71st General Assembly passed Senate File 570, section 27 of which was subsequently disapproved by the Governor as an "item veto". Plaintiff's allege:

1. Senate file 570 was not an appropriations bill nor was section 27 an "item" within the contemplation of item veto power.

2. Exercise of this item veto exceeded authority of Governor and is null and void.

3. Declaratory judgment should be entered declaring action of no effect and declaring that Senate File 570 as passed, enrolled and presented to the Governor is the law of the state.

GENERAL BASIS OF DEFENSE:

Art. III, section 16 provides Governor with Item Veto power, and this power was exercised correctly by the Governor:

1. Because the title, form, rules and procedures by which Senate File 570 was passed evidence that the bill is an appropriations bill.

2. Such item veto powers of the Governor are correctly exercisable to restore an otherwise unconstitutional bill to a constitutional form. (Reform of contents to conform to title).

STATUS OF CASE:

1. Complaint filed. (Plain.)
2. Answer filed. (Def.)
3. Request for admissions made. (Def.)
4. Reply to request for admissions filed. (Plain.)
5. Objection to reply filed. (Def.)
6. Motion to intervene sought. (8 judges of Iowa District Court)
7. Hearing held on Motion to Intervene. (Court)