Iowa General Assembly

2015 Legal Updates

Legislative Services Agency – Legal Services Division http://publications.iowa.gov/18995/1/Taylor%2015-1-1.pdf

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

DESIGNATION OF COUNTY SEATS - COUNTY HOME RULE

Iowa Attorney General Opinion
January 16, 2015

Letter to State Senator Rich Taylor (District 42)

2015 Op. Atty. Gen — (#15-1-1)

http://publications.iowa.gov/18995/1/Taylor%2015-1-1.pdf

Factual Background. Iowa's Lee County was established in 1836 by an act of the Wisconsin Territorial Legislature; that same act established the city of Madison as the site for the Lee County District Court. After Iowa was admitted into the Union, the First Iowa Legislature passed a special law in 1848 (1848 Special Law) requiring Lee County to hold district court in both Fort Madison and Keokuk, and to maintain clerk of court and sheriff's offices at both locations. The 1848 Special Law also required that either the sheriff or sheriff's deputy reside in each city and that either the clerk of court or clerk's deputy reside in each city. The 1848 Special Law did not specifically provide for the designation of county seats.

Legal Background. Iowa provides that a county seat is the place designated for doing county business, erecting public buildings, holding court, and locating county offices. Iowa statutory law also specifically sets county seats as the locations of other governmental activities and requires that a county board of supervisors provide offices to county officials at the county seat.

In 1978, the Iowa Constitution was amended to provide counties with home rule authority, in all areas other than taxation, to "determine their local affairs and government" if not inconsistent with state law. From 1860 to 1981, Iowa law provided a statutory process for the relocation of county seats by petition and election. Iowa Code chapter 353, which regulated the process for the relocation of county seats, was repealed in 1981. Since repeal of that Iowa Code chapter, Iowa has not statutorily regulated the relocation or designation of county seats.

Issues. Whether current Iowa law permits the Lee County Board of Supervisors to eliminate the county seat designation for one of that county's two county seats.

Conclusion. The Attorney General Opinion (Opinion) concluded that the Lee County Board of Supervisors may eliminate the county seat designation for one of the county's two county seats under Lee County's home rule authority. The Opinion also concluded, however, that Iowa law requires the county to maintain district courts, clerk of court offices, and sheriff's offices at both Fort Madison and Keokuk.

Analysis. The Opinion engaged in a constitutional and statutory analysis in concluding that the Lee County Board of Supervisors may act independently under its county home rule authority to eliminate the county seat designation for one of the county's two county seats. In arriving at this conclusion, the Opinion analyzed three different categories of legal preemption that would prevent a county from legally utilizing its authority under county home rule authority in Iowa.

First, the Opinion addressed the issue of express preemption under county home rule authority. Express preemption occurs when a statute expressly prohibits county or city regulation within a particular area of law. The Opinion

concluded that there is no statutory language in Iowa law that expressly limits the power of Lee County from designating its county seat.

Second, the Opinion addressed the issue of implied field preemption under county home rule authority, which occurs when a statute is of such comprehensive breadth as to reveal a state's clear intent to occupy the field in a particular area of regulation. The Opinion concluded that the 1848 Special Law is limited in scope and applies only to the operation of courts within Lee County, and relies on similar acts of the Legislature and court decisions to support this narrow interpretation of the 1848 Special Law.

Third, the Opinion addressed the issue of implied conflict preemption under county home rule authority. Implied conflict preemption occurs when a city or county action conflicts irreconcilably with a state statute. The Opinion addressed potential areas of conflict that might arise if Lee County were to adopt an ordinance to remove the county seat designation for one of its two county seats. The Opinion stated that "if Lee County passed an ordinance merely ending the designation of one of these cities as a county seat, the ordinance would not cause a direct conflict" with the 1848 Special Law which required Lee County to hold district court in both Fort Madison and Keokuk. The Opinion further noted that the Attorney General's Office has been "unable to find other statutes that would be irreconcilably inconsistent with an ordinance revoking designation of one of the current county seat designations in Lee County." The Opinion premised this conclusion, however, on the understanding that Lee County would not seek to close the district courts, clerk of court offices, or discontinue sheriff services to the district court in either Fort Madison or Keokuk, as such an action would cause a direct, irreconcilable conflict with the 1848 Special Law.

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