

**REPORT OF THE FISCAL COMMITTEE TO THE
LEGISLATIVE COUNCIL**

July 17, 1991

The Fiscal Committee met on Wednesday, July 17, 1991, and took the following action:

- The Committee recommended that no visitation meetings be conducted during the 1991 interim. The Committee suggested if visitation committee members want to hold these meetings, they can do so at their own expense.
- The Committee directed the Legislative Fiscal Bureau to prepare background information on the machinery and equipment tax program.

The Committee received information regarding the following issues:

- Department of Human Services Field Office Restructuring Plan.
- Tax and Revenue Anticipation Notes.
- FY 1991 ending balance.
- Governor's 3.25 % across-the-board reduction.
- Governor's FTE reduction plan to fund salary increases.
- Department of General Services computer upgrade.
- Department of Public Safety academy program.
- Department of Personnel hiring of former director.

Respectfully submitted,

Senator Leonard Boswell
Co-chairperson :

Representative Tom Jochum
Co-chairperson

**REPORT OF THE SERVICE COMMITTEE
TO THE LEGISLATIVE COUNCIL**

July 18, 1991

The Service Committee of the Legislative Council met on July 18, 1991. The meeting was called to order by Senator Joseph Welsh, Chairperson, at 10:40 a.m. in Room 22 of the State House, Des Moines, Iowa.

The Service Committee respectfully submits to the Legislative Council the following report and recommendations:

1. The Service Committee received and filed information from the Subcommittee on Legislative Agency Staff Classifications relating to requested changes in classifications for certain positions within the Office of Citizens' Aide. The Service Committee approved the following recommendations of the Subcommittee: 1. To approve the revision of the Assistant I and Assistant II positions job descriptions within the Office of Citizens' Aide/Ombudsman; and 2. To defer action on the request of the Citizen Aide/Ombudsman regarding position classification changes and to ask that a meeting be scheduled for the consideration of all central and caucus staffs' reclassification requests for approval by the appropriate body as required pursuant to the Pay Resolutions of the House and Senate and the Legislative Council. The Service Committee scheduled its October meeting date for this purpose.
2. The Service Committee received a progress report on the mainframe computer installation.
3. The Service Committee received and filed a report of the Computer User Policy Direction Committee.
4. The Service Committee received and filed a personnel report from the Citizens' Aide/Ombudsman. The Service Committee deferred and placed on file for further consideration the request for approval of a position reclassification for Ms. Judith Milosevich Stageberg to the position of Assistant II.
5. The Service Committee received and filed a personnel report from the Legislative Service Bureau. The Service Committee recommends that Bridget McNerney be classified as Acting Executive Administrator, Grade 23, Step 1 while Ms. Miklus continues her medical treatments.
6. The Service Committee recommends that prior approval by the appropriate authority of the respective house be required for out-of-state travel by a member of a statutory committee.

7. The Service Committee requested that representatives of the central staff agencies evaluate spending for services provided by the Department of General Services including telephone service, postage, and janitorial services and make recommendations as to whether spending reductions might be realized through the utilization of private services. A report of the findings of the evaluation will be reported to the Service Committee at its September meeting.
8. The Service Committee will tour the central staff agencies at its September meeting.
9. The Service Committee approved a request to evaluate the effects of providing a merit step increase to persons who successfully complete their probationary periods of employment.

Respectfully submitted,
SENATOR JOSEPH J. WELSH
Chairperson

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**REPORT OF THE STUDIES COMMITTEE
TO THE LEGISLATIVE COUNCIL**

July 18, 1991

The Studies Committee of the Legislative Council met on July 18, 1991, and makes the following recommendations:

1. That the attached listing of proposed interim study committee actions be approved as submitted.
2. That the legislative leadership be authorized to appoint members to the additional studies, to the Nursing Home Regulation Review Task Force, and to the Indigent Defense Advisory Commission on behalf of the Legislative Council.
3. That Mr. Rick Keith, Iowa Grain and Feed Association (IGFA), be appointed to the Quality Grains Advisory Committee, to replace Mr. Fred Tomlinson who previously represented IGFA.

Respectfully submitted,

**SENATOR BILL HUTCHINS
CHAIRPERSON**

RPTSTUD

Proposed Studies Committee Actions

1. Expand the membership of the *Environmental, Recreational and Economic Development of Iowa's Rivers and Lakes* interim study committee from 2 legislators from each chamber to 3 legislators from each chamber.

2. Change the final sentence of the *Tax Fairness and Equity* interim study committee charge to read as follows:

"The committee will forward a recommendation for a consultant to the Studies Committee by October 1, 1991, shall submit preliminary recommendations to the Legislative Council by September 1, 1992, and shall submit their final recommendations to the Legislative Council by December 1, 1992."

3. Establish the following additional 1991 legislative interim study committees:

Infant Mortality in Iowa

5/5

2 days

Charge: Review historical trends in Iowa's infant mortality rates to identify the extent of the problem on a statewide basis. Identify areas in the state with the greatest incidence of infant mortality, and research relationship between families in poverty and infant health complications. Identify factors which lead to impoverished families, and research access to health care services. Survey and review the current structure of services provided to pregnant women in Iowa health care facilities, and solicit information on the level of existing prenatal services. Recommend changes in Iowa's health care system which would lower Iowa's infant mortality rate.

Curtailling Youth and Gang Violence

5/5

2 days

Charge: Solicit testimony from communities experiencing problems with violent gangs and youths, and review actions which other states and communities have taken to curtail juvenile violence. Recommend cooperative efforts that local communities and the state can take to reduce youth and gang crimes.

Centralized Communication Between Excavators and Pipeline Operators

5/5

1 day

Charge: Examine the feasibility of adopting a statewide one-call notification system to provide a communication link between excavators and operators of pipelines to reduce the incidence of excavation damage to hazardous liquid pipelines and other underground equipment. Examine state options in the development, implementation, and oversight of a system which would comply with relevant federal mandates.

GENERAL ASSEMBLY OF IOWA

LEGAL AND COMMITTEE SERVICES DIVISION

JOHN C. POLLAK, ADMINISTRATOR

LEGAL COUNSELS

DOUGLAS L. ADKISSON

AIDA AUDEH

MARY M. CARR

JULIE A. SMITH CRAGGS

SUSAN E. CROWLEY

MICHAEL J. GOEDERT

MARK W. JOHNSON

GARY L. KAUFMAN

MICHAEL A. KUEHN

LESLIE E. WORKMAN

RESEARCH ANALYSTS

PATRICIA A. FUNARO

KATHLEEN B. HANLON

THANE R. JOHNSON



LEGISLATIVE SERVICE BUREAU

STATE CAPITOL BUILDING

DES MOINES, IOWA 50319

(515) 281-3566

FAX (515) 281-8027

DIANE E. BOLENDER, *DIRECTOR*

RICHARD L. JOHNSON, *DEPUTY DIRECTOR*

ADMINISTRATIVE CODE DIVISION

LUCAS BUILDING (515) 281-5285

PHYLLIS V. BARRY

ADMINISTRATIVE CODE EDITOR

LEGISLATIVE INFORMATION OFFICE

CAPITOL BUILDING (515)-281-5129

JULIE E. E. LIVERS

DIRECTOR

IOWA CODE DIVISION

LUCAS BUILDING (515) 281-5285

JoANN G. BROWN

IOWA CODE EDITOR

JANET L. WILSON

DEPUTY IOWA CODE EDITOR

July 18, 1991

TO: SENATOR DONALD V. DOYLE

FROM: Mark W. Johnson *mwj*

RE: Court Rule Change

1. Motion and Proceedings -- Iowa Rule of Civil Procedure 237(c) and 238.
Filed: 7-15-91 Received: 7-17-91

Provides that a motion for summary judgment must be filed no later than 45 days prior to the date the case is set for trial unless otherwise ordered by the court. Currently, the motion may be filed at any time up to 10 days prior to the date the case is set for hearing.

Also provides that any party resisting the motion must file the resistance, and any affidavits supporting the resistance, within 10 days from the date that the motion for summary judgment is served on the party resisting. Hearing on the motion is to be no earlier than 20 days after the motion is filed unless otherwise ordered by the court.

A conforming change is made in rule 238.

FILED

JUL 15 1991

CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF A CHANGE)
IN THE IOWA RULES OF)
CIVIL PROCEDURE)

REPORT OF THE
SUPREME COURT

TO: MS. DIANE BOLENDER, SECRETARY OF THE
LEGISLATIVE COUNCIL OF THE STATE OF IOWA.

Pursuant to Iowa Code sections 602.4201 and 602.4202,
the Supreme Court of Iowa has prescribed and hereby reports
on this date to the Secretary of the Legislative Council
concerning amendments to Iowa Rules of Civil Procedure 237
and 238 as shown in the attached Exhibits "A" and "B".

Pursuant to Iowa Code section 602.4202(2), these
changes are to take effect January 2, 1992.

Respectfully submitted,

THE SUPREME COURT OF IOWA

By Arthur A. McGiverin
Arthur A. McGiverin, Chief Justice

Des Moines, Iowa

July 15, 1991

ACKNOWLEDGMENT

I, the undersigned, Secretary of the Legislative
Council hereby acknowledge delivery to me on the 18th day
of July, 1991, the Report of the Supreme Court
pertaining to the Iowa Rules of Civil Procedure.

Diane E. Bolender
Secretary of the Legislative Council

EXHIBIT "A"

(D) Summary judgments

237. On what claims. Summary judgment may be had under the following conditions and circumstances:

* * * *

c. Motion and proceedings thereon. The motion shall be filed at least ten days before the time fixed for the hearing not less than forty-five days prior to the date the case is set for trial, unless otherwise ordered by the court. The adverse party prior to the day of hearing may file opposing affidavits. Any party resisting the motion shall file within ten days from the time when a copy of the motion has been served a resistance; statement of disputed facts, if any; and memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. Notwithstanding the provisions of R.C.P. 117, the time fixed for hearing or nonoral submission shall be not less than twenty days after the filing of the motion, unless a shorter time is ordered by the court. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. If summary judgment is rendered on the entire case, R.C.P. 179"b" shall apply.

* * * *

EXHIBIT "B"

238. Procedure. Motions and affidavits relating to any claim under R.C.P. 237 shall be filed and copies delivered as provided in R.C.P. 82 and hearing shall be had thereon as provided in R.C.P. 117.

GENERAL ASSEMBLY OF IOWA

LEGAL AND COMMITTEE
SERVICES DIVISION

JOHN D. POLLEK, ADMINISTRATOR

LEGAL COUNSELS

DOUGLAS L. FORBESON

ADA ALDER

MARY M. GARR

JULIE A. SMITH DRAGGS

SUSAN E. FROWLEY

MICHAEL J. BOEDERT

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THANE R. JOHNSON



LEGISLATIVE SERVICE BUREAU

STATE CAPITOL BUILDING

DES MOINES, IOWA 50319

515/281-3566

FAX 515/281-8027

DIANE E. BOLENDER, DIRECTOR

RICHARD L. JOHNSON, DEPUTY DIRECTOR

ADMINISTRATIVE CODE DIVISION

LUCAS BUILDING 515/281-5285

PHYLLIS J. BARRY

ADMINISTRATIVE CODE EDITOR

LEGISLATIVE INFORMATION

OFFICE

CAPITOL BUILDING 515/281-5139

JULIE E. LEWERS

DIRECTOR

IOWA CODE DIVISION

LUCAS BUILDING 515/281-5285

USANN B. BROWN

IOWA CODE EDITOR

JANET L. WILSON

DEPUTY IOWA CODE EDITOR

July 5, 1991

TO: LEGISLATIVE COUNCIL
FROM: DOUG ADKISSON,
LEGISLATIVE SERVICE BUREAU (1-3884)
RE: STANDING OF LEGISLATIVE COUNCIL TO SUPPORT AN
ACTION AS A PLAINTIFF PARTY

I. INTRODUCTION

The Legislative Service Bureau may accept from members of the General Assembly legal research requests which do not require the application of legal standards to a particular fact pattern. This policy is intended to allow the Legislative Service Bureau to investigate an area of law and to arrive at general findings. However, the Legislative Service Bureau is prevented from stating conclusions relating to the legality of any particular behavior or set of circumstances. All legal research is reviewed by a staff attorney licensed to practice law in Iowa.

II. ISSUE

The issue presented for analysis is stated as follows:
To what extent may the Legislative Council seek a judicial remedy by serving as a plaintiff party alleging that a public official is acting in an ultra vires manner?

III. ANSWER

The ability of the Legislative Council to become a party in a lawsuit against a public official turns on a procedural requirement known as *standing* (or *standing to sue*) which relates to a court's jurisdiction to decide a case without concern for the ultimate merits of a claim involved in the case. An inquiry regarding the standing of the Legislative Council must start with an analysis of the nature of the controversy subject to litigation. The Council must demonstrate that the wrong in question has produced a "legally cognizable injury." A mere interest in the outcome of a case is insufficient. This reflects a traditional view that a party has standing to raise issues affecting the public interest only when the party's own personal rights are affected. In Iowa it appears that the rights of a public entity are wholly vested within its statutory corpus. Therefore, to meet the standing requirement, the Legislative Council would in all likelihood be required to establish that the alleged wrong affects a statutory right or power of the Council which provides the Council justification to bring the lawsuit.

IV. DISCUSSION

A. Rational

Standing is strictly a procedural issue. The court makes its determination without regard to the merits of a party's claim. Standing (or *standing to sue*) is an old judicial doctrine which is also expressed in modern legal requirements. For example, Rule 2 of the Iowa Rules of Civil Procedure provides that every action must be prosecuted in the name of the "real party in interest." A purpose of the real party in interest requirement is to expedite litigation by protecting the adverse party from subsequent claims of third parties. The provision protects a defendant against a subsequent action by a party actually entitled to recovery. See Kimmel v. Iowa Realty Co. 339 N.W.2d 374 (Iowa 1983). This same concern presumably justifies standing requirements generally.

The issue of standing is sometimes raised without reference to a specific rule of procedure. This often occurs when a person attempts to challenge a public action, to enforce some constitutional or statutory right, or compel the performance of a duty by a governmental officer. The standing requirement is often portrayed as necessary to ensure a fair hearing of the issues in a case. Where no reliance is made on a specific statute authorizing enforcement by the party, it is necessary to allege a sufficient personal stake in the outcome of the controversy

to insure the dispute is presented in a concrete adversarial context.

B. Application of the Doctrine

In order to recognize the standing of a plaintiff party, the party must allege a wrong which produces a "legally cognizable injury." Iowa Civil Liberties Union v. Critelli, 244 N.W.2d. 564 (Iowa 1976), citing Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663, 678 (1962); Elview Cont. Co. Inc. v. North Scott Community School District, 373 N.W.2d 138, 141 (Iowa 1985). This reflects the traditional view that a party has standing to raise issues affecting the public interest when the person's own personal rights are affected. Thus a party generally must assert personal rights and interests and cannot base a claim to relief on the rights or interests of third parties. Iowa Civil Liberties Union v. Critelli, supra at 567.

Many jurisdictions hold that this theory prevents a person from redressing a public wrong, neglect, or breach of a public duty in a lawsuit if the right asserted by the person does not differ from that of the public generally or if the injury suffered by the person is in common with a general injury suffered by the public, even if the loss is greater in degree. Thus, as a general rule, a person is prohibited from maintaining an action at law complaining of the wrongful acts of a public official, unless there is a special injury not common to the public generally. 59 Am. Jur.2d Parties, sec. 33 (1987). Often such an action is maintained by the attorney general of a state. Id.

However, the Iowa Supreme Court has held that the Iowa Attorney General is not vested with inherent powers to maintain public interest suits against governmental officials. Turner v. Iowa State Highway Commission, 186 N.W.2d 141 (Iowa 1971). The case was brought by Attorney General Richard Turner to enjoin the Highway Commission from removing "permanent resident engineers' offices." Several individuals, including a private citizen (Mr. Gene Schlaegel) and two state senators (Mr. Clifton Lamborn and Mr. Charles Mogged) intervened as parties against the Commission. Plaintiffs argued that the removal violated a provision of an Act passed by the General Assembly which expressly prohibited the movement of those offices. The provision was item vetoed by Governor Robert Ray, and the plaintiffs challenged the constitutionality of the governor's action.

The Supreme Court first considered the extent to which the plaintiffs had standing to bring the case. The Court found the Attorney General had no specific statutory authority or "common-law" power to maintain the suit. The

court quoted from an earlier case, Cosson v. Bradshaw, 160 Iowa 296, 311, 141 N.W. 1062, 1063 (1913), in which that court noted the following:

The duties and powers of the Attorney General are defined by statute, and we take it that the Legislature has given to him by statute all the powers that in their judgment he ought to be permitted to exercise, and they imposed upon him all the duties which, in their judgment, should be imposed upon him as such officer.

The Turner Court then departed from the traditional rule to hold that the other plaintiffs had standing to maintain the lawsuit due to their status as taxpayers. In finding that standing existed to pursue the challenge, the Court did not consider the official positions of Senators Lamborn and Mogged as legislators. Since the Turner case, the Court has heard several cases in which a legislator has brought suit against a governmental official based on public issues. See e.g., Junkins v. Branstad, 448 N.W.2d 480 (Iowa 1989). However, the Court has never found standing based on a lawmaker's office.

Nationally, there has been a gradual liberalization of the requirement governing standing, particularly when applied to actions to protect environmental interests. See Sierra Club v. Morton, 405 U.S. 727, 92 S.Ct. 1361, 1364, 31 L.Ed.2d 636 (1971). However, in that case, the United States Supreme Court held a mere special interest by an organization in a subject is not sufficient to satisfy requirements of standing. The Iowa Supreme Court has also refused to recognize the right of a organization to bring an action based on a special interest. See Iowa Civil Liberties Union v. Critelli, supra.

C. Statutory Authority of the Legislative Council

The General Assembly has delegated by law a number of powers to the Legislative Council as established in Iowa Code section 2.41. The powers and duties of the Council are enumerated in Code sections 2.42 and 2.43. Other Code sections provide for committees of the Council and their powers and duties. See Code sections 2.45 through 2.47A.

Code section 2.42 enumerates a number of powers and duties of the Council. The Code section also states that the provisions granting powers to the Council are not an exhaustive listing of Council powers. According to the section, the Council oversees the administration of the Legislative Service Bureau, the Legislative Fiscal Bureau, and the Computer Support Bureau. Code section 2.12 provides an appropriation to the Council and authorizes certain expenditures. For example, the Legislative Council must

prove proposed budgets of legislative agencies. The Council is charged to appoint interim study committees, commend changes regarding the structure and staffing of standing committees, recommend changes or revisions relating to operation efficiency in the Senate and House rules and the joint rules, prepare reports submitted to the General Assembly, establish rules for the style of bill drafting, and appoint or approve the appointment of the top management staff for the central nonpartisan legislative staff agencies.

Code section 2.43 provides that the Legislative Council must prepare for each session of the General Assembly. The section also requires the Legislative Council to maintain supervision over legislative facilities, equipment and supplies.

D. Analysis

The Supreme Court has not established the parameters of the Legislative Council's authority. The Legislative Council, serving as plaintiff in an action against a public official, would have the burden of establishing a "legally cognizable injury" based on an incident which touches a statutorily created right or power of the Council. An inquiry into the standing of the Legislative Council would start with the nature of the controversy subject to litigation and the right asserted.

For example, if the Department of Management refused to submit the Legislative Council's budget to the Governor as required pursuant to Code section 2.12, a strong argument could be made that Council would have standing to challenge the action. In this instance the Council would appear to have suffered an injury sufficient to create a personal stake in the outcome of a controversy subject to resolve by judicial decision. This personal stake ensures that the dispute would be presented in a concrete adversarial context.

However, a mere interest in the outcome of a case is insufficient. Iowa Civil Liberties Union v. Critelli, supra at 567. There is no authority supporting or denying the proposition that the Legislative Council or even the General Assembly is automatically injured by a public entity acting in an ultra vires manner. Note, in the Turner case, the Iowa Supreme Court did not recognize the standing of the plaintiffs based on their positions as lawmakers. There is also no statutory provision expressly stating that the Legislative Council is delegated general authority to represent the interests of the General Assembly.

According to the analysis in the Turner case, the Legislative Council may be required to establish that its

injury arises pursuant to a statute granting it some right or power rather than merely asserting an injury on behalf of the General Assembly. The Iowa Civil Liberties Union case makes clear that to demonstrate standing a party must assert independent legal rights rather than the rights of third parties. The statutory provisions under Code sections 2.42 and 2.43 authorize the Legislative Council to act on behalf of the General Assembly for certain specific purposes (e.g., establishing rules for the style and format for drafting and preparing legislation, recommending efficiency operation revisions and purchasing equipment). Although the enumeration of powers under Code section 2.42 is not exhaustive, the types of powers listed appear designed to facilitate the administration of the legislative process. Code section 2.43 relates to the maintenance of physical facilities controlled by the General Assembly. The section has been characterized a mere "housekeeping statute" which confers to the Council limited authority to act on behalf of the General Assembly. See Cp. Atty. Gen. (Selden), Sept. 8, 1976.

Regardless of issues relating to standing, a lawsuit brought by the Legislative Council could probably survive, if a proper party was joined in litigation. The Turner case holds that an action may be maintained by a plaintiff party having standing regardless of whether other plaintiff parties do not. Supra at 147. Thus an action brought by the Legislative Council and a taxpayer could survive under Turner, although the Council might ultimately be dismissed as a party.

IV. SUMMARY

The right of the Legislative Council to prosecute a legal action against a public official for an ultra vires act depends upon the Council proving that it has suffered a legally cognizable injury, based on a statutory right or power conferred upon the Legislative Council.

GENERAL ASSEMBLY OF IOWA



LEGAL AND COMMITTEE SERVICES DIVISION

JOHN C. POLLAK, ADMINISTRATOR

LEGAL COUNSELS

DOUGLAS L. ADKISSON
AIDA AUDEH
MARY M. CARR
JULIE A. SMITH CRAGGS
SUSAN E. CROWLEY
MICHAEL J. GOEDERT
MARK W. JOHNSON
GARY L. KAUFMAN
MICHAEL A. KUEHN
LESLIE E. WORKMAN

RESEARCH ANALYSTS

PATRICIA A. FUNARO
KATHLEEN B. HANLON
THANE R. JOHNSON

LEGISLATIVE SERVICE BUREAU

STATE CAPITOL BUILDING
DES MOINES, IOWA 50319
(515) 281-3566
FAX (515) 281-8027
DIANE E. BOLENDER, DIRECTOR
RICHARD L. JOHNSON, DEPUTY DIRECTOR

ADMINISTRATIVE CODE DIVISION

LUCAS BUILDING (515) 281-5285
PHYLLIS V. BARRY
ADMINISTRATIVE CODE EDITOR

LEGISLATIVE INFORMATION OFFICE

CAPITOL BUILDING (515)-281-5129
JULIE E. E. LIVERS
DIRECTOR

IOWA CODE DIVISION

LUCAS BUILDING (515) 281-5285
JoANN G. BROWN
IOWA CODE EDITOR
JANET L. WILSON
DEPUTY IOWA CODE EDITOR

July 18, 1991

TO: CHAIRPERSON ARNOULD AND MEMBERS OF THE LEGISLATIVE COUNCIL

FROM: JOHN CONNORS, CHAIRMAN, INTERSTATE COOPERATION COMMISSION

RE: LOAN FOR 1992 COUNCIL OF STATE GOVERNMENTS ANNUAL MEETING

Iowa will be the host for the 1992 Council of State Governments Annual Meeting to be held December 3 - 7 in Des Moines. The Interstate Cooperation Commission has directed me to request that the Legislative Council authorize the expenditure of an amount not to exceed \$10,000 from moneys appropriated under section 2.12 of the Code of Iowa to be loaned to the Interstate Cooperation Commission for initial expenditures relating to developing and implementing plans for the Annual Meeting and for an evening reception to be held during the 1991 Annual Meeting in Newport, Rhode Island.

The Interstate Cooperation Commission will begin soliciting funds from private sources for this project later this summer and it is the intention of the Commission that any state funds used will be replaced in the general fund of the state by December 31, 1992.

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GENERAL ASSEMBLY OF IOWA

LEGAL AND COMMITTEE SERVICES DIVISION

JOHN C. POLLAK, ADMINISTRATOR

LEGAL COUNSELS

DOUGLAS L. ADKISSON

AIDA AUDEH

MARY M. CARR

JULIE A. SMITH CRAGGS

SUSAN E. CROWLEY

MICHAEL J. GOEDERT

MARK W. JOHNSON

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RESEARCH ANALYSTS

PATRICIA A. FUNARO

KATHLEEN B. HANLON

THANE R. JOHNSON



LEGISLATIVE SERVICE BUREAU

STATE CAPITOL BUILDING

DES MOINES, IOWA 50319

(515) 281-3566

FAX (515) 281-8027

DIANE E. BOLENDER, DIRECTOR

RICHARD L. JOHNSON, DEPUTY DIRECTOR

ADMINISTRATIVE

LUCAS BU

ADMINISTRA

LEGISLATIVE INF

CAPITOL BUILDING (

JULIE E

IOWA CODE DI

LUCAS BUILDING (515

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IOWA COD

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DEPUTY IOWA COD

July 18, 1991

M E M O R A N D U M

TO: CHAIRPERSON ARNOULD AND MEMBERS OF THE LEGISLATIVE COUNCIL

FROM: DIANE BOLENDER, DIRECTOR

RE: REDISTRICTING ACTIVITIES FOR CITIES AND COUNTIES

Election Data Services, Inc. has informed the Legislative Service Bureau of the following charges in order to provide block level population data by county:

- An initial fee of \$20,000 to perform the necessary preliminary work for providing the block level data. For this fee Election Data Services, Inc. would provide the information for not exceeding 20 counties (regardless of the populations of those counties).
- A fee of \$1,000 for each county thereafter.
- A fee of \$80,000 to \$85,000 for the set of 99 counties.

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LEGAL AND COMMITTEE SERVICES DIVISION

WINN C. POLLAK, ADMINISTRATOR

LEGAL COUNSELS

DOUGLAS L. ADKISSON

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MARY M. CARR

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MARK W. JOHNSON

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LESLIE E. WORKMAN

RESEARCH ANALYSTS

PATRICIA A. FUNARO

KATHLEEN B. HANLON

THANE R. JOHNSON



LEGISLATIVE SERVICE BUREAU

STATE CAPITOL BUILDING

DES MOINES, IOWA 50319

(515) 281-3566

FAX (515) 281-8027

DIANE E. BOLENDER, *DIRECTOR*

RICHARD L. JOHNSON, *DEPUTY DIRECTOR*

ADMINISTRATIVE CODE DIVISION

LUCAS BUILDING (515) 281-5285

PHYLLIS V. BARRY

ADMINISTRATIVE CODE EDITOR

LEGISLATIVE INFORMATION

OFFICE

CAPITOL BUILDING (515) 281-5129

JULIE E. E. LIVERS

DIRECTOR

IOWA CODE DIVISION

LUCAS BUILDING (515) 281-5285

JOANN G. BROWN

IOWA CODE EDITOR

JANET L. WILSON

DEPUTY IOWA CODE EDITOR

July 11, 1991

MEMORANDUM

**TO: CHAIRPERSON ARNOULD, VICE CHAIRPERSON HUTCHINS,
AND MEMBERS OF THE LEGISLATIVE COUNCIL**

FROM: Diane Bolender, Director *DB*

RE: Notice of Legislative Council Meeting Thursday, July 18, 1991

The Legislative Council and Council Committees are scheduled to meet on Thursday, July 18, 1991, as follows:

9:45 a.m. Citizens' Aide Salary Subcommittee
of the Service Committee, Speaker's Committee Room
10:15 a.m. Service Committee, Room 22
1:00 p.m. Legislative Council, Room 22

Tentative agendas for the meetings are enclosed.

A Studies Committee meeting is tentatively scheduled for 11:30 a.m. if it is determined that a meeting is needed.

Also enclosed are copies of the Minutes of the June 13 meetings of the Computer Subcommittee, Service Committee, Studies Committee, Administration Committee, and Legislative Council.

Please notify the Legislative Service Bureau prior to the meeting date if you will be unable to attend.

CCL711

The following counties and cities have indicated an interest in using the Legislative Service Bureau in their redistricting efforts depending upon the fee charged the county or city by the Legislative Service Bureau:

- City of Oskaloosa
- City of Council Bluffs
- City of Clinton
- Tama County
- Polk County
- Lyon County
- Delaware County
- Taylor County
- Monona County
- Osceola County

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