

McKibben
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SSB-1089
Local Government
Succeeded By

SENATE/HOUSE FILE SP/HF 260
BY (PROPOSED ATTORNEY GENERAL
BILL)

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

A BILL FOR

1 An Act relating to the appointment of an acting or a temporary
2 county attorney.

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

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1 Section 1. Section 331.754, Code 2001, is amended to read
2 as follows:

3 331.754 ABSENCE OR DISQUALIFICATION OF COUNTY ATTORNEY AND
4 ASSISTANTS.

5 1. In case of absence, sickness, or disability of the
6 county attorney and the assistant county attorneys, the board
7 of supervisors may appoint an attorney to act as county
8 attorney. If the need for an appointment occurs, a district
9 judge may appoint an attorney to act temporarily as county
10 attorney until the board has had sufficient time to appoint an
11 acting attorney. As an alternative, a district judge may
12 appoint the attorney general to act temporarily as county
13 attorney, if the attorney general consents to the appointment.
14 ~~The-acting-county-attorney-has-the-same-authority-and-is~~
15 ~~subject-to-the-same-responsibilities-as-a-county-attorney.~~

16 2. If the county attorney and all assistant county
17 attorneys are disqualified because of a conflict of interest
18 from performing duties and conducting official business in a
19 juvenile, criminal, or commitment proceeding which requires
20 the attention of the county attorney, a district judge may
21 appoint an attorney to act as county attorney in the
22 proceeding. As an alternative, a district judge may appoint
23 the attorney general to act as county attorney if the attorney
24 general consents to the appointment.

25 3. If the county attorney and all assistant county
26 attorneys are disqualified because of a conflict of interest
27 from performing duties or conducting official business in a
28 civil proceeding, the board of supervisors may appoint an
29 attorney to act as county attorney.

30 4. A temporary or acting county attorney has the same
31 authority and is subject to the same responsibilities as a
32 county attorney.

33 2- 5. The A temporary or acting county attorney shall
34 receive a reasonable compensation as determined by the board
35 for services rendered in proceedings before a judicial

1 magistrate or rendered on behalf of a county officer or
2 employee. If the proceedings are held before a district
3 associate judge or a district judge, the judge shall determine
4 a reasonable compensation for the temporary or acting county
5 attorney. If the proceedings are held before an associate
6 juvenile judge or a judicial hospitalization referee, the
7 temporary or acting county attorney shall be compensated at a
8 rate approved by the judge who appointed the associate
9 juvenile judge or referee. The compensation shall be paid
10 from funds to be appropriated to the office of county attorney
11 by the board.

12 EXPLANATION

13 This bill relates to the appointment of an acting or a
14 temporary county attorney.

15 Under current law, the county board of supervisors may
16 appoint an acting county attorney if the county attorney and
17 assistant county attorneys are unable to carry out the
18 official duties of office because of absence, sickness, or
19 disability. The bill provides that a district judge may
20 appoint an attorney or the attorney general to act temporarily
21 as county attorney until the county board of supervisors has
22 had sufficient time to appoint an acting county attorney. The
23 bill provides that the attorney general must consent to being
24 appointed by the court.

25 The bill also provides that if the county attorney and
26 assistant county attorneys are disqualified in a juvenile,
27 criminal, or commitment proceeding because of a conflict of
28 interest, a district judge may appoint an attorney to act as
29 county attorney in the proceeding. The court in the
30 alternative may appoint the attorney general to act as county
31 attorney, if the attorney general consents to the appointment.

32 The bill further provides that if the county attorney and
33 assistant county attorneys are disqualified in a civil
34 proceeding because of a conflict of interest, the county board
35 of supervisors is responsible for appointing an attorney to

1 act as county attorney.

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1089

Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5164
FACSIMILE: 515-281-4209

MEMORANDUM

TO: Members of the General Assembly
FROM: Anne M. Bunz, Legislative Liaison
DATE: January 8, 2000
SUBJECT: Emergency Provision for Absence of County Attorney

Problem:

In the 2000 Legislative session SF 2303, a judiciary-sponsored bill, changed the manner in which an acting county attorney is appointed in the "Absence, sickness, or disability" of a county attorney or his assistants. Iowa Code section 331.754 previously provided that the court handled the appointment and the county paid the expenses. The provision passed last year provides that the board of supervisors appoints the acting county attorney. This change is acceptable except for two situations:

- 1.) Certain procedures require immediate action. For example, if a county attorney were to become ill on the 44th day following a person's arrest on an indictable offense there would not be time for the board of supervisors to appoint someone to sign a trial information within the 45-day speedy indictment time period and the case might well be lost for failure to timely file a trial information.
- 2.) The current code section has been used in the past for the court to appoint an attorney to handle a case in which the county attorney has a legal disability. Prime examples are situations where either county attorney, a member of the board of supervisors or another county officer is the potential defendant in a criminal case.

The attorney general's office has the authority to file a trial information if requested by the county attorney to handle the case. At the present time if a county attorney is to be charged with an indictable offense there is no means for filling a trial information. Further, the board of supervisors as a political body is not an appropriate group to decide if a prosecutor should be appointed, and who should be appointed, in cases of conflicts involving possible prosecution of county officers.

Solution:

This proposal gives a district court judge the authority to appoint an attorney or designate the attorney general to act as county attorney until the board of supervisors appoints a temporary county attorney.

4/5/01 Rereferred To: Local Gov.

FILED FEB 21 '01

SENATE FILE 260
BY COMMITTEE ON LOCAL GOVERNMENT

(SUCCESSOR TO SSB 1089)

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SF 260

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