GRINNELL PUBLIC SAFETY COMMITTEE MEETING
MONDAY, FEBRUARY 18, 2019 AT 4:45 P.M.
IN THE COUNCIL CHAMBERS ON 2ND FLOOR
OF THE CITY HALL

TENTATIVE AGENDA

ROLL CALL: White (Chair), Hueftle-Worley, Burnell

PERFECTING AND APPROVAL OF AGENDA:

COMMITTEE BUSINESS:

1. Discuss agreement with Poweshiek County and Poweshiek County Attorney for prosecution of municipal infractions.
2. Review and comment on draft EMS agreement with CARE Ambulance Service.

INQUIRIES:

ADJOURNMENT

LEGAL SERVICES CONTRACT

28E Agreement Between:
Poweshiek County,
The Poweshiek County Attorney's Office, and
The City of Grinnell

THIS CONTRACT is made between the City of Grinnell, Iowa, an Iowa municipal corporation, hereinafter referred to as "City"; Poweshiek County, Iowa, hereinafter referred to as "County"; and the Poweshiek County Attorney's Office, hereinafter referred to as "County Attorney".

1. **BASIS FOR CONTRACT**. The City desires to retain the legal services of the County Attorney to prosecute violations of the City's Municipal Code. The County and the County Attorney have the resources, employees, and operational capabilities to provide these legal services to the City, and desire to do so pursuant to the terms and conditions of this contract.

2. **DUTIES AND OBLIGATIONS OF CITY**. So long as this agreement remains in effect, the City shall pay to the County the amount provided herein. Further, the City will communicate with the County Attorney or designee concerning the legal services provided pursuant to this contract. The City acknowledges the conflict of interest that arises for the County Attorney when a defendant is charged with a municipal criminal law that could have been charged under a similar state law. When these matters of conflict arise as a result of court trial, the City agrees to permit the County Attorney to amend the municipal charge to a state charge.

3. **DUTIES AND OBLIGATIONS OF COUNTY.** So long as this agreement remains in effect, the County and County Attorney shall provide legal representation to the City in cases arising under the City's Municipal Code, except in those instances of prosecuting municipal criminal laws where it is possible to charge the defendant under either state or municipal laws.

4. **TERM.** This contract shall commence upon signature by all parties. The term of the contract shall continue thereafter, or until otherwise terminated as hereinafter provided.

5. **PAYMENT FOR SERVICES.** In consideration of the legal services provided by the County Attorney to the City under this contract, the City shall pay to the County a sum equal to $150 per billable hour of work. The County shall provide proof of billable hours. Payments shall be made, for the previous month billable hours, by the 15th of the month.

6. **ANNUAL REVIEW.** The parties to this contract shall meet annually in May, or at such time mutually agreed upon by all parties, to consider the terms of this contract. All parties acknowledge that periodic adjustments in the fee for services paid by the City may be necessary. Any such adjustments shall be limited to demonstrable amounts associated with the cost of the County or County Attorney fulfilling the terms of this contract. Any amendments or adjustments to this contract will become effective following the meeting in May.

LEGAL SERVICES CONTRACT

28E Agreement Between:
Poweshiek County,
The Poweshiek County Attorney's Office, and
The City of Grinnell

7. TERMINATION.

a. Default. In the event that the County, County Attorney, or the City fails to perform its obligations under this agreement or otherwise breaches any provision of this contract, another party shall give to the non-performing or breaching party written notice of the claimed non-performance or breach. If the non-performance or breach is not cured within thirty (30) days of the receipt of the notice, the party claiming non-performance or breach may terminate this contract by written notice to the other parties.

b. Annual Termination. Any party may terminate this contract, without cause, for any reason by giving to the other parties written notice. In the event of such notice, this agreement shall terminate 30 business days from the date of notification.

The City of Grinnell, by resolution duly adopted by its City Council, has caused this contract to be executed by its Mayor and attested to by its City Clerk. Poweshiek County, by resolution duly adopted by its Board of Supervisors, has caused this contract to be executed by the Chairperson of said Board and attested to by its County Auditor. The Poweshiek County Attorney has caused this contract to be executed under the authority of their office.

IN WITNESS THREOF, the parties hereto have duly executed this Contract for Legal Services on the _____ day of _____, 2019.

BY: _____ DATE: _____
Chairperson, Board of Supervisors

ATTEST: _____ DATE: _____
Auditor

BY: _____ DATE:_____
Mayor, City of Grinnell

ATTEST: _____ DATE:_____
City Clerk

BY: _____ DATE:_____
County Attorney

Kay Cmelik

From: Bart Klaver <klaver_coatty@poweshiekcounty.org> on behalf of Bart Klaver
Sent: Monday, January 28, 2019 2:11 PM
To: rbehrens@grinnelliowa.gov
Cc: Dennis Reilly (dreilly@grinnellpd.com)
Subject: City Prosecution
Attachments: Ltr to City re Muncipal Prosecution.pdf; AG Opinion on City Conflict.pdf; AG Opininon 1991.pdf

Russ,

I wanted to let you know that effective immediately the County Attorney's Office will no longer be prosecuting any municipal violations on behalf of the City of Grinnell. As we discussed last week there is a conflict of interest for the County Attorney to enforce charges that could be brought under either the municipal code or state code. If the City would like the County Attorney's Office to prosecute non-conflict cases, there needs to be some sort of contract for services. I am not aware that there is any agreement in place.

Bart K. Klaver
Poweshiek County Attorney
4802 Barnes City Road
PO Box 455
Montezuma, IA 50171
Phone: (641) 623-5134
Fax: (641) 623-2820
Email: klaver_coatty@poweshiekcounty.org

Everett Tet
778 ~~8550~~ 9902
840

CITY CODE VIOLATIONS ADJUDICATED
2017/2018

	2017		2018
TOTAL - ***FINDING GUILTY***	104		50
CITY/STATE VIOLATION	103		50
CITY VIOLATION	1		0
TOTAL - ***PLEAD GUILTY***	232		194
CITY/STATE VIOLATION	223		187
CITY VIOLATION	9		7
% TRIALS	31%		20%

POWESHIEK COUNTY ATTORNEY

4802 Barnes City Road • P.O. Box 455 • Montezuma, Iowa 50171 • Telephone: (641) 623-5135 • Fax: (641) 623-2820

January 28, 2019

Russ Behrens
520 4th Avenue
Grinnell, IA 50112

Via Email: rbehrens@grinelliowa.gov

RE: City Prosecution

Dear Russ:

This letter is to follow up on our prior discussions and set forth more fully my concerns regarding the County Attorney's Office prosecuting municipal violations on behalf of the City of Grinnell. I wanted to inform you that effective immediately the County Attorney's Office will not be prosecuting any matters on behalf of the City of Grinnell.

When I joined the Poweshiek County Attorney's Office in 2015, I was instructed that the County Attorney's Office handled the prosecutions on behalf of the City of Grinnell. This arrangement is not customary and was not able to get any answers as to why this was the case until recently. I discovered that there had been a 28E agreement put in place in 2005 and which continued until 2011. It is my understanding that the agreement terminated either because it did not generate the anticipated revenue for the City or that the agreement was determined to be invalid. In any event, the County Attorney's prosecution on behalf of the City continued. This current arrangement is not appropriate for a variety of reason which I will set forth below.

First, the County Attorney's duties are enumerated in Iowa Code sec. 331.756 and do not include prosecution of municipal violations or representation of municipalities in any capacity. Second, I have no authority to act on behalf of the city without some sort of agreement. There are all kinds of potential problems with this including ethical concerns and liability exposure. Third, it would be inappropriate to provide the services of my office to the City without charge.

The most concerning issue, however, and likely the reason for termination of the former 28E agreement, is that a conflict of interest exists for the County Attorney to prosecute matters that can be charged under both the State code and municipal code. There are two opinions from the Attorney General that hold that position. I am attaching the opinions for your review. The County Attorney is absolutely prohibited under the ethical

1982 Iowa Op. Atty. Gen. 220 (Iowa A.G.), 1981 WL 37132

Office of the Attorney General

State of Iowa
Opinion No. 81-8-26
August 14, 1981

COUNTIES AND COUNTY OFFICERS: COUNTY ATTORNEY: Chapter 336, §§ 336.2, 372.13, The Code 1981. An allegation of incompatibility of offices raises a question of conflict of duties. This question is resolved via a legal analysis of the statutory duties of the offices involved. An allegation of conflict of interest raises a question of divergence of loyalties. This question is resolved via an evidentiary analysis of the facts surrounding the conduct of the office holder. The position of county attorney is an office, however, the position of city attorney is not an office. The position is that of an employee. The position of county attorney is not incompatible with the position of city attorney. A conflict of interest is present in a situation in which the county attorney assumes the duty of enforcing municipal criminal ordinances where it is possible to charge a defendant under either state or municipal laws. (Fortney to Angrick, Citizens' Aide/Ombudsman, 8/14/81)

*1 Mr. William P. Angrick
Citizens' Aide/Ombudsman
State Capitol
LOCAL

Dear Mr. Angrick:
You have requested an opinion of the Attorney General regarding the propriety of one individual serving as both county attorney and city attorney for a city within the county. You have indicated your belief that such dual service violates the doctrine of incompatibility of offices. While the potential for a conflict of interest may exist depending upon the facts of a particular case, we are of the opinion that an incompatibility of offices does not exist when the same individual serves as both county attorney and city attorney. Our conclusion is premised on two alternative rationales: first, the position of city attorney is not an 'office' within the doctrine of incompatibility of offices, such that the doctrine applies; and second, if the position of city attorney is considered an 'office' we see no incompatibility between a person occupying such office as well as the office of county attorney.

At the outset we note that this area is one which is characterized by a degree of confusion. Over recent years there has been a tendency by commentators to intertwine the concept of incompatibility with the concept of conflict of interest. Your present inquiry hopefully provides a vehicle to clarify this issue.

The doctrine of incompatibility holds that 'if a person, while occupying one office, accept another incompatible with the first, he ipso facto vacates the first office, 'and his title thereto is thereby terminated without any other act or proceeding." State v. White, 257 Iowa 606, 133 N.W.2d 903, 904 (1965), citing State v. Anderson, 155 Iowa 271, 136 N.W. 128, 129 (1912). When is one office 'incompatible' with a second? The Anderson court offered these comments:
. . . the consensus of judicial opinion seems to be that the question must be determined largely from a consideration of the duties of each, having, in so doing, a due regard for the public interest. It is generally said that incompatibility does not depend upon the incidents of the office, as upon physical inability to be engaged in the duties of both at the same time. (Citation omitted) But that the test of incompatibility is whether there is an inconsistency in the functions of the two, as where one is subordinate to the other 'and subject in some degree to its revisory power,' or where the duties of the two offices 'are inherently inconsistent and repugnant.' (Citations omitted) A still different definition has been adopted by several courts. It is held that incompatibility in office exists 'where the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for an incumbent to retain both.' (Citations omitted)

*2 136 N.W. 128, 129.

A number of conclusions can be drawn from Anderson: conclusions which can be contrasted with the concept of conflict of interest. Incompatibility is not concerned with how a person performs in office or how a person executes the duties of the office. The doctrine of incompatibility is concerned with the duties of an office apart from any particular office holder. Consequently, the question of incompatibility can be resolved by comparing the respective duties of the two offices in question and examining how the duties relate. In contrast, when one discusses conflict of interest one must look to how a particular office holder is carrying out his or her official duties in a given fact situation.

A conflict of interest generally develops whenever a person serving in public office may gain any private advantage, financial or otherwise, from such service. The occurrence of a conflict may be defined either by statute or by common law rules. Op.Att'yGen. #81-6-12(L). An allegation of conflict of interest can only be decided through a sifting of the various facts surrounding a particular action or set of actions taken by an office holder. The allegation raises what can be characterized as an evidentiary question. An allegation of incompatibility, on the other hand, presents a legal question. This was best demonstrated in State v. White, supra, a quo warranto action challenging the right of a person to serve as a member of a local school board and the county board of education at the same time. The trial court in White entered judgment on the pleadings, ruling that an incompatibility existed between the offices in question. The Supreme Court ruled that it was proper to resolve the question without the introduction of evidence, explaining that
[d]efendant's answer admitted all the allegations of the petition except that he denied the duties of the two offices are incompatible and further denied it is contrary to public policy to hold them both at the same time. He claims this denial made a fact issue and he should have been permitted to introduce evidence in support of his denial. The duties are defined by statute and as the trial court said: It is not a question of how the school laws are being applied, but rather what duties are imposed by the statutes, and whether the powers and duties of the two boards are incompatible. For that reason we hold it to be a legal question properly determined in a motion for judgment on the pleadings.

133 N.W.2d 903, 904.

Perhaps the clearest way to demonstrate the different approaches taken by the courts in resolving incompatibility and conflict of interest questions is to contrast State v. White, supra, an incompatibility case, with Wilson v. Iowa City, 165 N.W.2d 813 (Iowa 1969), a conflict of interest case.

In resolving the incompatibility issue relating to the two school board positions the White Court did not look at how the office holder was performing his duties, rather the Court was concerned solely with a determination of what those duties were. The Court examined the relevant statutes and held that 'these statutes show that a definite and clear incompatibility exists between the duties and powers of a local school board and a county board of education and it is contrary to public policy for one person to hold the offices concurrently.' 133 N.W.2d 903, 905. To reach this conclusion, the Court made the following observations:
*3 It is obvious that the curriculum of a school, the instruction in the schools, the transportation of pupils to school where required by law, the union or merger of school districts, the changing or adjusting of boundary lines of contiguous school corporations are important matters which are the concern of the board of directors of a community school district. The action of the board of such school district, however, in said matters is subject to review by the county board. Section 273.13, Par. 3, makes it a specific duty of the county board to approve the curriculum of the county school system in conformity with the course of study prescribed by the State Department of Public Instruction; Section 274.15 [273.18] Par. 7, makes it the duty of and grants the power to the county superintendent, under the direction of the county board, to supervise or arrange for supervision of instruction in the schools of the county school system; Section 273.13, Par. 7, and Section 289.9 [285.9] make it the specific duty of the county board to enforce all laws, rules and regulations of the Department of Public Instruction for the transportation of pupils to and from public schools in all school districts of

the county, and if the community district board fails to arrange for such transportation, the county board may do so and the service provided must be paid for by the community board. Section 285.12 makes the county board an appellate body over disagreements between a school patron and the community board as to matters of transportation; and Section 290.1 makes the county superintendent, a person appointed by the county board for a three year term (and subject to not being reappointed at the end of that period), the appeal body for persons aggrieved by any decision or order of the community board.

Section 274.37 makes any action of the board of directors of contiguous school corporations changing boundary lines subject to the approval of the county board; and Sections 274.42, 274.43 and 274.44 give the county board power to adjust boundary lines between districts under certain circumstances, and its decision is final. Section 274.46 gives the county board the power to determine matters of reimbursement for loss of taxes caused by adjustment of boundary lines provided for in Section 274.42.

It thus appears that in many important matters the community school board is subordinate to the county board and subject to its revisory power in some degree.

133 N.W.2d 903, 905.

In contrast with the foregoing purely statutory analysis utilized by the Court in White, is the reasoning of the Court in Wilson. In the Wilson case, certain city councilmen were determined to have conflicts of interest under the applicable statute because they had voted to bring a certain area within an urban renewal project when they knew that the area included property in which they had an ownership interest. The conflict of one councilman, however, was based entirely upon his employment by another public body, i.e., the University of Iowa, which owned property in the urban renewal area and was 'vitally interested' in the project. 165 N.W.2d 813, 821. This councilman had held various positions of trust and responsibility with the University. At the time he became a member of the city council, he was director of the alumni office. Soon after his election, he was made director of community relations for the University. The Court noted that the University was openly in favor of the urban renewal project and would be beneficially affected by it. The Court then concluded that the councilman-employee of the University did have a disqualifying interest under the conflict of interest statute, particularly because of his 'position of influence as director of community relations, the very department with which the city would deal in case of matters of mutual interest to the University and the city.' Id. at 823.

***4** In contrast with the White analysis, the Wilson Court did not find it necessary to analyze the statutory duties of the councilman involved with the urban renewal project. Instead, the Court focused on the presence of irreconcilable loyalties, loyalties to the private employer and loyalties to the public he had been elected to serve. Referring to the common law prohibitions against conflict of interest by a public employee, the Court in Wilson observed:
These rules, whether common law or statutory, are based on moral principles and public policy. They demand complete loyalty to the public and seek to avoid subjecting a public servant to the difficult, and often insoluble, task of deciding between public duty and private advantage.

It is not necessary that this advantage be a financial one. Neither is it required that there be a showing the official sought or gained such a result. It is the potential for conflict of interest which the law desires to avoid. (Emphasis in original.)

165 N.W.2d 813. 819.

To summarize, an allegation of incompatibility of offices raises a question of conflict of duties. This question is resolved via a legal analysis of the statutory duties of the offices involved. An allegation of conflict of interest raises a question of divergence of loyalties. This question is resolved via an evidentiary analysis of the facts surrounding the conduct of the office holder.

Returning to the issue you have raised, the incompatibility doctrine is applicable only if both the position of county attorney and the position of city attorney are considered 'offices.' Our analysis leads us to conclude that the position of county attorney is an office, however, the position of city attorney is not an office. The position is that of an employee. The decisions in State v. Anderson, supra, and State v. While, supra, presuppose that the individual holds two offices. See Op.Att'yGen. #79-6-5. The incompatibility doctrine does not apply where the person holds one office and is merely employed by another body. 1968 Op.Att'yGen. 257.

The Iowa Supreme Court addressed the employee-officer distinction in State v. Taylor, 260 Iowa 634, 144 N.W.2d 289 (1966). The Court stated:
It is somewhat difficult to define with accuracy the term 'public officer' as distinguished from an 'employee'. It has been wisely said that, although an office is an employment, it does not follow that every employee is an officer. . . . In the early case of State v. Spaulding, 102 Iowa 639, 72 N.W. 288, we fully considered this problem and set forth what we believed were the acceptable guidelines to be used in determining the status of one holding such a public position. We have never departed from them and they are applicable here. To summarize, five essential elements are required by most courts to make a public employment a public office. They are: (1) The position must be created by the constitution or legislature or through authority conferred by the legislature. (2) A portion of the sovereign power of government must be delegated to that position. (3) The duties and powers must be defined, directly or impliedly, by the legislature or through legislative authority. (4) The duties must be performed independently and without control of a superior power other than the law. (5) The position must have some permanency and continuity, and not be only temporary and occasional. See Hutton v. State, 235 Iowa 52, 54, 55, 16 N.W.2d 18, (workman's compensation case). Also see annotations, 53 A.L.R. 595, 93 A.L.R. 333, 140 A.L.R. 1076, 5 A.L.R.2d 416, 417.

***5** 144 N.W.2d 289, 292.

The Court has also stated that a public office is de jure in its creation. It is not established by de facto operation. State v. Pinckney, 276 N.W.2d 433 (Iowa 1979). The fact that a particular individual is accorded wide latitude and discretion in the performance of his duties does not convert a position of employment into a public office. Id. A public office is not created by practice. Id.

Applying the standards of State v. Taylor, we conclude that the position of city attorney is not an office. First, the position of city attorney is not created by the laws of Iowa. It is permitted to exist, but not required. Our review of the Code discloses no provision which can be said to establish the position, rather there are merely a number of sections which recognize that the position may exist. In this regard, we contrast § 372.13(3) with § 372.13(4), The Code. These sections provide:
3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be on the basis of that individual's qualifications and not on the basis of political affiliation.

The position of city clerk is created by statute. It satisfies the first Taylor test. The position of city attorney, if it exists at all in a particular municipality, exists only through the choice of the city council pursuant to § 372.13(4). This is strikingly dissimilar from the creation of the position of county attorney pursuant to Chapter 336. Arguably, the position of city attorney is created 'through authority conferred by the legislature.' Taylor, at p. 292. This conclusion, however, conflicts with the decision in State v. Pinckney, supra. The position in question was that of liquor properties manager. This position was established and the position's duties defined by the director of the Iowa beer and liquor control department pursuant to a grant of legislative authority. However, the Pinckney Court commented that the power of the director to

create the position of properties manager 'does not carry with it the authority to make this position a public office,' 276 N.W.2d 433, 436. Similarly, the power of the city council to create the position of city attorney pursuant to § 372.13(4) 'does not carry with it the authority to make this position a public office.'

Second, the Code reveals no grant of sovereign power to be independently exercised by a city attorney. As the Pinckney decision states, 'it is the unsupervised exercise of sovereign power which is the hallmark of a public office.' 276 N.W.2d 433, 436. The city council is given statutory authority to create the position of city attorney. No unsupervised soverign power of the city is delegated to the city attorney.

***6** As to the third prong of the Taylor test, the question is closer. The Code does, in a number of areas, define the duties of a city attorney. A review of these statutory duties reveals that they are quite narrow and in no manner do they encompass the scope of functions routinely performed by an attorney employed to represent an individual or a governmental unit. The city attorney is designated to represent the city civil service commission (§ 400.27), is a member of the board of trustees which manages the retirement funds for firemen and policemen (§§ 410.2 and 411.5), is designated to represent the city assessor and the board of review in all litigation dealing with assessments (§ 411.41) and is designated to conduct condemnation proceedings for the city (§ 472.2). When compared with the delineation of duties to be performed by the county attorney (§ 336.2), the foregoing duties assigned to the city attorney are sparse. They in no way encompass the range of services provided a municipality by a city attorney. However, these other customary functions are defined by practice or by contract. They are not statutorily defined as required by Taylor. We recognize, however, that the foregoing itemized duties are statutorily defined and we consequently recognize that the third factor of the Taylor test may be satisfied.

We have already addressed the fourth element, the performance of duties without supervision by a superior. A city attorney does not act independently. Rather he acts at the command and direction of his employer, the city council. He does not engage in independent decision-making on a routine basis. A critical exception to this relates to the area of prosecutorial discretion (discussed more fully below in regard to a potential conflict of interest). To the extent that the city attorney decides what charges should be filed in a criminal action, his charging decision is not subject to review by any superior. However, there is no statute which imposes enforcement of criminal laws on the city attorney. In other words, criminal law enforcement is not a statutory duty of the city attorney. Consequently, the fact that he is unsupervised in this function is of reduced significance in applying the Taylor analysis.

Fifth, and last, the position of city attorney does not have permanence and continuity. As pointed out previously, the city council has discretion whether to create the position. § 372.13(4). Similarly, the council could rescind its action and eliminate the position. Moreover, the position of city attorney is not accorded the protections of civil service. § 400.6(1). See State v. Pinckney, supra.

Based on the foregoing considerations, we conclude that the position of city attorney does not meet the criteria for a 'public office' as set forth in State v. Taylor, supra. We find it to be similar to the position of attorney for a school district. See Op.Att'y.Gen. #79-6-5. Compare to the discussion of a city zoning inspector in State v. Taylor, 144 N.W.2d 289, at 292-293.

***7** Because we conclude that the position of city attorney is that of an employee, and not that of a public office, the doctrine of incompatibility does not apply. If we were to determine that the position was in fact a public office, we do not find a violation of the doctrine to occur if the same individual occupied the office of county attorney and the office of city attorney. The alleged incompatibility is analyzed by applying the approach utilized in State v. White, supra, regarding the two school board positions. There the Court compared the statutorily defined duties of the two offices and found them incompatible, e.g., the county school board reviewed the decisions of the local school board. If we compare the statutory duties of the city attorney with those of the county attorney we are unable to find an incompatibility between the prescribed duties. Indeed, the duties are quite discrete. The statutory duties of the city attorney relate only to municipal

matters, do not intrude on the province of the county attorney, and cannot be said to be subject to any 'revisory power' of the county attorney. See State v. Anderson, supra, 129. The converse is equally true. No incompatibility exists.

While we are unable to find any incompatibility between the office of county attorney and the position of city attorney, we believe that the potential exists for a serious conflict of interest. The problem we foresee relates to the area of criminal law enforcement. In a prior opinion, 1976 Op.Att'yGen. 630, we held that the position of county attorney was incompatible with that of city attorney. While we reject that conclusion, a portion of the opinion correctly analyzes the potential conflict of interest. We quote:

Many offenses, primarily traffic, encompass both local and state charges. How much money from the fines and court costs and where that money goes depends upon which charge the violator is convicted of. A county attorney represents the State whereas a city attorney represents the city. A possibility of divided loyalties exists. In addition, there are many instances where cities and counties are at odds over a variety of situations, many times resulting in discussions and cases involving city and county attorneys. A person in both positions would be serving two such masters at the same time. Although we are not saying that you personally have done anything wrong, for the very fact that you requested this opinion indicates your desire to comply with the law, we believe that the possibility of the above problem exists. It is the possibility of impropriety that the law desires to avoid. Wilson v. Iowa City, 165 N.W.2d 813 (Iowa 1969).

1976 Op.Att'yGen. 630, 631.

Because of the very real potential for conflict described above, we believe it would be inappropriate for a county attorney, whose duties require him to enforce and prosecute criminal laws, to attempt enforcement of city criminal laws. Similarly, the county attorney should not engage in the performance of any legal work on behalf of the city if to do so would place him in a conflict with his required county duties. This is, of course, a question which generally must be addressed on a case-by-case basis. It also involves determinations of factual issues not readily addressed in an opinion of the Attorney General. However, with regard to the narrow question of criminal law enforcement, we are able to state that a conflict of interest exists in a situation in which the county attorney assumes the duty of enforcing municipal criminal laws where it is possible to charge a defendant under either state or municipal laws.

***8** In conclusion, an allegation of incompatibility of offices raises a question of conflict of duties. This question is resolved via a legal analysis of the statutory duties of the offices involved. An allegation of conflict of interest raises a question of divergence of loyalties. This question is resolved via an evidentiary analysis of the facts surrounding the conduct of the office holder. The position of county attorney is an office, however, the position of city attorney is not an office. The position is that of an employee. The position of county attorney is not incompatible with the position of city attorney. A conflict of interest is present in a situation in which the county attorney assumes the duty of enforcing municipal criminal ordinances where it is possible to charge a defendant under either state or municipal laws.

Previous opinions which conflict with the conclusion that the position of county attorney is not incompatible with the position of city attorney are hereby withdrawn.

Sincerely,

David M. Fortney
Assistant Attorney General

1982 Iowa Op. Atty. Gen. 220 (Iowa A.G.), 1981 WL 37132

End of Document

1992 Iowa Op. Atty. Gen. 22 (Iowa A.G.), 1991 WL 495656

Office of the Attorney General

State of Iowa
Opinion No. 91-4-7(L)
April 30, 1991

COMPATIBILITY: COUNTIES AND COUNTY OFFICERS; MUNICIPALITIES; COUNTY AND CITY ATTORNEY. Iowa Code §§ 331.756, 331.903 (1991). The office of county attorney is not incompatible with the offices of city council member and city mayor. A county attorney has discretion to enforce a county ordinance violation which replicates a state law crime. (Bennett to Bruner, Carroll County Attorney, 4-30-91)

*1 Mr. Barry T. Bruner
Carroll County Attorney
225 E. 7th Street
P. O. Box 863
Carroll, Iowa 51401-0863

Dear Mr. Bruner:
You have requested an opinion of the Attorney General concerning the following questions:
1. May a county attorney serve as a prosecuting attorney, council member or mayor of a city?

2. May an assistant county attorney serve as a prosecuting attorney, council member or mayor of a city?

3. May a county attorney enforce county ordinances which are identical to state law crimes?

Your request implicates issues of the compatibility of multiple public offices held by a county attorney, possible conflicts of interest in holding more than one position, and a county attorney's authority to enforce county ordinances in lieu of identical state crimes. Some of these matters were addressed in an earlier opinion, 1982 Op.Att'yGen. 220 (Fortney to Angrick, Citizens' Aide/Ombudsman, 8/14/81), #81-8-26 (hereafter, referred to as opinion 81-8-26).

I.

Your first question asks whether a county attorney may serve as a prosecuting attorney for a city, as a city council member, or as a city mayor. Your second question raises the same inquiries as to an assistant county attorney. We first respond to the inquiry regarding whether a county attorney may hold these city positions.

The common-law doctrine of incompatibility of offices holds that "if a person, while occupying one office, accepts another incompatible with the first, he (or she) ipso facto vacates the first office, 'and his (or her) title thereto is thereby terminated without any other act or proceeding.'" State ex rel. LeBuhn v. White, 257 Iowa 606, 133 N.W.2d 903, 904 (1965), citing State ex rel. Crawford v. Anderson, 155 Iowa 271, 136 N.W. 128, 129 (1912). For application of this doctrine, each position must be a public office. The incompatibility doctrine has no relevance if a person holds one office but is merely employed by another body. See Op.Att'yGen. #89-10-3(L); 1968 Op.Att'yGen. 257, 258.

Regarding your question whether a county attorney may also serve as a prosecuting attorney for a city, in our opinion #81-8-26 we concluded that although the position of county attorney was a public office, the position of city attorney was not an office but instead was a position of employment. That being the case, the incompatibility doctrine had no

application, and perforce did not bar a county attorney from also serving as a city attorney. We also opined, after applying the traditional test established for the incompatibility doctrine (discussed below), that even if the position of city attorney was an office, it was not incompatible with the office of county attorney. 1982 Op.Att'yGen. 220, 226.

*2 Nevertheless, in opinion #81-8-26, we found it to be a per se conflict of interest for a county attorney, when acting as a city attorney, to be involved in the enforcement of a city ordinance which replicated a state statute defining a crime, as the fine revenue would be remitted to the city. Our conclusion that if the position of city attorney were an office it would not be incompatible with the office of county attorney was unaffected by this conflict, as issues of conflict of interest and incompatibility of offices involve different considerations. Id. at 221, 226-27.

This office has the policy of not overruling a prior opinion unless we determine that the controlling law has changed or that the earlier opinion was clearly erroneous. Op.Att'yGen. #90-12-2(L). Review of our opinion #81-8-26 and the authorities cited therein, reveals that the applicable law has not changed and that our prior opinion that a county attorney is not barred by the incompatibility doctrine from also holding the employment position of city attorney is not clearly erroneous. Therefore, we reaffirm that portion of opinion #81-8-26.

We also find that our conclusion regarding the per se conflict of interest is not clearly erroneous. Although the legislature has authorized cities to receive the fine money collected from prosecution of a city ordinance, that does not compel the conclusion that the county attorney has no conflict of interest when enforcing an ordinance which financially benefits the city. Although, generally, a county attorney may also hold the employment position of city attorney without any problem of incompatibility, the county attorney is charged by statute with the enforcement of state (and county) laws. Iowa Code § 331.756(1) (1991). The problem of possible divided loyalties, found in our opinion #81-8-26, still remains despite the legislature's authorization for cities to receive fine money for city prosecutions, and we reaffirm that portion of our earlier opinion.

You also ask whether a county attorney may serve as a city council member or mayor. We first note that those city positions obviously are public offices. See Op.Att'yGen. #81-7-28(L) (position of city council member is a public office). Because the position of county attorney is also a public office, the doctrine of incompatibility is relevant and the test for determining incompatibility must be applied.

The test for deciding if two public offices are incompatible consists of determining whether there is an inconsistency in the functions of the two offices, either because one office is subordinate to the other office and subject to its revisory authority, or because the duties of the two offices are inherently inconsistent and repugnant. It has also been stated that two offices are incompatible if public policy would render it improper for one person to hold both positions, in view of the nature and duties of the two offices. State ex rel. LeBuhn v. White, 133 N.W.2d at 905. Review of the statutory duties of the offices at issue here is required to determine whether the office of county attorney is incompatible with the two other offices. 133 N.W.2d at 904, 905-06.

*3 Comparison of the statutory duties of county attorney with the duties for city council member and city mayor fails to reveal that a county attorney has any revisory or approval authority over the duties of the other two offices; these city offices are not subordinate to the office of county attorney. The converse is also true; the office of county attorney is not subordinate to these city offices. This comparison also fails to reveal that the duties of county attorney are inherently inconsistent with, and repugnant to, the duties of a city council member or mayor. We therefore conclude that the office of county attorney is not incompatible with the offices of city council member or city mayor.

This conclusion does not, however, mean that no potential for conflict of interest exists when a county attorney also serves as a council member or mayor. It is possible that disputes may arise between a city and the surrounding county, which well might implicate the county attorney's statutory duties to advise and represent the county. See Iowa Code §§ 331.756(2), (6), and (7) (1991). Therefore, it will be incumbent upon a county attorney who is also a mayor or city council

member to at times abstain from voting on certain issues when a conflict of interest exists. However, the possibility of conflicts of interest does not render the offices at issue incompatible under the applicable legal test. 1982 Op.Att'yGen. 390 (#82-4-6(L)). As we have previously stated, the doctrine of incompatibility should be applied with caution and with precision, so as to not thwart the legitimate public interests in encouraging persons to seek public office and in allowing voters a full choice in electing public officials. See 1982 Op.Att'yGen. 390 (#82-4-6(L)).

In your second question you ask whether an assistant county attorney may serve as a prosecuting attorney for a city, as a city council member, or as a city mayor. What we have already stated in this opinion regarding the office of county attorney and the position of city prosecuting attorney applies to an assistant county attorney. See Iowa Code §§ 331.903(1) and (4) (1991) (county attorney may appoint an assistant, who shall perform the duties assigned by the county attorney, and shall perform the duties of the county attorney when the county attorney cannot perform them). For the reasons already noted as to a county attorney, we also find that the doctrine of incompatibility does not prohibit an assistant county attorney from serving as a city council member or mayor. [1]

II.

We now address your third question, whether a county attorney may enforce county ordinances which replicate state law crimes. As previously noted, our opinion #81-8-26 found that a per se conflict of interest would occur if a county attorney, when acting as a city attorney, enforced a city ordinance which replicated a state law crime instead of pursuing a state criminal prosecution. It might initially appear that our opinion #81-8-26 would militate against a county attorney's pursuit of a county ordinance prosecution instead of a state criminal prosecution. However, we have concluded that opinion #81-8-26 has no application to this matter, and that a county attorney does have the discretion to pursue the county charge in lieu of the state charge.

***4** It must be remembered that opinion #81-8-26 involved an issue of possible divided loyalties between "two masters" -- the city, when a person acts as city attorney, and the state, when that same person acts as county attorney. That dilemma is not, however, presented by your question. Of course, a county attorney is not required to act as a prosecuting attorney for a city -- it is not one of the duties enumerated in Iowa Code § 331.756 (1991). We only found in opinion #81-8-26 that the simultaneous holding of the office of county attorney and the employment of city attorney was not precluded by the doctrine of incompatibility, but that this per se conflict of interest indeed existed. However, a county attorney is specifically charged by statute with the duty of enforcing "state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county or as a county attorney, except as otherwise provided." Iowa Code § 331.756(1) (1991). We believe that this statute grants the county attorney discretion whether to pursue a state criminal prosecution or a county prosecution, and that no issue of divided loyalties is presented because the State has expressly provided for this choice to be made by the county attorney. Cf. State v. Perry, 440 N.W.2d 389, 391-92 (Iowa 1989) (where criminal conduct could be charged under either of two state criminal statutes, prosecutor had discretion as to which charge to file). Therefore, we conclude that a county attorney has discretion to pursue a county ordinance prosecution which replicates a state crime.

An additional consideration supports our conclusion that the conflict found in opinion #81-8-26 would not exist when a county attorney pursued a county ordinance prosecution. Under Iowa Code § 331.302(2) (1991), a county may provide a penalty of up to a one hundred dollar fine or up to thirty days imprisonment for a violation of a county ordinance. However, when a county ordinance provides a penalty for a violation which is also penalized under state law, the fine collected for the violation shall be remitted to the state treasurer. Iowa Code §§ 602.8106(3), 602.8108(2)(a) (1991). Obviously, the concern which was apparent in our opinion #81-8-26 regarding divided loyalties has no application if the fine money is remitted to the state. It is true that 90 percent of a fine collected for violation of a county infraction, which is defined as a civil offense, shall be remitted to the county. Iowa Code §§ 331.307(1), 331.307(6), and 602.8106(2) (1991). However, prosecution of county infractions falls within the duties of the county attorney, and a county's authority to

enact county infractions which replicate state criminal laws is severely limited. See Iowa Code §§ 331.307(3), 331.756(1), and 331.756(2) (1991).

In sum, we conclude that a county attorney does have discretion to enforce a county ordinance which replicates a state law crime.

Sincerely,

RICHARD J. BENNETT
*5 Assistant Attorney General

Footnotes

1 A prior opinion issued by this office (1972 Op.Att'yGen. 35) stated that the position of assistant county attorney was an office, although it is evident from review of that opinion that this conclusion was essentially assumed and was not the result of legal analysis. Because the duties of an assistant county attorney are not always "performed independently and without control of a superior power other than the law," that position may not be a public office but instead one of employment. See State v. Taylor, 260 Iowa 634, 144 N.W.2d 289, 292 (1966) (performance of duties not subordinate to another's control is one of the five requirements for finding a public office to exist); Iowa Code §§ 331.903(1) and (4) (1991). However, we need not reach this issue in view of our conclusion that no incompatibility exists between the office of county attorney and these city offices.

1992 Iowa Op. Atty. Gen. 22 (Iowa A.G.), 1991 WL 495656

End of Document

Agreement for the Provision of Emergency Medical Services between the City of Grinnell, Iowa and Care Ambulance LLC.

This Agreement is entered into by and between the City of Grinnell, here in after referred to as the City and Care Ambulance LLC located in Iowa City Iowa, here in after referred to as CARE.

WHEREAS, the City, acting pursuant to Chapter 364 of the 2013 Code of Iowa (as amended here and in all future references to the 2013 Code of Iowa) desires to attain competent and reliable emergency medical services (EMS) for its citizens of the service territory detailed in the agreement.

WHEREAS, CARE desires and has the ability to provide competent and reliable EMS to the service territory.

NOW, THEREFORE, IT IS HEREBY AGREED by the City and CARE as follows:

1. Definitions

911 Ambulance shall mean an ambulance staffed and equipped, at the Paramedic level, to respond first and immediately to an emergency call in the service territory.

ADVANCED-SERVICE AMBULANCE shall mean ambulances equipped to provide advanced emergency medical care as defined in Iowa Administrative Code 641- Chapter 132 of the 2013 Code of Iowa.

BACK UP AMBULANCE shall mean an ambulance stored in the service territory that is available for use, but not staffed with on duty personnel.

CUSTOMERS shall mean those people of legal entities financially responsible for particular EMS calls or Services.

EMERGENCY CALLS shall not include emergency transfers from Grinnell Regional Medical Center.

PARAMEDIC means an individual who has successfully completed a course of study based on the United States Department of Transportation's Paramedic Instructional Guidelines (January 2008), has passed all required practical and cognitive examinations for the Paramedic, and is certified and in good standing as a Paramedic by the Iowa Department of Public Health Bureau of Emergency Medical Services.

SERVICE TERRITORY shall include the area as defined by the map and description in Attachment A. It shall also include TIER and mutual aid responses to surrounding communities.

TRANSFER AMBULANCE shall be an ambulance staffed and equipped, at the Paramedic level, to handle transfers originating or ending in the service territory

2. Terms of Relationship

It is fully and completely understood by and between the parties that CARE is an independent contractor and the City, by entering into this agreement and subsidizing CARE operations in the service territory has an ongoing responsibility to monitor the work of CARE as outlined in this agreement. City agrees that by subsidizing CARE, it has neither directly or indirectly, any control of CARE and that any actions on the part of CARE are solely the actions of CARE and City shall not in any way enter into the operations of, or services rendered by CARE.

The City shall solely establish the Service Territory of this Agreement and minimum level of service provided within the service territory. All communications regarding the Service Territory and services provided shall be solely between the City and CARE. CARE shall honor the Service Territory and may only provide service outside the territory with staff and equipment assigned to this Agreement with prior written approval of the City, or in the event of providing Mutual Aid to any agency near the Service Territory where a 28-E agreement exists. If for any reason the Service Territory is altered for reasons outside the control of the City or CARE, either party can request negotiating the terms of the entire agreement. CARE shall be the sole provider allowed by the City for Emergency Services.

3. Equipment

CARE shall provide a minimum of three (3) ambulances stationed in the corporate limits of Grinnell. The ambulances shall be equipped, and meet the minimum level of service as specified in Article 4 of this agreement.

CARE shall properly maintain these vehicles in accordance with applicable federal, state, and local hours. The City agrees that a vehicle may be out of service for repairs for as long as 4 (four) days but at no time may CARE have less than 2 (two) vehicles in service. Once that amount is exceeded a replacement vehicle must be provided within 24 hours of a unit going out of service.

Vehicles shall be stored in a secured, heated building. Vehicles shall be maintained at the expense of CARE. CARE shall be responsible for maintaining the cleanliness and good mechanical condition of the Vehicles provided for this agreement.

The City may inspect ambulances, equipment, and facilities with a reasonable notice, for the purposes of determining that they are in good mechanical condition and resources are appropriate for servicing of this Agreement. Reasonable notice shall be one (1) hour during the hours of 8:00 a.m. to 5:00 p.m. Monday thru Friday and two (2) hours outside those hours. These inspections shall be initiated by the Grinnell City Manager but may be completed by either the City Manager or an appropriate designee

4. PERSONNEL

CARE shall render ambulance service during the period covered by this Agreement and shall staff the ambulance with an adequate number of qualified personnel. Staffing shall be determined by the minimum standards set forth in Iowa Chapter 132, specifically 641-132.8 (147A) Service Program Levels of Care and Staffing Standards.

a) CARE shall staff the 911 Ambulance and the Transfer Ambulance at the Paramedic Level.
b) CARE shall have a third unstaffed Back Up Ambulance
c) CARE personnel who staff the 911 Ambulance shall be stationed with the Ambulance on duty.
d) The 911 Ambulance shall be used for emergency calls in the service territory only.
e) CARE shall work to implement a call back system of local personnel to assign to the Back Up Ambulance when needed.
f) Only one (1) of the three (3) Ambulances assigned to the service territory may be out of the service territory for transports. In the event that there are less than two (2) Ambulances in the service territory CARE shall notify the on duty Firefighter and ensure two (2) Ambulances will be in the service territory in a timely manner.
g) CARE agrees to use the resources that are assigned as part of this Agreement to provide EMS to the service territory unless service is provided outside the service territory as part of a written mutual aid agreement or a tier arrangement approved by the City. All mutual aid and tier arrangements will be reviewed with the City.
h) CARE shall notify the City when doing transports with the Transfer Ambulance that do not end or originate in the Service Territory. This notification will take place via radio to Poweshiek CO E911 on a frequency determined by the City.

5. Subsidy and Payments

CARE agrees to fulfill the terms of this Agreement from April 1, 2019 to March 31, 2024 and shall be paid by the City as follows:

April 1, 2019 to March 31, 2020. $132,500 (One Hundred Thirty-Two Thousand Five Hundred Dollars) Payments shall be made monthly in twelve equal installments of $11,041.67

April 1, 2020 to March 31, 2021. $137,500 (One Hundred Thirty-Seven Thousand Five Hundred Dollars) Payments shall be made monthly in twelve equal installments of $11,458.33

April 1, 2021 to March 31, 2022. $142,500 (One Hundred Forty-Two Thousand Five Hundred Dollars) Payments shall be made monthly in twelve equal installments of $11,875.00

April 1, 2022 to March 31, 2023. $147,500 (One Hundred and Forty-Seven Thousand Five Hundred Dollars) Payments to be made in twelve equal installments of $12,291.67

April 1, 2023 to March 31, 2024. $152,500 (One Hundred and Fifty-Two Thousand Five Hundred Dollars) Payments to be made in twelve equal installments of $12,708.33

The foregoing payments shall constitute a subsidy to CARE by the City as assistance to CARE to perform the services set forth in this Agreement, and that said subsidy has been established as an effort to make this operation feasible for CARE allowing them to offset the cost of personnel and equipment needed to staff, maintain, and operate an Ambulance Service in the Grinnell Service Territory.

Routine Ambulance transfers will include services provided to those individuals either voluntarily or involuntarily hospitalized for mental health and / or substance abuse reasons per treatment episode. Individuals not requiring a level of care provided by EMS, but are needing transportation from one facility to another for the purpose of further care may be transported by a "Secure Car" provided by CARE. These services are billed to the requesting facility / entity.

The subsidy reimbursement provided to the City for the provision of Ambulance Services in Poweshiek County via CARE will cover ambulance service to qualified indigent residents of Poweshiek County in an amount not to exceed $12,000 of services in each year of the five (5) year contract. 'Indigent Resident" is defined as any uninsured individual with their treatment episode originating in Poweshiek County. CARE will provide Poweshiek County with ambulance statements per treatment episode for subsidy documentation purposes.

6. CHARGES

CARE shall charge customers on a schedule of fees based on the level of service provided to the customer. CARE will provide the City Manager the Fee Schedule annually no later than January 31st and are automatically made part of this Agreement.

It is understood and agreed by the parties that said charges, (the rates are set forth in the current schedule of fees – Attachment B to this Agreement) shall be billed, collected, and retained by CARE as substantial compensation for its cost of operation. City agrees to allow CARE to re-negotiate the subsidy above in the event of actions taken by the federal, state, or local government, or their respective agencies, would substantially reduce the amount of monies which could reasonably be expected to be collected from Customers of CARE. The City also has the right to re-negotiate the subsidy if their revenues or expenditures are substantially impacted by actions taken by the federal, or state government or their respective agencies.

7. RECORDS

CARE shall insure that a record is kept of the following: the time a call is received, the time CARE arrives at the scene, the time on scene/the time the ambulance leaves the scene for the hospital, the time of arrival at the hospital, and the time the ambulance is back in service.

As a part of this Agreement, CARE agrees to have all emergency response dispatched via the Poweshiek County Dispatch Center. Both parties agree to coordinate this with the Poweshiek

County Sherriff's Office as they are charged with the management and oversight of the dispatch operations. CARE is responsible for the equipment necessary for CARE staff to communicate effectively with the Poweshiek County Dispatch Center.

CARE shall complete records which apply only to the terms of this agreement, of all sources of income, expenses, accounts receivable, and accounts payable and said records shall be made available to the City Manager or their designee at the home office of CARE and said records/information shall not be removed from said CARE office. Appropriate designees include: the City Clerk, Finance Officer, Mayor, City Attorney, Fire Chief, Assistant City Manager, or the City's designated accounting/auditing firm. Any other designees must be approved by CARE.

Information maintained in CARE's records pertaining to the identity, condition, or treatment of patients is confidential and not subject to inspection by non-CARE personnel.

8. Continuous Improvement

It is the goal of both parties to realize continuous improvement in the provision of EMS for the Grinnell community. Both parties believe one of the best methods to attain this improvement is via proper communication and constructive / critical feedback. For the first year of the agreement the City will call a semiannual meeting with community stakeholders and representatives of CARE to review all aspects of this Agreement. At these semiannual meetings CARE shall provide:

- Records as requested n paragraph one of Article 7.
- Current staff assigned to Grinnell operations with credentials.
- Details of any deficiencies or problems experienced and not already reported to the Committee.
- Details of any positive experiences or exemplary services provided.
- Feedback from GRMC Emergency Department.
- Tour of any facilities and viewing of equipment.

The City shall provide:

- A meeting agenda in advance to the group.
- Copies of any pertinent information or documents to the group in advance.
- A narrative summary assessing the performance of CARE in the review period.

The Committee will be informal and may consist of the Grinnell Fire Chief, Grinnell Police Chief, Mayor, the Chair of the Public Safety Committee, the Poweshiek County Sherriff or their designee, a representative of the Poweshiek County Board of Supervisors, the CEO of Grinnell Regional Medical Center, a representative of Mayflower Homes and/or Seeland Park, the Public Safety Director of Grinnell College, a representative(s) of Jasper County partners, CARE representatives, and others deemed appropriate by the City. This Committee will establish realistic goals for CARE and aid CARE in achieving those goals as possible. The primary purposes of this committee will be to monitor the terms of the Agreement and assist the City and CARE

with the continuous improvement of EMS service for the Grinnell community. The meeting of this committee will be held as follows or other mutually acceptable dates.

9. RENT AND TERMS OF OCCUPANCY

CARE will pay the City $$$$$$$ annually for rent and utilities. A building site plan showing the areas of joint occupancy and sole occupancy by Ambulance Service is made part of this Agreement as Attachment C.

All employees or representatives of CARE, that will work out of the Public Safety Building, must submit to a fingerprint background check conducted by the Grinnell Police Department. These background checks will be reviewed by the Grinnell Chief of Police and the City Manager. The City shall solely determine, based on the findings of the check, whether or not a particular CARE employee shall be allowed to work in the Grinnell Public Safety Building. A guidance policy regarding this matter is included as Attachment D for reference.

CARE shall be responsible to keep all areas it occupies solely in a clean and orderly manner consistent with the standard of care established throughout the Grinnell Public Safety Building. CARE shall also take special effort to clean up debris or mess they make in shared areas. The care and cleaning of the following joint occupancy areas shall be the responsibility of CARE:

- Female locker rooms.
- All hallways on the fire department side of the building and kitchen floor.
- Exercise room, cleaned daily, in exchange for CARE employee access.

The City shall provide all necessary cleaning supplies and equipment.

As allowed by City Code, CARE may install up to one sign on the property with their company designation. This sign design, location, and style must be approved in advance by the City Manager.

CARE will have the right to install security monitoring systems in all locations in which CARE has rented space. It is understood that CARE has leased the areas defined in this contract and that such monitoring, reports, supplies, equipment, and all other property of CARE is owned solely by CARE and is not subject to public record requests, or other inspections not permitted under the law. All installations must be pre-approved by the City to insure that there is no harm to our security system or the integrity of the building.

CARE employees are expected to be in uniform while on duty or responding to calls for service. CARE employees shall also be expected to be in uniform while using joint occupancy or common areas of the Public Safety Building at all times with the exception of visits to the restrooms and other trips of short duration. Even these exceptions require good judgment.

10. RENEGOTIATION

In order to enable CARE and the City to make arrangements for the continuation of EMS, it is agreed that the parties will renegotiate and execute any new Agreement no less that six (6) months in advance of the expiration of the Agreement, unless both the City and CARE mutually agree to other timelines

CARE and the City agree that this Agreement may be cancelled, extended, modified, or renegotiated at any time subject to mutual agreement of the parties. It is further agrees that in the event this Agreement is cancelled, the decision to cancel shall be set forth in a document and shall be signed by appropriate officials of both the City and CARE and said cancellation shall not occur less than sixty (60) days from the execution of this written cancellation document. Notwithstanding the above provision the City shall have unilateral authority to cancel this Agreement under the provision set forth in Paragraph 12 below.

If no action is taken by either party to this Agreement to cancel, extend, modify or renegotiate this Agreement as described in this Agreement, this Agreement shall terminate August 31, 2024.

That CARE designates their company CEO as their representative on whom notice shall be served and who shall be notified of any breaches or deficiencies in this Agreement and the City designates the Grinnell City Manager as their designee on whom notice shall be served and who shall be notified of any breaches or deficiencies in this Agreement. City shall be notified at the City Offices of Grinnell, Iowa, Attention City Manager, 520 4th Avenue, Grinnell, Iowa 50112. CARE shall be notified at 1801 S. Riverside Drive, Iowa City, Iowa 52234.

CARE shall immediately make the City Manager aware in writing of any contact with any City Council members or the Mayor that deals specifically with the terms of the performance of this Agreement so that the content of that discussion may be disseminated to all other City Council Members and the Mayor. Breach of this provision may be cause for immediate termination of the Agreement.

11. INSURANCE AND INDEMNIFICATION

CARE agrees to maintain proper worker's compensation insurance as to any employed personnel, CARE further agrees to maintain automobile liability and property damage insurance on all of its ambulances or any back up units operated by CARE. CARE agrees to maintain general liability insurance and professional liability insurance in the amount of not less than three million dollars ($3,000,000) per occurrence covering the operations of EMS and their personnel.

CARE does hereby agree to indemnify and hold harmless the City, its Mayor and City Council members, officers, and employees from any and all claims and liabilities of any type or nature whatsoever, for damages to, loss of, or the destruction of any property or person or persons, which may now or hereafter arise out of, or the result of operations of CARE and the providing of service incident to or pursuant to this Agreement.

12. PROOF OF INSURANCE

CARE shall provide the City a Certificate of Insurance as evidence that the insurance described in Paragraph 11 above is in force and effect as soon after the execution of this Agreement as practicable and in no event later that twenty (20) calendar days from the execution date. The failure of CARE to supply the Certificate of Insurance in a timely fashion or failure by CARE to have the insurance in force and effect at any time during this agreement for whatever reasons that may have occurred, shall constitute sufficient grounds upon which the City may unilaterally and independently cancel this Agreement by serving written notice of cancellation on CARE at it's Iowa City office.

13. DISCRIMINATION

CARE shall not discriminate their provision of service because of race, creed, color, religion, national origin, sex, age, financial status, or physical or mental disabilities.

14. MUTUTAL AID

CARE may enter into mutual aid agreements or contracts with other EMS providers and shall attempt to initiate said agreements. Any mutual aid or tiering agreements shall be in writing and be executed by both parties. Copies of these executed agreements shall be provided to the City.

15. DISPATCHING

CARE agrees that emergency dispatching shall be done via the Poweshiek County Dispatch Center. CARE shall install and pay for its own phones, communication systems, and have a business number answered twenty-four (24) hours a day seven (7) days per week. City requires that CARE advertise, encourage, and promote the use of 911 as the proper number for emergency EMS calls in the Grinnell Service Territory. CARE agrees to provide the training necessary for their employees to work and effectively within the Poweshiek County Dispatch System.

This Agreement entered into this day of March 2019, by the City of Grinnell and CARE Ambulance shall become effective on April 1, 2019.