

THE IOWA JUDICIAL SYSTEM

By Russell M. Ross*

To implement the doctrine of the separation of powers and the rule of law, an independent judicial division is essential. The major function of the Iowa court system is to decide cases of legal controversy between individual citizens, or between the state government and its citizens. The state legislature enacts the law, thus determining policy; the Governor and the administrative departments execute the program legislated; and the state courts adjudicate the disputes that arise. In a way, the judicial body passes upon the work of both of the other major branches of government, for the courts consider the meaning and intent of the legislative acts and the validity of the actions of the officers who try to enforce these statutes.

Iowa has always believed in the codification of its laws. All of the permanent state statutes are codified. These state laws, of course, must be in accord with the federal Constitution, the federal laws and treaties, as well as the state Constitution. The common law in Iowa is utilized mainly as an interpretative source rather than as a primary source of law.

In Iowa, as in almost all of the states, there are three kinds of laws with which the state courts are concerned: (1) constitutional law; (2) criminal law; and (3) civil law.

Constitutional Law. In Iowa the cases involving constitutional law are those that in one way or another involve the United States Constitution and its amendments, or the Iowa Constitution of 1857 and its amendments. Cases involving the two constitutions call for the state courts to pass either on the constitutionality of an act of Congress, an act of the state legislature, or an action of some governmental official. This process of judicial review is one of the fundamental features of the United States government. The United States Constitution is the organic law of the land and as such takes precedent over all other laws and actions; it controls the validity or consti-

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tutionality of the acts of all governments, no matter whether they are local or national, executive or legislative. Just as the United States Supreme Court is oftentimes referred to as the "balance wheel" of the Constitution, the Iowa Supreme Court may be said to be its counterpart on the state level.

Civil Law. Law that resolves conflicts between individuals is usually termed civil law. The majority of civil laws protect property rights and individual rights. In civil cases ordinarily the state is not a party. The cases must be prosecuted by the individual who feels he has been wronged. Civil rights include the freedom of speech, freedom of worship, freedom of assembly, freedom of the press, freedom of occupation, and the right to own property. It should be emphasized that civil rights involve constitutional law, civil law, and criminal law. It is not uncommon for the state to be a defendant in a civil case when an individual finds that the state has violated a right; a private citizen can then sue the state to restrain this action.

Criminal Law. Laws that have as their objective the maintenance of the law and order and the peace of the state, and that provide for some type of punishment if the law is violated, are called criminal laws. If the punishment for the violation is a relatively small fine or confinement in jail, or both, the offense is called a misdemeanor. A crime of a more serious nature is termed a felony. The state is the prosecutor in all criminal cases.

The Constitution of 1857 provides for the judicial department in Article V, Section 1: the judicial power "shall be vested in a Supreme Court, district courts, and such other courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish."¹ The Constitution thus provides the skeleton for the state court system.

THE IOWA SUPREME COURT

The highest court in the state is the Iowa Supreme Court, and all other state courts are inferior to it. Section 2 of Article V originally provided for a Supreme Court of three judges, but Section 10 of the same Article allowed the state legislature to increase or decrease the number of judges on the Court. However, no more than one judgeship may be added or deleted by any one General Assembly, and no judge may be removed from office by the reorganization.

Jurisdiction. Both original and appellate jurisdiction rest in the highest court of Iowa. The majority of cases are heard under the power to hear

¹ Carl L. Erbe, "The Judicial Department of Government as Provided by the Constitution of Iowa," *IOWA JOURNAL OF HISTORY AND POLITICS*, 23:406-474 (July, 1925).

appellate cases.² These are cases that are brought to the Supreme Court for review after having been heard first by one of the state district courts. Original jurisdiction is defined as the power to hear a case in the first instance. A very small number of cases heard by the Supreme Court are of this type. Much of the original jurisdiction is in connection with various writs that are necessary for the court to exercise its jurisdiction.

Appeals from superior, municipal, and district courts may be taken to the Supreme Court at any time within four months after the time of rendition of the judgment. No appeal may be taken in any cause in which the amount in controversy between the parties does not exceed \$100, unless the trial judge certifies that the cause is one which should be allowed the Supreme Court, which, according to the Constitution, has appellate jurisdiction only in cases in chancery, and thus constitutes a court for the correction of errors at law.

An appeal may be taken to the Supreme Court under any one of five different circumstances: (1) an order made effecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken; (2) a final order made in special actions affecting a substantial right therein, or made on a summary application in an action for judgment; (3) an order which grants or refuses, continues or modifies a provincial remedy, grants or refuses, dissolves or refuses a new trial, or sustains or overrules a demurrer; (4) an intermediate order involving the merits or materially affecting the final decision; and (5) an order or judgment on habeas corpus. If any of the above orders or judgments are made or rendered by a judge, they are reviewable the same as if made by a court.

Organization. The number of judges on the Iowa Supreme Court has been gradually increased. In 1857 the Constitution established a court of three men. By 1864 there were four members; by 1867, five members; from 1870 until 1915 the Supreme Court was composed of six judges. In 1915 there were seven; eight by 1929, and nine in 1931. No changes in number have been made since 1931. Similarly, the salaries of the judges have undergone an evolution. The Constitution originally established the annual salary at \$2,000 but provided that the General Assembly might increase the compensation. This has been done from time to time; in 1955

² Ethan P. Allen, "Appeals from the Supreme Court of Iowa to the Supreme Court of the United States," *ibid.*, 31:211-73 (April, 1933).

JUDGES OF THE IOWA SUPREME COURT

| <i>Name</i> | <i>Home County</i> | <i>Years Served</i> |
|---------------------|--------------------|------------------------|
| Charles Mason | Des Moines | 1838-1847 |
| Thomas S. Wilson | Dubuque | 1838-1847 |
| Joseph Williams | Muscatine | 1838-1848 1849-1855 |
| John F. Kinney | Lee | 1847-1854 |
| George Greene | Dubuque | 1847-1855 |
| S. Clinton Hastings | Muscatine | 1848-1849 |
| Jonathan C. Hall | Des Moines | 1854-1855 |
| William G. Woodward | Muscatine | 1855-1860 |
| Norman W. Isbell | Linn | 1855-1856 |
| Lacon D. Stockton | Des Moines | 1856-1860 |
| George G. Wright | Van Buren | 1855-1860 1860-1870 |
| Ralph P. Lowe | Lee | 1860-1867 |
| Caleb Baldwin | Pottawattamie | 1860-1863 |
| John F. Dillon | Scott | 1864-1869 |
| Chester C. Cole | Polk | 1864-1876 |
| Joseph M. Beck | Lee | 1868-1891 |
| Elias H. Williams | Clayton | 1870 (8 months) |
| James G. Day | Fremont | 1870-1883 |
| William E. Miller | Johnson | 1870-1875 |
| Austin Adams | Dubuque | 1876-1887 |
| William H. Seevers | Mahaska | 1876-1888 |
| James H. Rothrock | Cedar | 1876-1896 |
| Joseph R. Reed | Pottawattamie | 1884-1889 |
| Gifford S. Robinson | Buena Vista | 1888-1899 |
| Charles T. Granger | Allamakee | 1889-1900 |
| Josiah Given | Polk | 1889-1901 |
| LeVega G. Kinne | Tama | 1892-1897 |
| Horace E. Deemer | Montgomery | 1894-1917 |
| Scott M. Ladd | O'Brien | 1897-1920 |
| Charles M. Waterman | Scott | 1898-1902 |
| John C. Sherwin | Cerro Gordo | 1900-1912 |
| Emlin McClain | Johnson | 1901-1912 |
| Silas M. Weaver | Hardin | 1902-1923 |
| Charles A. Bishop | Polk | 1902-1908 |
| William D. Evans | Franklin | 1908-1934 |
| Byron W. Preston | Mahaska | 1913-1924 |
| Frank R. Gaynor | Plymouth | 1913-1920 |
| Winfield S. Withrow | Henry | 1913-1914 |

JUDGES OF THE IOWA SUPREME COURT

| <i>Name</i> | <i>Home County</i> | <i>Years Served</i> |
|------------------------|--------------------|------------------------------|
| Benjamin I. Salinger | Carroll | 1915-1920 |
| Truman S. Stevens | Fremont | 1917-1934 |
| Thomas Arthur | Harrison | 1920-1925 |
| Frederick F. Faville | Webster | 1921-1932 |
| Lawrence De Graff | Polk | 1921-1932 |
| Charles W. Vermillion | Appanoose | 1923-1927 |
| Elma G. Albert | Greene | 1925-1936 |
| Edgar A. Morling | Palo Alto | 1925-1932 |
| James W. Kindig | Woodbury | 1927-1934 |
| Henry F. Wagner | Keokuk | 1927-1932 |
| John M. Grimm | Linn | 1929-1932 |
| William L. Bliss | Cerro Gordo | 1932 (3 months) 1939- |
| Richard F. Mitchell | Webster | 1932-1942 |
| George C. Claussen | Clinton | 1932 (2 months) 1933-1934 |
| Hubert Utterback | Polk | 1932-1933 |
| John W. Anderson | Woodbury | 1933-1938 |
| Maurice F. Donegan | Scott | 1933-1938 |
| John W. Kintzinger | Dubuque | 1933-1938 |
| Leon W. Powers | Crawford | 1934-1936 |
| Wilson H. Hamilton | Keokuk | 1935-1940 |
| James M. Parsons | Polk | 1935-1937 |
| Paul W. Richards | Montgomery | 1935-1940 |
| Carl B. Stiger | Tama | 1936-1942 |
| Edward A. Sager | Bremer | 1937-1942 |
| Ernest M. Miller | Shelby | 1937-1938 |
| Ralph A. Oliver | Woodbury | 1938- |
| Frederic M. Miller | Polk | 1939-1946 |
| Oscar Hale | Louisa | 1939-1950 |
| Theodore G. Garfield | Story | 1941- |
| Charles F. Wennerstrum | Lucas | 1941- |
| Halleck J. Mantz | Audubon | 1943-1953 |
| John E. Mulronev | Webster | 1943-1955 |
| William A. Smith | Dubuque | 1943- |
| Norman R. Hays | Marion | 1946- |
| G. King Thompson | Linn | 1951- |
| Robert L. Larson | Johnson | 1953- |
| Henry K. Peterson | Pottawattamie | 1955- |

the 56th General Assembly set the yearly salary for members of the Supreme Court at \$12,000, to take effect as the judges are re-elected or new judges elected.

The constitutional qualifications required for a judge of the Supreme Court are negligible. Naturally, it is assumed that a judge must have the legal voting qualifications: twenty-one years of age, residence in Iowa, and citizenship. However, no formal legal training apparently is required by law. This is in contrast with the requirements in Texas, where a Supreme Court judge must be thirty years of age and have had at least seven years of law practice or judicial experience. Conceivably, in Iowa a person without law experience could become a member of the Supreme Court, but this has never occurred.

Members of the Supreme Court are selected by popular election, as provided in the state Constitution. Nomination of judges in Iowa is not by the primary, as is the case in all other public elective offices; instead, nominations of candidates for the Court are made by the two major political parties in special judicial conventions. All of the qualified voters in the state are eligible to participate in the selection of the Supreme Court judges, since voting on them is statewide.

At the present time all the members of the Supreme Court are Republicans. While the state statutes are silent upon the geographic distribution of the residence of the members of the Court, political expediency requires consideration of the candidate's residence in the nominating convention. The present members of the 1956 Iowa Supreme Court are: William L. Bliss, Mason City; Theodore G. Garfield, Ames; Norman R. Hays, Knoxville; Robert L. Larson, Iowa City; Ralph A. Oliver, Sioux City; Henry K. Peterson, Council Bluffs; W. A. Smith, Dubuque; G. K. Thompson, Cedar Rapids; and Charles F. Wennerstrum, Chariton.

At each biennial election, three positions on the Supreme Court are filled. The term of office is six years. Thus, in theory, every two years three judges' terms expire. Should a vacancy occur on the Court, by death, resignation, or impeachment, the Governor has the power to fill the vacancy by appointment. This appointee serves until a successor is elected and qualified, and he may be a candidate for the post. The judges are subject to removal by impeachment. The procedure would involve indictment by the House of Representatives of the General Assembly and conviction or exoneration by the Senate.

The post of chief justice of the Iowa Supreme Court rotates every six months, with the senior member in time of service usually assuming the position. For some years the chief justiceship rotated every year, but the 45th General Assembly in 1933 ordered that the title be passed on each six months. No additional salary accompanies the title.

Procedure. The Iowa Supreme Court usually sits in two divisions.³ A division consists of four associate justices and the chief justice. However, on matters of constitutionality the entire bench sits to hear the case. In cases in which a division of the court is utilized, the hearing is conducted and the four justices and the chief justice weigh and consider the rights of each party; the records in the case are then assigned to one of the judges for study and the preparation of an opinion. After the opinion has been prepared, it is submitted to all of the nine members of the court, along with the records in the case. Five members constitute a quorum, which must be present to render a decision. After further conferences, the vote of all members is taken and a decision rendered. Usually the decisions are unanimous. If any member of the court dissents from the majority decision, he is permitted to write a dissenting opinion. Decisions of the Iowa Supreme Court are published in yearly volumes entitled *Iowa State Reports*.

The Supreme Court staff in Iowa is relatively small. Each justice appoints his own secretary, and the justices also name the clerk of the Court, a deputy clerk, a file clerk, and a messenger. The position of statistician of the judicial department was created by the 56th General Assembly in 1955. The Supreme Court and its staff are housed in the State Capitol, where all cases are heard and all decisions rendered.⁴

Usually the Supreme Court sits at three regular terms in each year. The first term begins in January and ends with the first Monday in May. The second term begins on Tuesday after the first Monday in May and ends with the third Monday in September, while the third term begins with the first Tuesday after the third Monday of September and ends with the third Saturday of December.

The time allotted to each term is divided as nearly as practicable into periods of four weeks, the first part of each period being devoted to the

³ Jack T. Johnson, "The Supreme Court in Session," *The Palimpsest*, 19:191-5 (June, 1939).

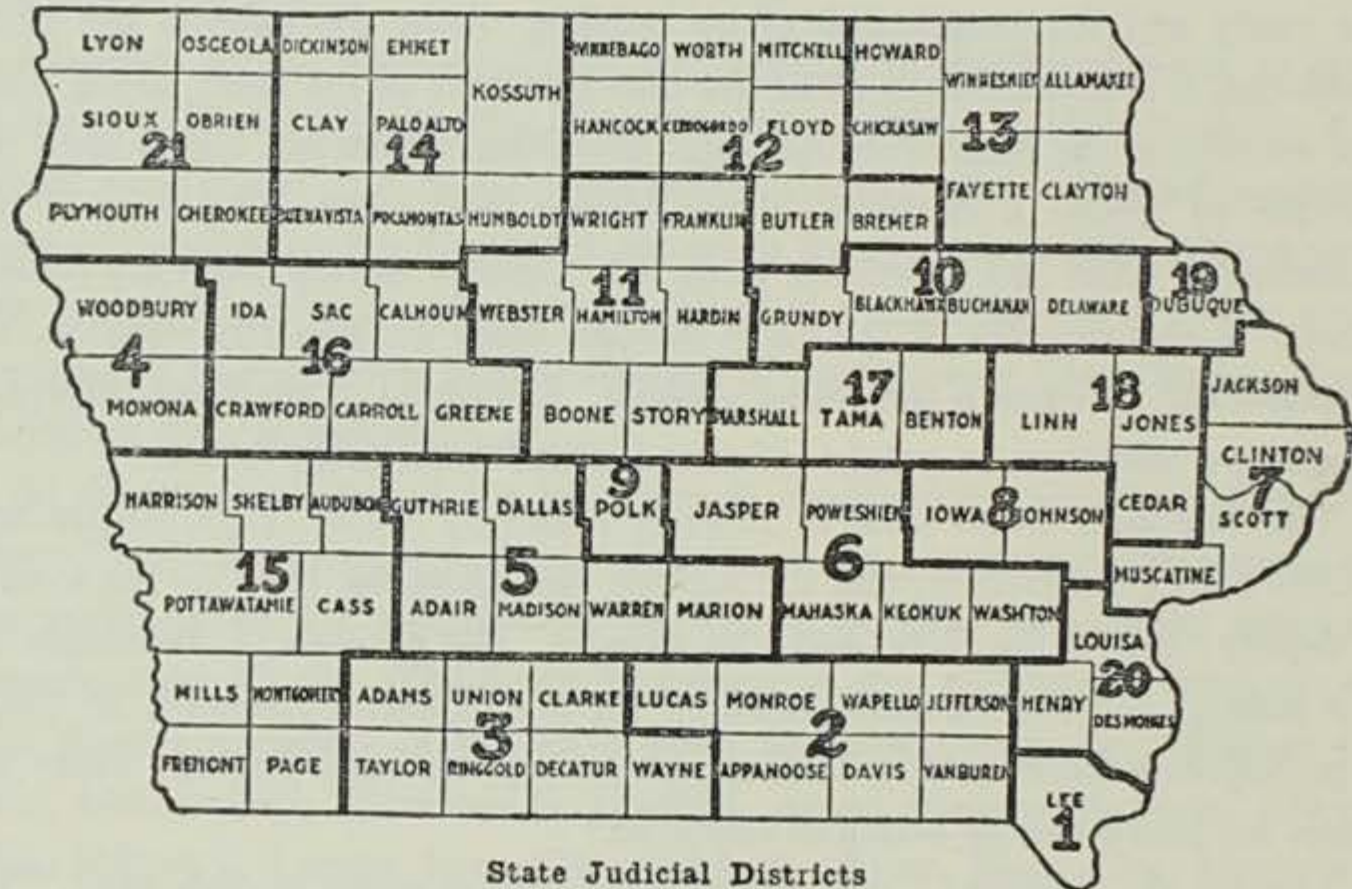
⁴ Ora Williams, "Iowa's Supreme Court," *Annals of Iowa* (third series), 26:3-22, 138-54 (July, October, 1944).

argument and submission of cases and the second four weeks to consultation and the preparation of opinions. Cases assigned for each period are called in the order that they appear on the docket. Judgments of affirmance, rulings, and orders in cases submitted and orders authorized by law are made at any time, regardless of the term of court.

IOWA DISTRICT COURTS

Jurisdiction. The twenty-one judicial district courts in Iowa have both original and appellate jurisdiction. In contrast to the Supreme Court, their appellate jurisdiction is of less importance than their original jurisdiction.

Courts of Iowa



State Judicial Districts

They do, however, act as a court of appeals over matters which arise from justice of the peace courts, superior courts, industrial commissioners' courts, and other inferior tribunals. The large bulk of district court dockets are filled with original jurisdiction cases. Both criminal and civil cases are heard in the district courts. They also act as probate courts, administering the estates of deceased persons and those under guardianship.⁵

Organization. Eleven district courts were provided by the Constitution of 1857, with the General Assembly authorized to increase the number of districts after 1860. An amendment of 1884 allows the General Assembly

⁵ Code of Iowa, 1954, Chap. 604.

to change the districts at any time; such reorganization, however, may not remove a judge from office. The General Assembly has been cautious in adding new districts. A 12th district was created in 1864, a 13th in 1872, the 14th in 1876, and so on. By 1925 there were 21 districts, and no changes have been made since. It is doubtful that there will be any increase or decrease in this number in the near future, unless the movement for reorganization of the judiciary becomes more powerful.⁶ The territorial size of the districts is of great variation, from the single-county districts of Polk, Lee, and Dubuque, to the 15th district which embraces nine counties. These districts have been arranged with a view to the judicial work occurring in each area. Likewise, the number of judges varies from one district to another. In four districts only two judges are elected, while in a majority of the districts there are three. The 9th Judicial District (Polk County) has the largest legal agenda and the largest number of judges — six.

Just as the Iowa Supreme Court judges are popularly elected, so are the district judges. Similarly, nomination is by a judicial district convention of each party rather than by direct primary. All qualified voters in the judicial district may participate in the selection of the district judges. Iowa now has seventy judges in the twenty-one districts.

The term of a district judge is four years. In districts with two judges, usually one judicial post is up for election at every general election. Other districts may have two or even three judicial races at every general election. District court judges now receive annual salaries of \$10,000 plus a limited expense account for sessions of court. The pay was set at \$7,000 in 1949 by the 53rd General Assembly, and was raised by the 55th General Assembly in 1953 and by the 56th in 1955.

Procedure. In the civil branch, two classes of cases are tried by the district courts: cases in law and cases in equity.⁷ Law cases are usually tried before a judge and jury, while ordinarily no jury is used in equity cases. Trial by jury may be waived in criminal law trials. Where both a judge and jury are used, the judge determines questions of law and the jury determines questions of fact. Naturally, in cases of equity, where jury trial is waived, the judge decides both questions of law and of fact.

⁶ Dan E. Clark, "Judicial Districting in Iowa," *IOWA JOURNAL OF HISTORY AND POLITICS*, 5:455-97 (October, 1907).

⁷ Jacob A. Swisher, "The Jones County Calf Case," *The Palimpsest*, 7:197-208 (July, 1926); Jasper H. Ramsey, "The Jones County Calf Case," *ibid.*, 33:369-92 (December, 1952).

Criminal procedure in the Iowa district courts is to a rather large degree prescribed by the Constitution. In all criminal procedure the state is the prosecutor. In cases of felonies the accused is "arraigned" — formally informed as to the charges preferred against him. The indictment preceding the arraignment may be either by grand jury or by information filed by the county attorney with the district court. In open court the accused must plead either guilty or not guilty. If the plea is not guilty, the trial with jury follows. The accused may in Iowa request a change in venue — requesting that the trial be moved to another county because of the belief that a fair and impartial jury cannot be obtained in the county of arraignment. The judge must rule for or against the request. The actual trial is conducted by one judge of the district court with a jury of twelve. During the trial, the accused may or may not appear in his own behalf as he and his counsel decide most advantageous. Underlying the entire criminal trial is the doctrine that the man is innocent until he has been proved guilty. Jury verdicts must, of course, be unanimous. The jury in criminal trials determines the guilt or innocence of the accused. The judge then sets the accused free or sentences him to the state reformatory or the state penitentiary, depending on the decision of the jury. Iowa uses the indeterminate sentence rule.

District courts are held in the county courthouses of the various counties in each judicial district. The judges usually rotate with each term of court, with a judge seldom holding two consecutive terms of court at the same county courthouse. Because of the fact that the district courts are held in the county courthouses, the name "county court" is often applied to the district courts in Iowa. However, strictly speaking, there are no county courts in the state.⁸

ORIGINAL COURT TRIALS

In addition to the district courts of Iowa, there are five other courts which may be classed as courts of original jurisdiction. The municipalities employ four different court groups (municipal courts, superior courts, police courts, and mayor's courts), while the rural areas of Iowa still utilize the time-honored but often criticized justice of the peace court system. It is in these lower courts that most Iowans receive their impression of the judicial procedure. It is here that the necessity for equal justice as well as rapid justice must prevail.

⁸ James R. McVicker, "The Administration of Justice in the County," *Iowa Applied History Series* (6 vols., Iowa City, 1912-1930), 4:320-63.

Iowa's 934 cities and towns are given a variety of courts from which to select the type of judicial procedure desired. Cities of more than 15,000 population may choose to have either superior courts or municipal courts, and may also institute a police court to handle criminal cases. Cities with a population of more than 5,000 have the same choice between municipal and superior courts but do not usually have police courts. The cities that do not have the option of superior or municipal courts rely primarily upon the mayor's court for dispensing local justice. As a result, nearly 900 mayor's courts are periodically in operation in the rather complicated and confusing Iowa local court system.⁹

Municipal Courts. Since 1915 any city in Iowa with a population of more than 5,000, whether organized under a special charter, commission form of government, manager form of government, or the general law for the incorporation of cities or towns, may establish a municipal court.¹⁰ The territorial limits of such a court extend to the limits of the city and include therein all civil townships in which the city or part of the city is located.

The jurisdiction of the municipal courts is relatively extensive. In civil matters it is concurrent with the district courts; however, the amount in controversy usually does not exceed \$1,000. Municipal courts do not have authority over matters in probate, actions in divorce, alimony, separate maintenance, matters directly affecting the title to real estate, and juvenile proceedings, unless otherwise authorized.

In cities where municipal courts are established the police court, mayor's court, justice of the peace court, and the superior court in the municipal court district are usually abolished, if such have ever existed. All criminal matters that those inferior courts have jurisdiction over are included in the municipal court's jurisdiction. Exclusive jurisdiction of prosecutions for violations of city ordinances rests with the municipal courts. Misdemeanor cases, in which the punishment exceeds a fine of \$100 or imprisonment of more than thirty days, are tried exactly as in the district courts.

Appeals from the municipal courts go to the district courts. Likewise, cases brought into the municipal courts may be on occasion transferred to

⁹ *Code of Iowa, 1954*, Chaps. 602, 603.

¹⁰ Francis R. Aumann, "Administration of Justice in Iowa Cities" (Ph.D. thesis, State University of Iowa, 1928), published in *Iowa Applied History Series*, 7:145-225.

district courts, the municipal court judge being willing. Naturally the municipal courts have the same powers in reference to injunctions, writs, orders, and other proceedings in and out of court as are possessed by the state district courts and their judges.

Only nine cities in Iowa maintain municipal courts: Des Moines, Sioux City, Council Bluffs, Cedar Rapids, Waterloo, Ames, Burlington, Clinton, and Marshalltown. All municipal judges are popularly elected by the municipal electorate for four-year terms. The number of judges on a municipal court is determined by the population of the municipality, with a maximum of four judges. The Des Moines court has four judges; Council Bluffs, three; Sioux City, Cedar Rapids, and Waterloo, two each; and Ames, Clinton, Burlington, and Marshalltown, one each. The salary of the judges is determined also by the size of the city. Cities over 75,000 (Des Moines and Sioux City), according to the laws of the 55th General Assembly in 1953, pay their municipal judges \$5,750 annually, while cities of population between 30,000 and 75,000 (Council Bluffs, Cedar Rapids, and Waterloo) pay \$5,500; cities of less than 30,000 pay the municipal judges \$4,875. According to the state statute, judges of the municipal courts must have been, at one time, practicing attorneys.¹¹

The clerks of the municipal courts are popularly elected for four-year terms unless the city council appoints the city clerk to act as municipal court clerk. Bailiffs are likewise popularly elected. The salaries are set by state law, again depending upon the population, with the clerks in the large cities receiving \$4,500 per year, while clerks in cities under 30,000 get about \$3,500. Similarly, bailiffs' pay ranges from \$3,800 to \$3,300, depending on population.

Superior Courts. A third group of courts is provided by an 1876 Iowa statute. These are the superior courts which may be established in any city in Iowa with a population of over 4,000. The jurisdiction is for the most part the same as that of the municipal court. Superior courts have concurrent jurisdiction with the district courts in all civil matters. They have exclusive original jurisdiction to try and to determine all actions, civil and criminal, for the violation of city ordinances and all jurisdiction ordinarily conferred on police courts and justices of the peace.

Only two cities in Iowa maintained superior courts in 1954: Keokuk

¹¹ *Code of Iowa, 1954, Chap. 602, Sec. 7.*

and Oelwein, and Oelwein has now abandoned its superior court. Just as in the case of municipal courts, whether or not the city establishes a superior court depends upon the will of the electors, for by a process of petitions and a majority vote on the question ("Shall the city maintain a superior court?") such a court is established. Each superior court has one judge who is elected by the voters of the municipality for a four-year term. The qualification required of a superior court judge is that he be a practicing attorney, but he need not give up his legal practice, since the duties of this court do not require his full time. As in the municipal courts, the salaries of the judges depend upon the size of the city. Cities of less than 25,000 pay \$2,400, and cities between 25,000 to 45,000 pay an annual salary of \$3,000 for the superior court judge. The first two quarters of the judge's pay are taken from the city treasury, while the last two come from the county treasury in which the superior court is located. Other officials of the superior court are provided for by the city council and are usually paid on a per diem basis. Appointment of a court shorthand reporter and a deputy clerk is by the city council, but the superior court judge ordinarily is influential in the selection.

The people may abolish the superior court for their city just as they may abolish municipal courts by a majority vote cast on the proposition.¹²

The Mayor's Court. The mayor is an elective officer chosen by the voters of the city or town for a term of two to four years.¹³ He is defined by statute as a "magistrate," and as an "officer of justice," and is invested with the powers of a magistrate although he is not primarily a judicial officer. He is the chief executive officer of his city or town, and also participates in the exercise of legislative powers and functions.

The mayor's duties are in general prescribed by the statutes, but they are more specifically enumerated and described in the various municipal codes or ordinances of the cities and towns, especially with reference to the enforcement of the municipal ordinances and regulations.

The mayor's court is in its nature chiefly a tribunal of summary procedure for the enforcement of the city ordinances. The court has also the function of preserving the peace of the city.¹⁴ The superior, municipal, or police courts

¹² *Ibid.*, Chap. 602, Sec. 51; Chap. 603, Sec. 55.

¹³ Paul K. Huff, "Legal Status of the Mayor in Iowa" (M.A. thesis, State University of Iowa, 1941).

¹⁴ *Code of Iowa, 1954*, Chap. 367, Sec. 5.

have exclusive jurisdiction of all actions or prosecutions for violations of city ordinances in any city wherein any one of these courts exist; but in all cities and towns not having any one of such courts, the mayor has exclusive jurisdiction of all actions or prosecutions for violations of city or town ordinances. In criminal matters the mayor has the jurisdiction of a justice of the peace coextensive with the county and in civil cases has the same jurisdiction within the city or town that a justice of the peace has within the township. In the absence of the mayor or a judge of the superior, municipal, or police court, or his inability to act, the nearest justice of the peace has jurisdiction to hold court in criminal cases for any of these magistrates. A case on information before the mayor for violation of an ordinance of a city or town may, upon the mayor's own motion only, be transferred for further proceedings to any justice of the peace within such city or town, who thereby acquires full jurisdiction.

The mayor's court is not a statutory court of record in Iowa. This omission, however, relates only to the non-admissibility of the mayor's records as conclusive evidence in other courts. As a matter of practice, substantial records are generally kept of all proceedings of the mayor's courts in official dockets provided for the purpose. Such records are usually similar to those kept by justices of the peace, and often the records required to be kept are particularly described in the city or town ordinances relating thereto.

The proceedings before a mayor are, in general, similar to those before a justice of the peace, but no change of venue is allowed in actions or prosecutions under municipal ordinances, and trial is by the court without a jury, except upon appeal. Appeals and writs of error are taken from the mayor's court to the district court in the same time and manner and under the same restrictions as from the justice of the peace courts. On the hearing of such appeals or writs of error, the court takes judicial notice of the city or town ordinance.

The actual administration and practical workings of the mayor's courts over the state are reasonably efficient and satisfactory, especially from the standpoint of the peace and security afforded both the citizens and the visitors within the cities and towns of Iowa. The office is usually a distinctly attractive local political prize, as evidenced by the keen competition for its honors at the city elections, at which there are almost invariably two and frequently more candidates.

The Police Court. The police court is now established by statute in

cities of over 15,000 population wherein there is no municipal or superior court. Its jurisdiction is that of the justice's and mayor's courts in all criminal actions, no civil jurisdiction being assigned to it. It is prescribed by statute to be a court of record, to have a seal provided by the city, and to be open at all times for the transaction of business. The clerk of the police court is prohibited from being in any way concerned as counsel or agent in the prosecution or defense of any person before this court. Provision is made by ordinance for jurors with the qualifications required by law and for all other matters in relation to this court that may tend to make for its efficiency.¹⁵

The judge of the police court is defined by statute as a "magistrate" and as an "officer of justice," and is therefore invested with the statutory powers of a magistrate.

The police court is a court of record, but the judge is not required to be an attorney at law. If he is an attorney at law, duly admitted to practice under the laws of Iowa, he is not prohibited from the practice of law in civil matters during his term of office. In cities of the first class having the police court, the police judge is an elective officer, except that in cities having the commission or manager plan of government, the police judge holds his office by appointment from the council. For statutory cause, he is amenable to the provisions of the "Casson Law" for the trial and removal of officers.

The proceedings in a police court are, as far as applicable, similar to those before a justice of the peace. However, no change of venue is allowed in actions or prosecutions under ordinances, and the trial is before the court without a jury, except upon appeal. Appeals and writs of error are taken therefrom to the district court of the county as from the justice's court. On the hearing thereof, the district court takes judicial notice of the city ordinances.

The Justice of the Peace. Justices of the peace in Iowa are called by a variety of titles. They may be defined as county officers, as magistrates, and as officers of justice.¹⁶ To be sure, they are also called by less formal titles. The justice of the peace is the people's judge. He is by the design of the Iowa statutes near to the people for the purpose of furnishing prompt relief in innumerable civil matters and to administer criminal law with

¹⁵ *Ibid.*, Chap. 367.

¹⁶ Howard J. Holister, "Justice of the Peace Courts in Iowa County" (M.A. thesis, State University of Iowa, 1928).

a minimum of delay. Justices have limited jurisdiction in both civil and criminal cases. In general the jurisdiction includes in civil cases (except cases in equity) all cases with amounts of less than \$100 and in cases of \$300 or less with the consent of both parties. Territorially the jurisdiction includes the county within which the justice of the peace has been elected.

Actions in justice of the peace courts are commenced on voluntary appearance or upon serving a notice. Justices may issue search warrants, limited by the usual rules on unreasonable search and seizure. A change of venue from one justice court to another is possible on statutory grounds. Appeals from the justice courts are taken to superior courts, where such exist, or may be taken to the district court upon the option of the defendant.

In criminal cases, the jurisdiction of the justice courts includes those public offenses less than a felony committed within the county, the penalty for which does not exceed a fine of \$100 or imprisonment for more than thirty days. Jury trial in such cases may be obtained, with a jury consisting of six jurors, as in civil cases.¹⁷

Except in municipal court districts, the law provides that two justices of the peace shall be elected for each township. No special qualifications are prescribed by law, but it has been held to be an implied principle of government that the justice of the peace shall be a qualified voter. An official bond and oath are required.

The term of office of the justice of the peace is two years, and once a man is elected to the position, he will usually be re-elected almost automatically if he desires to continue in office. The compensation is through fees for specific services as determined by statute. Accounting for the fees received must be made to the county board of supervisors. Justices are subject to removal for the usual reasons assigned to an elective office. Resignation may be made in writing to the county auditor. In case of a vacancy, the board of supervisors may fill the position until the next general election. The justice of the peace acts both as a judge and as a clerk of his court. The constable, also a popularly elected official, is the proper executive officer of the justice of the peace court. Many times the county sheriff also aids the justice in the execution of his jurisdiction.

The justice of the peace court has been an integral part of the Iowa system for the administration of justice ever since the creation of the Territory of Iowa. There has never been any concerted effort to abolish

¹⁷ *Code of Iowa, 1954, Chap. 601.*

the J. P. court in Iowa. The legislature has given the cities various other alternatives, but it has never provided any other judicial system for the rural areas.

COURTS OF SPECIAL JURISDICTION

Iowa law provides for four courts of special or limited jurisdiction: (1) the court of conciliation; (2) the juvenile court; (3) the probate court; and (4) the court of impeachment.

Court of Conciliation. The court of conciliation is, in reality, not a separate court but rather an auxiliary of the superior, district, and municipal courts. The judges of the three types of courts adopt and enforce rules prescribing the manner of settlement of controversies by conciliation. No legal counsel is involved in the procedure. The proceedings are very informal and no record is preserved unless by special agreement of the persons concerned. Usually less than \$100 is involved in the cases settled by conciliation.¹⁸ This plan of an informal court has not been as widely utilized in the United States as it has in other countries. Iowa has not made extensive use of this special court.

The Juvenile Court. Iowa law provides that the district judges, and the superior or municipal court judges when so designated, are the juvenile court judges. The juvenile courts are courts of record, with separate record books kept of all transactions, and have original and full jurisdiction over all cases coming under the juvenile court acts. The courts are always open for transaction of business, but the hearings in the cases are held only at times designated by the judge of the juvenile court. Frequently these are private hearings in the judge's chambers. The primary aid of the Iowa juvenile court judge is the probation officer, who is appointed by the judge, with a salary established by state law according to the population of the county. Probation officers receive a per diem pay in smaller counties and a yearly salary in the more populous areas. The powers of the probation officials are identical with those of peace officers.¹⁹

The Probate Court. This court, like the juvenile court, is not strictly speaking a separate court but is rather another specialized function performed by the Iowa district courts. During certain designated days of the court term the district judge serves as the probate judge for the purpose

¹⁸ *Ibid.*, Chap. 605, Sec. 19-21.

¹⁹ *Ibid.*, Chap. 231, Sec. 1-13.

of transacting the business of the probate court. The matters dealt with include probating wills, the appointment of administrators for estates of deceased persons, and the appointment of guardians.²⁰

The Court of Impeachment. The Senate of the Iowa General Assembly is the court of impeachment when impeachment proceedings are instituted. All state officers, and all supreme court, district, or superior judges are subject to impeachment by written accusation by the House of Representatives. The charge is usually either a misdemeanor or malfeasance in office. Members of the Senate receive six dollars per day while in session as a court of impeachment. The rules followed are similar to those of any court of record, with the defendant being accorded the right of counsel, witnesses, and other procedural safeguards. The punishment, if the accused is found guilty, is removal from office and disqualification to hold any public office of honor, trust, or profit in Iowa.²¹ This court has never operated in Iowa.

JUDICIAL ADMINISTRATION

The Judicial Council. The judicial council movement in Iowa was short lived and relatively ineffective. In 1930, seven years after the adoption of the judicial council in Ohio, Professor Francis Aumann suggested that Iowa badly needed an agency similar to the Ohio council. The objective of the agency, which was activated in 1932 but allowed to expire in 1936, was to improve judicial organization and administration. However, the judicial council as established in Iowa was merely an advisory agency with insufficient power to carry on the three major functions ordinarily associated with this type of organization: (1) general administrative supervision of the judicial business of the state; (2) rule-making powers for the state courts; and (3) the power to conduct investigations and research on special subjects as requested by the legislature, the Governor, or the judiciary.²² The Iowa judicial council was dropped during the economic depression because of lack of funds to finance the work, and there has been no attempt to revive it.

Revision of the Jury System. As in almost all of the states, the Iowa jury system is antiquated. Part of the ineffectiveness is no doubt due to the low compensation allowed for jury service. Until recently jurors were paid \$3.00 per day and five cents per mile for travel expense. The 55th

²⁰ *Ibid.*, Chap. 631.

²¹ *Ibid.*, Chap. 68.

²² W. Brooke Graves, *American State Administration* (Boston, 1953), 619-23.

General Assembly increased the pay to \$5.00 per day and the mileage allotment to seven cents per mile, a sum that still forces many citizens to make a financial sacrifice if they are called to serve upon the jury.²³ The low caliber of the juries in Iowa and elsewhere may be partially laid to the exemption system. Iowa law exempts seven classes of persons from jury duty:

- 1 Persons holding office under the laws of the United States or of Iowa.
- 2 Practicing attorneys, physicians, licensed embalmers, and other professional personnel.
- 3 Professors or teachers of any college, school, or other institution of learning.
- 4 Persons disabled by bodily infirmity.
- 5 Persons over sixty-five years of age.
- 6 Active members of any fire company.
- 7 Persons conscientiously opposed to acting as jurors because of religious faith.²⁴

Iowa's jury system probably needs the usual remedial action. Entirely too many cases are given jury trial. Greater use should and could be made of trial by judge without jury. Likewise, administrative tribunals should be expanded, with greater use made of quasi-judicial boards and commissions.

The traditional twelve-man jury is employed in Iowa courts. Decisions must similarly be made by the traditional unanimous verdict of all twelve members of the jury. Reduction in the size of juries and the allowing of verdicts of two-thirds or three-fourths of the members would aid in improving Iowa's juries.

Supervision of the Court System. In Iowa, as in many other states, the Constitution provides that "the Supreme Court shall . . . exercise a supervisory control over all inferior judicial tribunals throughout the state." This supervisory power vested in the Supreme Court has never been fully utilized by that tribunal. The supervision usually has been in theory only. The inferior courts are not directly supervised or aided materially by the Supreme Court. It is doubtful if any attempt at supervision would be welcomed by the secondary courts of the state. Probably one of the most

²³ *Laws of the Fifty-fifth General Assembly, 1953, Chap. 248.*

²⁴ *Code of Iowa, 1954, Chap. 607.*

urgent needs in Iowa, as in many other states, is the establishment of an administrative officer to head the court system. The rotation of the Iowa chief justice post makes it impracticable to expect him to perform the administrative duties commonly associated with this office.

From this survey of the Iowa courts, it is apparent that the development of the court system has been similar to that of state and local administration systems. Frequently new judicial needs, whether local or statewide, have been met by the creation of a new court with its own limited jurisdiction. Jurisdictional overlappings between courts oftentimes have not been avoided.

It must be emphasized that even with the duplication of jurisdictional powers, the Iowa courts have maintained a high degree of integrity, ability, and remarkable efficiency in the performance of their judicial responsibilities. There are evidences of defects, both peripheral and central, as in almost all human institutions. But in spite of the organizational problems that present themselves in the Iowa judicial system, Iowa citizens have attained justice, with reasonable dispatch and at reasonable expense, the fabulous Jones County Calf Case notwithstanding.

Improvements in the system may be attained in Iowa with much greater ease than in many states, because a great majority of the organizational structure and procedure requirements may be modified by statutory action rather than by constitutional amendment. Many of the detailed constitutions found operative in other states would require longer time and more concerted pressure than would be necessary in Iowa for major court system modification.