

# Memorandum

Iowa Citizens' Aide/  
Ombudsman



To: Government Oversight Committee

From: William P. Angrick II 

Date: February 17, 2010

Re: Ombudsman Presentation Before Government Oversight Committee

Many Iowans continue to request the Ombudsman's help to resolve their complaints about local and state government, and to understand how their government works.

As our state gets more aggressive on debt collection, with unemployment claims up, and with cuts in statewide services such as child welfare and mental health, early indications are that the numbers of contacts to my office will increase even more in 2010.

The 4,825 cases that my staff of 15 fielded in 2009 represented an increase of 114 cases from 2008. Most notable were increases in contacts about Iowa Workforce Development (33 percent), the Iowa Department of Transportation (28 percent), the Iowa Department of Revenue (21 percent), and the Department of Human Services (12 percent).

In the first month of 2010, contacts to my office were up 9.9 percent from the same period in 2009. It is apparent to us that some of these new complaints are directly related to state and local budget cuts and service reductions.

Of the work we've performed over the past year, here is a sampling of our observations and casework:

## **Public Records and Open Meetings laws**

We continue to substantiate violations of both the letter and spirit of the state's Public Records and Open Meetings laws. Much of the problem lies with ignorance of the law, especially where smaller towns and public schools are concerned. We routinely receive reports from citizens who are denied government records without explanation, overcharged for records, or asked why they want the records. Similarly, we hear about governments that fail to give proper notice of meetings, close meetings improperly, or discuss and decide important policy matters outside of open meetings.

Citizens who question their governments about such abuses often tell us they are ignored and dismissed. Even when members of the public know the law, they cannot always convince

governments to reconsider their position. This can lead citizens to conclude, rightly or wrongly, that the errors or omissions of their government are intentional. In many cases, we find it hard to argue with that perception.

Recently, we received a complaint from a woman in a small town whose son died in an auto accident. The woman, seeking more information about the causes and circumstances of the crash, asked the investigating police agency for a complete copy of the investigative report, including photos. Police, citing their internal fee policies, originally told the woman's attorney it would cost her \$1,300 for this information. Iowa's Public Records law only allows government agencies to charge people what it costs them to produce a record. We made a telephone inquiry to the police department within 24 hours and are working with the department to establish more reasonable fees in policies.

Most times, we can straighten out such disputes with a few simple contacts to the agency in question. But not always. Eighteen months ago, we expressed our concerns to a county in northeast Iowa that quoted a citizen an estimate of between \$2,000 and \$6,000 to copy certain assessment records to a single CD. Officials revised their quote to \$450 when the requester pared down his request. But since our first contact to the county, officials still have not changed their fee policy to reflect their actual costs of compiling the records. It took one employee about one hour to transfer the information to a disc. The county agreed only to suspend its fee policy while it further considers the law.

Many of the complaints we receive relate experiences with government that are so obviously inappropriate that we are led to believe these laws are more often unknown to local governments than known. We recently substantiated three violations of law in a single act of a city council in north central Iowa when a mayor improperly voted to break a 2-2 tie to fill a vacancy on the council. The council vote took place – illegally – by secret ballot. The public also received no notice that the council had planned to appoint a replacement rather than hold a special election, although state law plainly requires such notice. Upon our advice, the city agreed to redo the appointment process.

In another case in northeast Iowa, a man asked his local school district for copies of paid bills relating to the work of one of its contractors. A school employee flatly denied the man's first request, then ignored two of his subsequent requests, even after the man cited the Public Records law. When the school superintendent was contacted, he too ignored the man's request, without legal justification. When we asked the school superintendent about the school's handling of the request, he agreed to provide our complainant the records.

In southern Iowa, a mayor admitted to us that he had asked the public to leave an open city council meeting *before* the council voted to go into closed session. The reason for the closure was not provided to the public, nor was it recorded in the official minutes, as the law requires. The city later agreed to announce the reason for the closure at its subsequent meeting, and to close meetings in the future only in the public's presence.

These are only a handful of examples from our 2009 case files. Based on our experience, there is no question that local governments' knowledge of, and adherence to, the Public Records and Open Meetings laws is scattershot. We continue to educate local officials on these laws, as part of our casework and in workshops, and we remain committed to referring

for prosecution those cases in which flagrant violations take place or repeat violations go uncorrected.

### **Official misconduct**

After an extensive investigation, we concluded that a street superintendent in a central Iowa community committed official misconduct when he repeatedly used city equipment at his home, despite admonitions from city officials and the frequent complaints of citizens. In two specific instances, we determined that the employee was paid overtime wages by the city to clear his own driveway with a city plow.

Perhaps more troubling, the street superintendent retaliated against a citizen who complained about his activities by issuing him a ticket for failing to shovel his business' sidewalk. City leaders who were aware of the improprieties forgave the citation issued to the citizen, but failed to take any remedial action against the street superintendent.

We referred the matter to the local county attorney for his consideration of prosecution. In addition, we made six formal recommendations to the city to tighten up its policies and practices. The city agreed to adopt all six recommendations.

We posted the 22-page report on our website and forwarded copies to the media and the Iowa League of Cities in hopes it would educate officials throughout the state about the appropriate use of city equipment. We have since received several inquiries about the report from cities and citizens.

### **Court-ordered restitution**

When state inmates working outside the prison walls asked us to look into unexplained deductions from their paychecks, we found at least one state prison that was failing to distribute the earnings in accordance with state law.

The State Auditor verified our findings that the prison's inmates were not being paid the prevailing wage for work outside the prison, as state law dictates.

Even more surprisingly, we discovered that a portion of inmates' earnings that should have been applied first to victims, past court costs, and the state's general fund were being kept by the prison.

It is our belief that significant amounts of inmate earnings from this one prison may have been misdirected in this fashion. The Iowa Department of Corrections is currently reviewing our findings.

The Legislative Services Agency made similar observations in a January 21, 2010, issue review about court-debt collection practices that noted confusion among state agencies due in part to discrepancies in statutory language.

## **Work-release waiting lists**

Some inmates who receive work release from the Iowa Board of Parole are instead discharging their sentences in prison due to a lack of available beds at the state's work-release facilities. The fiscal effect of this logjam could be costing the state hundreds of thousands of dollars a year.

After we received several complaints from inmates about the delays, we discovered a case involving an offender who was kept in prison for nearly a year after receiving his work release. When the offender finally discharged his full sentence on January 13, 2010, he had remained in prison 351 days longer than anticipated – at a daily cost to taxpayers of \$85.02, according to figures provided by the Department of Corrections. Had the offender been moved to work release (which costs the state about \$65.94 per day), he would have been eligible within a month for day reporting (at a cost of \$32.97 a day), and eventually parole (at a daily cost of \$3.75).

As it was, the state paid an estimated \$29,842 to house this offender in prison after the Board of Parole had granted his release. That's almost \$25,000 more than it might have cost if the offender had been immediately moved to work release and parole.

The number of offenders waiting for placement in a residential facility typically hovers around 800, according to a Legislative Services Agency Fiscal Topics report from August 2009. It is not unusual for offenders in some judicial districts to remain on the residential waiting list for six months. If these offenders could receive a residential bed more quickly, many would be eligible for day reporting or parole within a few months of their arrival.

The Board of Parole cites public safety as its reason for granting gradual releases rather than straight paroles. The Department of Corrections argues the obvious, that it cannot send an offender where there is no bed. Regardless of the two agencies' objections, we note that maintaining the status quo is both costly to the state and unfair to those offenders who have behaved responsibly and worked to earn their release. We believe this problem could be resolved if BOP and DOC would commit to an earnest discussion of the issue.

## **Gradual release codes**

Some prisoners have lost the ability to meet the Iowa Board of Parole's requirements to receive an early release – through no fault of their own.

A change in the Department of Corrections' classification policy in January 2009 seems to be at the root of the problem. That's when DOC officials reversed a policy that previously allowed inmates to live and work outside the secured perimeter of the prisons. Working or living outside a fence while under prison supervision allowed some offenders to meet the BOP's gradual re-entry requirements. However, with that privilege now gone, offenders are unable to do what is required of them to qualify for an early release.

The BOP believes that a gradual release is the safest way to reintegrate violent or long-term offenders into society. DOC also cites public safety as the reason for its policy change, although it has not cited any specific security incident that prompted the change.

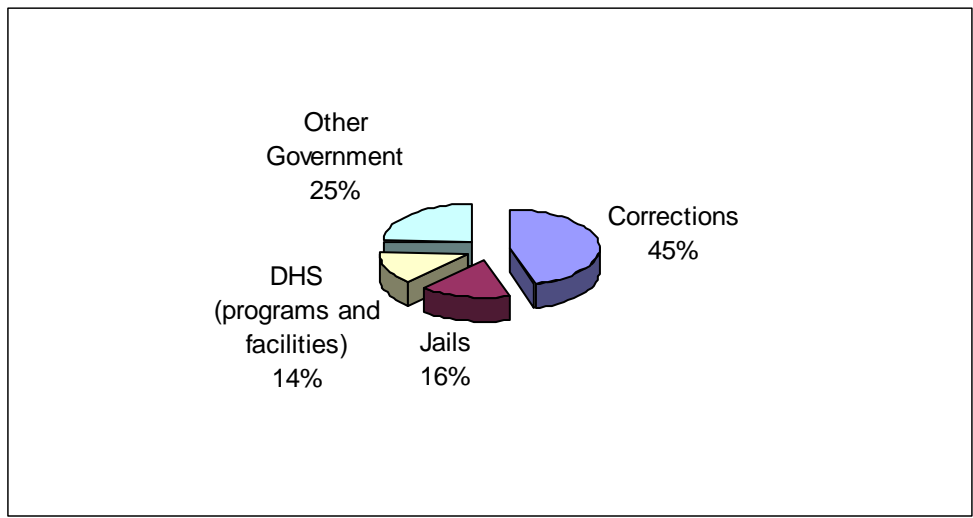
If the BOP requires an offender to work outside the fence as a prerequisite for release, but the DOC's policy prevents the offender from doing so, one can safely draw the conclusion that the releases of many offenders will be delayed. That will undoubtedly increase incarceration costs for the state of Iowa.

We and the Board of Corrections have made inquiry into this issue. In early fall 2009, it appeared progress was beginning to be made when DOC proposed to move some of these offenders to minimum-security housing with GPS bracelets. Since then, however, our office has received new complaints from offenders who were approved by BOP for gradual release but who are not being moved to less restrictive environments. DOC has not provided us specific reasons for its delay in implementing what we both thought was a solution. We are continuing to pursue this issue with DOC.

**Mental Health update**

I continue to believe Iowa must confront its failure to comprehensively establish and fund community based mental health services. It is poor public policy, and ultimately very expensive, to rely upon our jails and prisons to be the de facto mental health facilities of our state. While I have not taken a position regarding the closure of one or more of the state's mental health institutes (MHIs), I would encourage you to consider how Iowa can improve access to mental health services and support development and provision of community-based resources.

My office added the ability to identify mental-health related cases in January 2008. The purpose of adding the Mental Health "Special Topic" field was to identify how mental health issues impact complainants and complaints. Below is a chart of the mental health related issues we received by agency in 2009.



Corrections cases involving mental health have increased by 10 percent over last year, while jail cases have declined by 5 percent.

My staff has been attending many task force and work group meetings involving mental health and disabilities. I provided suggestions to the Adult Mental Health and Developmental Disabilities Service System Workgroup. I suggested that the Legislature:

1. Mandate communication and collaboration for all parties involved with the civil commitment process.
2. Either establish a pilot process or mandate use of community mental health centers to pre-evaluate persons with mental illness prior to a court-ordered commitment.
3. Use the state MHIs to provide sub-acute care for those patients who no longer meet the criteria for commitment but are not appropriate for release.
4. Mandate notification of law enforcement by provider prior to a patient's discharge if the patient was delivered to the provider by law enforcement for mental health-related concerns.
5. Study Iowa Code Chapter 230A (Community Mental Health Centers (CMHCs)) and consider the CMHC role in providing mental-health services to persons in jails.

### **Unintended impacts of reducing supervisors**

I realize that increasing the span of supervisory control is an important consideration in the effort to reduce the cost of state government and balance the budget. But I would like to offer a cautionary observation based upon three decades of experience investigating complaints and making findings on a wide variety of government administrations in Iowa.

The need for supervision is situational and contextual. To be sure, there are tasks of state government that can be performed with higher spans of control. But in some cases, say, where the safety of children is concerned, more and better supervision is absolutely vital. Nowhere has this been made clearer than in my past reports on the untimely deaths of Shelby Duis, a 2-year-old who was found beaten to death in her home in 2001, and Reggie Kelsey, a troubled, mentally-ill teenager who drowned in the Des Moines River that same year.

While one manager might be able to adequately schedule and supervise more employees who perform routine tasks, it is highly unlikely that manager could responsibly and credibly oversee the same number of workers who perform more complex regulatory functions or make important decisions requiring judgment.

Therefore, I urge you to allow for some variation and flexibility in any legislation on a “span of control” policy.

### **Proposed 2010 legislation**

In addition to legislation I have proposed on the policing of retailer fraud by the Iowa Lottery (SSB 3091 and HSB 578), our office has taken supportive positions on bills relating to the subjects of housing grants to military service members (SF2019 and HF 2055), time frames for contested-case hearings and decisions in child and dependent adult abuse appeals (HF 2223), and prisoners’ visits with minors (HF 696).