

IOWA STATE BULLETIN ASSOCIATION of COUNTIES

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TO: COUNTY SUPERVISORS

FROM: JOHN T. TORBERT

SUBJECT: "Area Service Level B" Roads

*Copy to All Co Engrs
JER*

Several weeks ago, you should have received a sample resolution prepared by the County Supervisor - Engineer Coordinating Committee. The resolution was a recommendation on how your county could implement the "Area Service Level B" road system.

The county engineer - supervisor coordinating committee discussed whether this system should be implemented by county resolution or ordinance. For a variety of reasons, the committee decided to recommend the resolution route. I personally felt at the time that the ordinance route would have been preferable but did not "push" the issue until I had had the opportunity to discuss the issue with ISAC legal counsel for his opinion.

We received that opinion this week and it is that the ordinance route would definitely be preferable from a legal standpoint. Our attorney points out that an ordinance is actually a county law and a resolution is simply a setting of county policy - usually an administrative type act. A county supervisor acting in a legislative capacity is immune from personal liability. A supervisor would not be immune from personal liability as a result of an administrative act unless it could be established that you acted in "good faith." The essence of this is that by using your legislative authority and enacting an ordinance you will have greater protection from liability.

An ordinance also requires a hearing and publication. Resolutions do not. While this may make the ordinance mechanism more costly and a little bit slower than a resolution - it does offer you better protection if you are sued. It shows, for example that the county has taken action, thru a publication, to make sure that the citizens of the county were aware that the Area Service B system was being discussed. It also gives the citizens an opportunity to state their objections - thus avoiding the possibility of some citizen claiming you were trying to "railroad something through."

ISAC will develop a model ordinance in the next several weeks that will follow the suggestions of the county engineer supervisor coordinating committee but using it in an ordinance instead of a resolution format.

Please contact myself or Terry Larson at the ISAC office if you have any questions.