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To: **Andy E. Nielsen, CPA**
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From: **Christie J. Scase** C. Scase
Assistant Attorney General

Date: **January 4, 2006**

Re: **Iowa Code section 441.50 – Special appraiser's fund use**

This memo is prepared as a follow-up to a letter issued by Deputy Attorney General Julie F. Pottorff on November 14, 2005, in response to an opinion request this office received from the Sioux County Attorney. During the past several months you and I have discussed a number of issues regarding authorized use of the "special appraiser's fund," which is created by Iowa Code section 441.50 and confusion created by two opinions issued by this office in 1962 concerning use of the fund to employ appraisers to assist in the valuation of property. An opinion issued July 18, 1962, concluded that the Code section 441.50 authorized the employment of appraisers and other technical help to assist in the valuation of property without limitation upon the duration of contracts for these services. 1962 Iowa Op. Att'y Gen. 86. A second opinion issued on November 2, 1962, opined that the special appraisers fund created by section 441.50 "can only be used in the employment and compensation of professional and expert appraisers and cannot be used for the compensation of local appraisers to assist the county assessor." 1962 Iowa Op. Att'y Gen. 160. On their face, these opinions provide conflicting guidance regarding use of the special appraiser's fund to pay the salaries of employees within county assessors office. I am writing to provide advice regarding interpretation and application of Code section 441.50 on this issue and two related questions regarding use of the fund which were raised in the opinion request.

The language of Code section 441.50, as applied to specific facts controls the outcome of each question. This Code section provides, in full, as follows:

> 441.50 Appraisers employed.
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> The conference board shall have power to employ appraisers or other technical or expert help to assist in the valuation of property, the cost thereof to be paid in the same manner as other expenses of the assessor's office. The conference board may certify for levy annually an amount not to exceed forty and one-half cents per thousand dollars of assessed value of taxable property for the purpose of establishing a special appraiser's fund, to be used only for such purposes. From time to time the conference board may direct the transfer of any unexpended balance in the special appraiser's fund to the assessment expense fund.

Iowa Code § 441.50 (2005). Nothing within the terms of the statute directly prohibits use of the special appraiser's fund to cover the salary and costs associated with staff employed by the county assessor. Rather, the statute focuses on the type of services provided, specifically authorizing use of the fund "to employ appraisers or other technical or expert help to assist in the valuation of property." This office concluded, in a 1966 opinion, that "[i]t follows from [the language of section 441.50] that the conference board has the power to determine whether [an] appraisal should be conducted by the assessor with local personnel or by professional outside help." 1966 Iowa Op. Att'y Gen. 456, 463.

Section 441.50 authorizes use of the special appraiser's fund to pay the cost of employing "appraisers and other technical or expert help to assist in the valuation of property." I find no legitimate basis within the statutory language to distinguish between the cost of contracting with an appraiser as an independent contractor and hiring an appraiser to work as part of the assessor's staff. Both circumstances would appear to constitute employing or using appraisers or other technical or expert help to assist in the valuation of property. Consistent with the 1966 opinion, the conference board must exercise its discretion to determine whether appraisal services will be provided by appraisers on the assessor's staff or by independent contractors. It is my view that salary, benefits, and other costs associated with employing appraisers and other personnel within a county assessor's office may be paid from the special appraiser's fund, as long as the employees provide "technical or expert help to assist in the valuation of property."

This is not to say that the special appraiser's fund may be used to cover all personnel costs of the assessor's office. Section 441.50 does not authorize use of the special appraiser's fund for payment of salary and expenses associated with the

employment of clerical staff or other employees who to not provide "technical or expert help to assist in the valuation of property." Based upon the governing statute, it is the function performed by the individual employee, rather than the job title or label associated with the position which controls the propriety of using the special appraiser's fund to pay the employee. See Iowa Op. Att'y Gen. # 00-2-3(L) [2000 WL 33258481] (recognizing that common use of job title within a particular county office does not necessarily correspond with standard definitions of the terms deputy, assistant, and clerk). Whether an individual employee provides "technical or expert help to assist in the valuation of property" is a determination which must be made based upon the specific facts and circumstances of a given situation.

Concern has also arisen regarding whether the special appraiser's fund may be used to pay for geographic information systems [GIS] utilized for property appraisal purposes. Although this is a closer question, I believe that section 441.50 can reasonably be applied to allow money from the special appraiser's fund to support the purchase and maintenance of a GIS system which is used for property appraisal. It is my understanding that GIS has proven to highly useful to the process of managing information used by the assessor's office in establishing property valuations. The phrase "employ technical help" may be read to imply the use of personnel or simply to mean the use of technology. On the one hand, it seems doubtful that the legislature envisioned the use of modern geographic information systems in 1959, when section 441.50 was enacted. See 1959 Iowa Acts (58th G.A.), ch. 291, § 50. On the other hand, it is my understanding that use of the special appraiser's fund to cover appraisal costs not directly associated with the employment of personnel has long been an accepted practice.

Further, the State Appeal Board has allowed use of the special appraiser's fund to cover costs associated with maintenance of a county GIS system. A 2003 decision in a county conference board budget appeal includes discussion of a challenge to a $120,000 expenditure over a two-year period from special appraiser's fund to cover the cost of aerial photos used to measure and list exempt properties and to upkeep the County GIS system. In Re: Warren County Conference Board Budget Appeal FY 2003-2003, Order of the State Appeal Board issued April 30, 2003. The Appeal Board rejected the Petitioners' objection to this expenditure, finding that use of the special appraiser's fund for the cost of aerial photos was consistent with Department of Revenue guidance and with established practice in other counties. Based upon this decision, it is reasonable for counties to use the special appraiser's fund to cover the cost of purchase or design and maintenance of a GIS system used by the assessor.

Finally, we have discussed whether it is appropriate for a conference board to build its budget based on the routine transfer of funds from the special appraiser's to

finance general operation of the county assessor's office. Two distinct statutory fund sources are available to obtain necessary funds for operation of the county assessor's office. The first is the "assessment expense fund," created pursuant to Iowa Code section 441.16. This fund is established to finance basic maintenance and operation of the office of the assessor and is funded by an annual levy which is subject to limit between twenty-seven cents per thousand dollars of assessed valuation and forty and one-half cents per thousand dollars of assessed valuation depending upon the total valuation upon which the tax is levied. The second is the limited use special appraiser's fund authorized by section 441.50 and discussed above. Levy for the special appraiser's fund shall not exceed forty and one-half cents per thousand dollars of assessed value of taxable property. The special appraiser's fund shall be used only for appraisal costs, as authorized by section 441.50. However, section 441.50 provides that "[f]rom time to time the conference board may direct the transfer of any unexpended balance in the special appraiser's fund to the assessment expense fund." Iowa Code § 441.50 (2005).

It has been suggested that the provision regarding transfer of the unexpended balance in the special appraiser's fund to the assessment expense fund is sufficient authority to allow a county conference board to impose the maximum special appraisal levy allowed by section 441.50 for the purpose of raising revenue to transfer to the assessment expense fund, even if the board anticipates minimal or no expenses for which the special appraiser's fund could be used. Given that the special appraiser's fund is a limited use fund, I do not believe that this is a reasonable interpretation of section 441.50. Nor would I advise the State Appeal Board approve special appraiser fund levy which was not based upon a good faith estimate of anticipated costs which could legitimately be paid for which this fund. Any contrary interpretation would have the effect of allowing the money levied into the special appraiser's fund to be used for any legitimate expense related to operation of the assessor's office and, as such, be clearly inconsistent with the explicit statement of legislative intent requiring the section 441.50 levy to be used only for the purpose of funding the cost of "appraisers and other technical or expert help to assist in the valuation of property." Certainly, it is not possible to estimate future expenses with exact precision. It is fully reasonable, however, to require a conference board to base the special appraiser's fund levy upon legitimate anticipated appraisal expenses. To do otherwise would simply negate the fund use limitation placed on this fund.

I am hopeful that this advice is useful to you in addressing application of the Code section. Please note, however, that this memorandum represents my own analysis of the issues and is not an opinion of the Attorney General. Feel free to contact me if you would like to discuss the issues further.