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Department of Justice

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February 15, 2008

Mark R. Schuling, Director
Iowa Department of Revenue
Hoover State Office Building
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L O C A L

Dear Mr. Schuling:

You have asked for an opinion from the Attorney General as to whether it is permissible for two counties to share an assessor through a chapter 28E agreement. As set forth below, we conclude that an agreement between two counties to share the services of a single assessor would be inconsistent with the chapter 441 requirement that each county assessor must devote full time to the duties of the office.

Chapter 28E agreements are intended to allow state and local governments to efficiently cooperate and share services and facilities with each other for the mutual advantage of each. See Iowa Code § 28E.1 (2007); Barnes v. Dept. of Housing and Urban Development, 341 N.W.2d 766 (Iowa 1984). Section 28E.3 authorizes political subdivisions "to exercise their powers jointly" and section 28E.4 authorizes public agencies of the state to enter into agreements for "joint or cooperative action." See Allis-Chalmers Corp. v. Emmet County Council of Governments, 355 N.W.2d 586, 588 (Iowa 1984). However, chapter 28E "does not confer any additional powers on the cooperating agencies, it merely provides for their joint exercise." Barnes, 341 N.W.2d at 767. Similarly, a 28E agreement shall not "relieve any public agency of any obligation or responsibility imposed upon it by law . . .." Iowa Code § 28E.7 (2007). If a political subdivision cannot do an activity directly under its statutory authority, then it cannot do that activity indirectly through a chapter 28E agreement. 1984 Iowa Op. Att'yGen. 167, 170 [1984 WL 60030]. If other provisions of the Iowa Code preclude counties from sharing an assessor, then a chapter 28E agreement cannot be used to achieve that goal.

Section 441.1 requires the creation of an office of assessor in every county in Iowa. In addition, cities of 10,000 or more in population may by ordinance provide for the selection of a city assessor and for the assessment of city property, but such an office is not required. The duties of all assessors, whether city or county, as set out in section 441.17, include a requirement that the assessor shall "[d]evote full time to the duties of the assessor's office and shall not

engage in any occupation or business interfering or inconsistent with such duties." Iowa Code § 441.17(1) (2007) (emphasis added).

Several opinions issued by this office have dealt with the issue of what is meant by devoting "full time to the duties of the assessor's office." We have consistently concluded that, although the provision does not mean that the assessor must devote 24 hours a day, seven days a week, to the assessor's job, the assessor is expected to devote normal or standard working hours to the assessor's office. See Iowa Op. Att'yGen. #97-2-2(L) [1997 WL 988714]; 1968 Iowa Op. Att'yGen. 370; 1947 Iowa Op. Att'yGen. 73. The most recent opinion on this point concluded that a county could combine the duties of the county assessor with those of the county zoning administrator, as long as the county considered "the requirement that a county assessor devote 'normal' or 'standard' working hours to the duties of the assessor's office and the possibility that a single person cannot physically perform the duties of both positions." Iowa Op. Att'yGen. #97-2-2(L).

The 1997 opinion relied, in part, upon a 1968 opinion where we determined that a county assessor was not precluded from serving as a county civil defense director as that position was not per se incompatible or in conflict with the assessor's duties set forth in section 441.17(1). 1968 Iowa Op. Att'yGen. 370. That opinion included the following observations about the requirement for the assessor to devote full time to that office.

> However, if the duties of civil defense director and county assessor are so extensive and demanding that one person would be physically unable to be engaged in both at the same time we are of the opinion that a situation of incompatibility would exist and that the holding of the office of civil defense director would be an occupation which would interfere or be in conflict with the office of assessor prohibited by §441.17(1). Furthermore, unless the duties of civil defense director could be performed at night and on weekends the requirement of §441.17(1) that the assessor "devote his entire time to the duties of his office" would be violated.

Id. at p. 372 (emphasis added).

In a 1947 opinion, we dealt directly with the issue of whether a city assessor could also act as the deputy county assessor. 1948 Iowa Op. Att'yGen. 73. At that time, every city over 125,000 population was required to establish an office of city assessor which was considered in that opinion to be a full time position. The opinion reasoned that if a city assessor was expected to devote his full time to the city as city assessor,

> then he does not have time to serve as a deputy county assessor and if such city assessor were appointed deputy county assessor, he would not be in a position to comply with the provisions of

> section 11, paragraph one, chapter 240,[1] which provides, "[The county assessor] shall devote his entire time to the duties of his office and shall not engage in any operation or business interfering or inconsistent with such duties." It is our judgment that no man can serve two masters and devote his entire time to each at the same time.

Id. at 75 (emphasis added).[2]

A 1971 opinion addressed use of a chapter 28E agreement to combine the offices of county assessor and optional city assessor for a city with a population of 125,000 or less. 1972 Iowa Op. Att'yGen. 252. The opinion reiterated and appeared to agree with the reasoning and conclusion of the 1947 opinion, that one person could not devote full time to the office of city assessor in a city with a population of greater than 125,000 and also serve as a deputy county assessor. Id. at 252. Without otherwise discussing the statutory requirement for a county assessor to devote full time to that office, the 1971 opinion concluded that a 28E agreement could be used to combine the office of county assessor with the office of city assessor in a city with a population of 125,000 or less in the same county. Id. at 253. The holding was expressly limited to cities with a population not exceeding 125,000.

No explicit rationale was given in that opinion as to why a 28E agreement would be applicable only to assessors in cities with a population not exceeding 125,000. At the time of the opinion the office of city assessor was optional in a city of that size. Iowa Code § 441.51 (1971). Cities with a population exceeding 125,000 were required to maintain a city assessor devoting full time to that office.[3] The opinion did not analyze whether the full time duty requirement set forth in section 441.17(1) applied to optional city assessors under section 441.51. Clearly,

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[1] The internal reference is to 1947 Iowa Acts, 52nd G.A., chapter 240, section 11, paragraph one, codified as section 441.17(1). The 1947 Act created the office of county assessor and provided for an optional assessor's office for cities between 10,000 and 125,000 in population.

[2] As discussed in our 1997 opinion, in the mid-1980s the Code Editor changed the section 441.17(1) wording from "his entire time" to "full time" for gender neutrality purposes. Iowa Op. Att'yGen. #97-2-2(L). "This editorial decision . . . did not amount to a substantive change to section 441.17(1)." Id.

[3] Section 441.51 authorizing the optional city assessor offices was repealed in 1974 and all assessors were then included under section 441.1. See 1974 Iowa Acts, 65 G.A., ch. 1230. Section 441.1 was further amended in 1997 making all city assessor offices optional and specifically provided for procedures to abolish the city assessor's office by ordinance, including abolishing the conference board, examining board and the board of review within the city assessing jurisdiction. See 1997 Iowa Acts, 73 G.A., ch. 22, § 1.

however, at the time of that opinion all county assessors and assessors in cities having a population of 125,000 or more were subject to the full-time-duty requirement. See 1968 Op. Att'yGen. 370. Therefore, it appears that the 1971 opinion was predicated upon the assumption that the full-time-duty requirement of section 441.17(1) was not applicable to city assessors for cities of 125,000 or less in population. Whether that assumption was correct or not is now irrelevant as no city is required to maintain an assessor and all assessors, city or county, are now required by section 441.17(1) to devote full time to their assessor's office. Because the question presented here involves the sharing of an assessor by two counties and each county is required to employee an assessor who is directed to "devote full time to the duties of the assessors office," the 1971 opinion does not control the outcome here.

The reasoning in our opinions has consistently supported the view that one person can not functionally hold two offices if the law requires full time service to be devoted to each office.[4] Current statutes clearly require both county and city assessors to devote full time to the duties of the assessor's office to which they were appointed. Any combining of two assessor positions or sharing of an assessor between two assessing jurisdictions would defeat this mandate and be contrary to the duties required of an assessor under section 441.17(1). Because we find that the full time duty requirement of section 441.17(1) effectively prohibits the sharing of an assessor between two or more counties, we must conclude that a chapter 28E agreement cannot be utilized to accomplish this purpose.

In addition, we have previously held that the county conference board may not "impose any duties upon an assessor beyond those required by statute." Iowa Op. Att'yGen. # 97-7-3(L) [1997 WL 988720]. "As the Supreme Court of Iowa has observed about a city assessor: '[H]is duties are fixed by statute, and when these are performed, he is not required to do more.'" Id., quoting Polk County v. Parker, 178 Iowa 936, 160 N.W. 320, 321 (1916); see 1994 Iowa Op. Att'yGen. 21 (#93-6-4(L) [1993 WL 264140] (a county attorney "is not required to perform any duty unless the duty is specifically mandated by statute").

We are aware that the office of county assessor may be combined with certain other county offices upon petition and election, pursuant to Iowa Code section 331.323 (2007). Several prior opinions have recognized the authority of the electorate to combine the assessor's function

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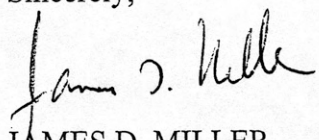
[4] Conversely, we have consistently found that an individual who serves in an office or position of employment to which a statute requires the individual to devote full time, may engage in private activity or agree to accept additional duties, as long as the added functions do not conflict with or interfere with the individual's ability to devote regular full time work hours to the original position. See Iowa Op. Att'yGen # 97-2-2(L) (finding that section 441.17(1) does not, per se, preclude combination of the position of county assessor with the position of county zoning administrator); 1990 Iowa Op. Att'yGen. 65 (assessor may take on additional part-time employment if the work is done during non-business hours of the assessor.); 1982 Iowa Op. Att'yGen. 119; 1968 Iowa Op. Att'y Gen. 370.

with that of another officer. See Iowa Op. Att'yGen. # 97-7-3(L); Iowa Op. Att'yGen # 97-2-2(L) [1997 WL 988714]; and 1990 Iowa Op. Att'yGen. 65 (#90-2-7(L)) [1990 WL 484874]. In these opinions we considered section 331.323 and concluded that the power of the electorate to combine offices does not extend the authority of the conference board or negate the full-time-duty requirement found in section 441.17(1). Neither section 331.323 nor chapter 441 authorizes the conference board or the electorate to approve the combination of the offices of two county assessors or the sharing of an assessor between two counties.

Similarly, home rule authority provided to the counties pursuant to Article III, section 39A of the Iowa Constitution does not provide authority for two counties to share an assessor. This section of the Iowa Constitution provides that "counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly. . . ." See also Iowa Code § 331.301(1) (2007). This caveat "places an important qualification on counties' powers. They may only exercise powers 'if not inconsistent with the laws of the general assembly.'" Worth County Friends of Agriculture v. Worth County, 688 N.W.2d 257, 261 – 262 (Iowa 2004). For reasons discussed above, we believe that any county action to share an assessor with a city or another county would be in direct conflict with the statutory requirement that each assessor shall devote full time to the duties of the assessor's office and would be preempted specifically by section 441.17(1) and generally by chapter 441. See also Iowa Code § 441.55 (2007) ("[i]f any of the provisions of this chapter should be in conflict with any of the laws of this state, then the provisions of this chapter shall prevail").

In summary, the statutory requirement that an assessor devote full time to the duties of the assessor's office effectively precludes the sharing of an assessor between two or more counties or the combination of county assessor offices through use of a 28E agreement or local ordinance enacted under home rule authority. Any sharing or combining of assessors or assessor offices would require a legislative amendment to chapter 441 spelling out the duties of the assessor and the affected boards of each respective assessing jurisdiction.

Sincerely,



JAMES D. MILLER
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