



POTTAWATTAMIE COUNTY ATTORNEY'S OFFICE

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June 3, 2004

Steve Palm
Pottawattamie County Assessor
227 South Sixth Street
Council Bluffs, Iowa 51501

Re: Request for Informal Opinions

Dear Steve:

I am in receipt of your requests for informal opinions on your office's practices concerning the following issues: 1) whether buildings constructed on leased premises may be assessed to the land owner or the building owner; and 2) whether employees of your office are trespassing when engaging in assessment duties.

Buildings on Leased Premises

As you know, Iowa Code §428.4 provides that buildings or improvements erected on a person other than the land owner shall be listed and assessed to the owner of the buildings or improvements as real estate. Your office would prefer that the assessments be provided to the land owner, not the building owner and have asked for an opinion concerning whether your office may do so.

Iowa Attorney General Opinion Letter 1988-93 provides some guidance in this matter providing, "The assessment of a building in a particular name 'is only a matter of administrative convenience.'" See also *Oberstein v. Adair County Board of Review*, 318 N.W.2d 817, 819 (Iowa App. 1982). In addition, the Iowa Supreme Court has construed

§428.4 to allow for the assessment of taxes for improvements, such as new buildings, to be made against the lessor (land owner) or the lessee (building owner).

“If a tenant improves the real estate, by either building a new structure...the tenant can be taxed after listing the property. This statutory scheme puts the burden on the taxpayers, rather than the assessor, to decide who is going to pay taxes on real property that has been improved by someone other than the owner. It relieves the assessor of the burden of investigating whether a tenant or a lessor improved the property.” *Ruan Center Corp. v. Board of Review*, 297 N.W.2d 538, 541 (Iowa 1980). See also *Duda v. Hastings*, 389 N.W.2d 404, 407 (Iowa App. 1986);

In light of these interpretations of §428.4, it is the opinion of this office that the Assessor's office may continue its practice of assessing the value of buildings on leased premises to the land owner rather than the building owner, unless or until further interpretations prohibit such assessment.

Trespassing

You have requested an opinion from this office concerning whether employees of the assessor's office are trespassing when engaging in assessment duties on the private property of another. Iowa Code §441.17 outlines the duties required of the county assessor. Among those duties are 1) that the assessor cause to be assessed all the property in the assessor's county or city, except property exempt from taxation, or the assessment of which is otherwise provided for by law; and 2) that the assessor make frequent inspections and checks within the assessor's jurisdiction of all manufactured or mobile homes and manufactured home communities or mobile home parks and make all the required and needed reports to carry out the purposes of this section. In performing these duties it is necessary for the assessor to go onto property belonging to another.

McCallum v. Board of Review of City of Des Moines, 159 N.W. 1036 (Iowa 1916) provides,

“the assessor is not armed with a statutory warrant to enter upon and search the premises of the person to be assessed, against his will, for the discovery of taxable property. He is doubtless authorized to take notice of such property as may come within his view without committing trespass.”

Based upon the duties prescribed by the Iowa Code and Iowa case law, it is the opinion of this office that the assessor and his or her official designees may enter onto the property of another without committing trespass while performing their official duties.

As a practical matter, I would recommend that an employee of the assessor's office avoid confrontations with property owners and return to perform official duties at a time when confrontations may be avoided.

Please feel free to contact me if you need additional information concerning these matters.

Sincerely,

Matthew D. Wilber
County Attorney