

DISCUSSION

The petitioners and the representatives of the Montgomery County Conference Board provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of this information and the public hearing is as follows:

PETITIONERS

Ms. Rose Keast represented the petitioners. In her presentation, she raised certain questions with regard to the Montgomery County Conference Board, summarized as follows:

1. The Conference Board did not review, analyze, discuss and comprehend the current fiscal budget in detail prior to the February 27, 2006 approval of the FY 2007 budget and were not aware that the levy for the Assessment Expense Fund was insufficient for the budgeted expenditures.
2. The tax in the Special Appraisers Fund was not levied upon a good a faith estimate of anticipated costs which could be paid from that fund and was levied to obtain the revenue necessary to balance the Assessment Expense Fund, double taxing property owners for the same purpose.
3. The Conference Board has, for the last four years or longer, annually levied an extra tax on the property owners of the county to fund the Special Appraisers Fund and transferred those funds to the Assessment Expense Fund to stay within their budget. The Conference Board has also used the Special Appraisers Fund to pay for items that are routine office functions, and for expert appraisers such as Vanguard Appraisals, Inc., for field appraisers. However, Iowa Code Section 441.13 clearly states that such field personnel, as far as possible, shall come from the eligible list of deputy appraisers made up by the Iowa Department of Revenue, as found in Iowa Code Section 441.10.
4. A 1989 Attorney General Opinion No. 89-2-2(L) states in Part; "You note that Iowa Code Section 441.41 provides that the county attorney "shall" represent the assessor and board of review in all litigation dealing with assessments" and later; "We tend to read Sections 441.41 expansively and view it as clarifying the county attorney's role in such matters." Iowa Code Section 441.41 states special counsel may be employed to assist the County Attorney. Iowa Code Section 4.1 (30) states that the word "shall" imposes a duty; "must" states a requirement; and "may" confers a power. We request the Conference Board cite the authority used to relieve the County Attorney of that duty and employ outside legal counsel to represent them.
5. The Conference Board allows legal expenses to be budgeted and paid for from the Special Appraisers Fund which is contrary to Iowa Code Section 441.16 which states in part, "...a separate fund to be known as the assessment expense fund and from which all expenses incurred under this chapter shall be paid." This fund should also include expenditures for legal services as specified in Iowa Code Section 441.17. The supplemental detail of the Special Appraisers Fund of the FY 2007 Conference Board budget, line 16, shows the Conference Board has budgeted \$30,000 for FY 2006 and FY 2007. We do not understand why the costs of legal services are budgeted for in the Special Appraisers Fund or what they have to do with special appraisers.

6. We do not understand why line 38 – field assessors, line 53 – appeals/court/legal and line 50 – appraisal service on the Assessment Expense Fund supplemental detail sheet are blank when those are clearly expenditures paid from the Assessment Expense Fund.
7. Each year the Conference Board has, in effect, exceeded the maximum levy in the Assessment Expense Fund by levying a tax in the Special Appraisers Fund and allowing transfers from the Special Appraisers Fund to the Assessment Expense Fund. This year the Conference Board is moving a part of the Assessor's salary and benefits from the Assessment Expense Fund to the Special Appraisers Fund when those items are clearly not special.

Additional comments by the petitioner regarding the items noted above are as follows:

A budget appealed for the correct reasons should be regarded as a learning experience for all the parties involved. We, the petitioners, feel we have legitimate questions that need to be answered. Hopefully, they will be answered to the satisfaction of all.

MONTGOMERY COUNTY CONFERENCE BOARD RESPONSE

Ms. Stacey VonDielingen, Montgomery County Assessor, was the primary spokesperson for the Montgomery County Conference Board. In her response to the petition, she expanded upon the written remarks and the exhibits that were submitted.

1. In preparing the FY 2007 budget, the Conference Board followed Iowa Code Chapter 441 and a memo dated January 4, 2006 from Christie J. Scase, Assistant Attorney General with the Department of Justice, to Andy E. Nielsen, CPA, Deputy Auditor of State with the Office of Auditor of State. The memo addresses the use of the Special Appraisers Fund under Iowa Code Section 441.50.
2. The Conference Board hires outside counsel each year to represent the Board of Review in court. Iowa Code Section 441.41 states in part, "The conference board may employ special counsel to assist the city legal department or county attorney as the case may be." Due to the specialized nature of assessment law, the Conference Board has chosen to utilize the services of outside legal counsel that has this expertise, which benefits the taxpayers.
3. The budget includes a line for the Geographic Information System (GIS), which includes maintenance for the GIS and the continuous update of all splits/transfers done daily. The information is then sent electronically to the mapping company each day where it is plotted and sent back to us. The GIS allows us to keep our records up to date daily and is a great tool assisting in the valuation of property.
4. The computer equipment line is used to fund the annual service and maintenance agreements for the appraisal software, used daily in determining property valuations. Also, this line item includes the cost of replacing computer equipment used in making appraisals.
5. The appraisal services line item is used to cover the cost of hiring an outside appraisal firm to help with annual field work. It is more cost effective for the office to operate with two full-time employees and hire out part of the annual field work instead of hiring additional employees. The office saves money by not needing to pay salary and benefits for an additional full-time employee.
6. In FY 2007, one third of the Assessors salary and benefits will be paid from the Special Appraisers Fund since the Assessor does a portion of the annual field work and makes all final property valuation decisions for the County.

In her rebuttal, Ms. VonDielingen addressed the concerns expressed in the petitioners' opening statements. She stated the following:

1. The Conference Board had ample time to review and discuss the budget prior to approval and the budget did not include a double taxation of the taxpayers because the Special Appraisers Fund is allowable by law and can be used to fund the expenditures included in the FY 2007 budget.
2. The FY 2007 budget does not include transfers from the Special Appraisers Fund to the Assessment Expense Fund.
3. Certain line items on the Assessment Expense Fund supplemental detail budget sheet were left blank because they are budgeted in Special Appraisers Fund.
4. Assessment appeals are not lawsuits (torts); therefore, the cost of special counsel for these appeals should not be paid from the Tort Liability Fund.

Mr. Bruce Swanson, Montgomery County Attorney, also addressed the Hearing Panel. He stated that neither he, nor his assistant, have the expertise to handle assessment cases and would have to hire additional help in order to do so.

FINDINGS OF FACT

1. Iowa Code Section 24.27 provides persons who are affected by any proposed budget, expenditure or levy, or by an item thereof, may appeal. The petitioners met the requirements and, pursuant to Sections 24.28 and 24.29, a hearing was scheduled and conducted.
2. The FY 2007 budget does not include transfers from the Special Appraisers Fund to the Assessment Expense Fund.
3. Iowa Code Section 441.41 specifically authorizes the Conference Board to employ outside legal counsel. The Conference Board has hired outside legal counsel to assist with assessment cases. The County Attorney has stated he and his staff do not have the expertise to handle this work.
4. Iowa Code Section 441.50 states in part, "The conference board shall have power to employ appraisers or other technical or expert help to assist in the valuation of property..." Based upon the January 4, 2006 memo by Christie J. Scase, all expenditures included in the FY 2007 budget for the Special Appraisers Fund are allowable from this fund as follows:
 - The memo states in part "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." The Conference Board can hire outside appraisers to be paid from the Special Appraisers Fund.
 - The memo further states "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 appraisers fund, as long as the employees provide "technical or expert help to assist in the valuation of property." To the extent the Assessor provides technical or expert help, that portion of the Assessors salary and benefits can be paid from the Special Appraisers Fund.

- Computer software and equipment used in the appraisal of property is "technical" help that can be paid from the Special Appraisers Fund.
- The memo states "...I believe that section 441.50 can reasonably be applied to allow money from the special appraisers fund to support the purchase and maintenance of a GIS system which is used for property appraisal." This is also supported by a State Appeal Board decision regarding the FY 2002 Carroll County Conference Board budget.
- Legal services to defend the Board of Review in litigation of property assessments is "other technical or expert help to assist in the valuation of property" and is an appropriate expenditure from the Special Appraisers Fund. Since a tort has not occurred, these legal services would not be an appropriate expenditure from the Tort Liability Fund.

CONCLUSIONS OF LAW

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Iowa Code Sections 24.28 and 441.16.

BASIS OF DECISION


Iowa Code Section 24.28 states in part, "At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the previous year and which the objectors propose should be reduced or excluded...". The petitioners did not adequately satisfy this requirement to justify a change in the FY 2007 budget.

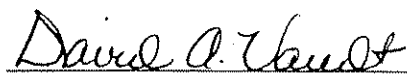
ORDER

Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board sustains the FY 2007 Montgomery County Conference Board Budget as adopted.

STATE APPEAL BOARD


 Michael L. Tramontina
 Chairperson


 Michael L. Fitzgerald
 Vice Chairperson


 David A. Vaudt
 Member

5-1-2006
 Date