INCOMPATIBILITY OF OFFICES: Mayor and deputy sheriff. Iowa Code §§ 331.652(7); 331.903(4); 372.14 (2003). A deputy sheriff does not hold a "public office" for purposes of the incompatibility doctrine. Accordingly, the mayor of a city could simultaneously serve as a deputy sheriff for the county in which the city is located. To the extent that the 1912 Op. Att'y Gen. 276 and 1978 Op. Att'y Gen. 325 conflict with this opinion by holding that the position of deputy sheriff is an office, they are overruled. (Odell to Whitacre, Mills County Attorney, 3-22-04) #04-3-1

March 22, 2004

C. Kenneth Whitacre
Mills County Attorney
Mills County Courthouse
418 Sharp Street
Glenwood, Iowa 51534

Dear Mr. Whitacre:

You have requested an opinion concerning a compatibility of office issue. Specifically, you ask whether the positions of mayor of a city and deputy sheriff of the county in which the city is located are compatible. As you note, an opinion of the Attorney General issued in 1911, 1912 Op. Att'y Gen. 276, concluded that these two positions were incompatible. Because we believe that the conclusion of the prior opinion is clearly erroneous, we overrule the prior opinion and conclude that the two positions are compatible.

In 1992, we highlighted the difference between the doctrines of "incompatibility" and "conflict of interest" as follows:

> The incompatibility and conflict of interest doctrines, while often confused, are distinct concepts. [T]he 'doctrine of incompatibility' is concerned with the duties of an office apart from any particular officer holder.' 'Conflict of interest' issues, on the other hand, require examination of 'how a particular office holder is carrying out his or her official duties in the given fact situation.'

1992 Op. Att'y Gen.150, 150-151 (internal citations omitted). An allegation of conflict involves evidentiary considerations; in contrast, an allegation of incompatibility -- which may have a constitutional, statutory, or common-law basis -- presents a purely legal question. 1982 Op. Att'y Gen. 220, 221.

Because an issue of incompatibility arises only if there is inconsistency in the functions of two "public offices," resolution of your inquiry hinges on the initial determination whether the position of deputy sheriff is a "public office." See State ex rel. LeBuhn v. White, 257 Iowa 606, 609, 133 N.W.2d 903, 905 (Iowa 1965); 1982 Op. Att'y Gen. at p. 224 (the incompatibility

doctrine is applicable only if the two positions involved are both public offices). While there is no Iowa statute or case directly on point, two prior opinions of the Attorney General address the compatibility of the position of deputy sheriff with specific public offices. In 1912 Op. Att'y Gen. 276, the question you pose was presented and the Attorney General concluded, without analysis, that the position of deputy sheriff is incompatible with that of mayor. Similarly, in 1978 Op. Att'y Gen. 325, the Attorney General concluded, again without analysis, that the positions of deputy sheriff and city council member are incompatible.

More than a century ago, in State v. Spaulding, 102 Iowa 639, 72 N.W. 288 (1897), the Iowa Supreme Court set forth guidelines which it has consistently used to distinguish a public office from a mere position of public employment. These guidelines establish five essential elements required to make a public employment a public office. All of these essential elements must exist:

> (1) the position must be created by the constitution or legislature, or through authority conferred by the legislature;
> (2) a portion of the sovereign power of government must be delegated to that position;
> (3) the duties and powers must be defined directly or impliedly by the legislature or through legislative authority;
> (4) the duties must be performed independently and without control of a superior power other than the law; and
> (5) the position must have some permanency and continuity and not be only temporary and occasional.

VanderLinden v. Crews, 205 N.W.2d 686, 688 (Iowa 1973), citing State v. Taylor, 260 Iowa 634, 639, 144 N.W.2d 289, 292 (Iowa 1966) and State v. Spaulding, 102 Iowa at 647, 72 N.W. at 290.

Although the position of deputy sheriff meets some of these elements, the position fails to meet at least two of the five elements. The position of deputy sheriff is created "through authority conferred by the legislature" and meets the first element of the public office analysis. See Iowa Code § 331.652(7) (2003) (county sheriff authorized to appoint "deputies, assistants and clerks," subject to the approval of the county board of supervisors and governing civil service law). A deputy sheriff, however, is not statutorily authorized to independently execute a portion of the sovereign power of government without control of a superior other than the law. Rather, a deputy sheriff performs duties as assigned by the sheriff, subject to the supervision and control of the sheriff. See Iowa Code §§ 331.903(4) (2003). The sheriff defines the role of a deputy sheriff who must perform the duties assigned by the sheriff. Iowa Code § 331.903(4) (2003). See 1996 Op. Att'y Gen. 97 (#96-10-2(L)) (concluding that a city reserve police officer is not a public office holder for purposes of the doctrine of incompatibility of offices). Thus, a

deputy sheriff does not exercise unsupervised sovereign power – the hallmark of a public office. See State v. Pinckney, 276 N.W.2d 433, 436 (Iowa 1979).

Further, the position of deputy sheriff has no permanency or continuity. It is within the initial discretion of the sheriff to determine whether a deputy sheriff should be appointed and to hire a specific applicant subject to the approval of the county board of supervisors and applicable civil service rules. Iowa Code §§ 331.652(7) and 331.903(1), and Iowa Code ch. 341A (2003). Subject to the civil service provisions of Iowa Code chapter 341A, the sheriff has authority to "remove" any specific deputy sheriff or, presumably, abolish the position of deputy at any time without legislation. See Iowa Code § 331.652(7) (2003); State v. Pinckney, 276 N.W.2d at 436. While the sheriffs of many larger counties in Iowa could not realistically perform their statutory duties without the aid of at least one deputy sheriff, the position of deputy sheriff is not a "public office" merely because it is necessary or of long-standing duration. A public office is "de jure in its creation. It is not established by de facto operation." State v. Pinckney, 276 N.W.2d at 436.

The position deputy sheriff fails to meet several of the elements of a public office, as defined by the Iowa Supreme Court. Therefore, we must conclude the position is not a public office for purposes of the incompatibility analysis and that the position of deputy sheriff cannot be "incompatible" with the office of mayor.

Although we conclude that the position of deputy sheriff is not incompatible with the office of mayor of a city in the county where the deputy is employed, we caution that conflicts of interest may arise as to specific issues which preclude a deputy sheriff, while serving as mayor, from acting upon matters directly impacting the sheriff's department. However, because allegations of conflict may only be resolved by considering the facts surrounding a particular action or set of actions, we make no attempt to identify every potential conflict which might arise. Rather, we caution that an individual serving in these two positions should remain vigilant for conflicts, abstain from acting as mayor when appropriate, and seek advice from the city attorney if in doubt regarding the existence of a conflict in a specific situation.

In summary, we conclude that a deputy sheriff does not hold a "public office" for purposes of the incompatibility doctrine. Accordingly, the mayor of a city could simultaneously serve as a deputy sheriff for the county in which the city is located. To the extent that the 1912 Op. Att'y Gen. 276 and 1978 Op. Att'y Gen. 325 conflict with this opinion by holding that the position of deputy sheriff is an office, they are overruled.

Sincerely,

Cristen C. Odell
Assistant Attorney General

CITIES: Home Rule; regulation of precursor substances. Iowa Const. art. III, § 38A; Iowa Code ch. 124B; Iowa Code § 364.1 (2003); 2004 Iowa Acts, 80th G.A., ch. 127. A city in Iowa may legitimately exercise its home rule power by enacting an ordinance requiring local retail vendors to record the name and address of persons who purchase identified methamphetamine precursor substances. (Scase to Van Haaften, Director, Office of Drug Control Policy, 6-9-04) #~~06-6-1~~ 04-6-1

June 9, 2004

Marvin L. Van Haaften
Office of Drug Control Policy
Office of the Governor
State Capitol
Des Moines, Iowa 50319

Dear Mr. Van Haaften:

You have asked for a formal opinion from this office regarding the legality of Ordinance - 02-03 proposed by the City of Hazleton. Specifically, you ask whether the city has authority to enact an ordinance that categorizes seven substances as methamphetamine precursors, imposes record keeping requirements on local retail vendors of products containing these substances, and levies fines for violations. As discussed below, we conclude that the proposed ordinance represents a legitimate exercise of the city's home rule power and is not preempted by state law.

In determining whether the City of Hazleton has the power to adopt this ordinance we focus upon two concepts: (1) the city's home rule authority to exercise police powers; and (2) the State's ability to preempt local action. These concepts and their interrelationship are set forth in the Municipal Home Rule Amendment of Iowa's Constitution:

> Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the General Assembly.
>
> The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Iowa Const. art. III, § 38A.

Iowa Code chapter 364 sets forth the powers and duties of cities. The statute essentially mirrors the municipal home rule amendment, providing that

> [a] city may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents....

Iowa Code § 364.1 (2003); see also Iowa Code § 364.2(2) (2003) ("A city may exercise its general powers subject only to limitations expressly imposed by a state or city law"). "An action taken pursuant to this provision is an exercise of a city's police power." Home Builders Ass'n. Of Greater Des Moines v. City of West Des Moines, 644 N.W.2d 339, 345 (Iowa 2002). Police power refers to a municipality's "broad, inherent power to pass laws that promote the public health, safety, and welfare." Gravert v. Nebergall, 539 N.W.2d 184, 186 (Iowa 1995).

In order to constitute a legitimate exercise of police power, an ordinance "must have a definite, rational relationship to the ends sought to be served by the ordinance." Goodenow v. City Council of Maquoketa, 574 N.W.2d 18, 23 (Iowa 1998). Limitations on the exercise of police power were detailed by the United States Supreme Court more than a century ago.

> [T]he state may interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

Lawton v. Steele, 152 U.S. 133, 136-7, 14 S. Ct. 499, 501, 38 L. Ed. 385, 388 (1894). Reasonableness is the benchmark for assessing the scope of police power.

"There can be no question of the authority of the state in the exercise of its police power, to regulate the administration, sale, prescription and use of dangerous and habit-forming drugs..." Whipple v. Martinson, 256 U.S. 41, 45, 41 S. Ct. 425, ___, 65 L. Ed. 819, 822 (1921). Similarly, statutes and municipal ordinances regulating the advertising, display, and sale of drug paraphernalia have been found to relate to the legitimate municipal goal of protecting the public welfare. 7 E. McQuillin, Municipal Corporations § 24.240.50 (3rd ed. 1997); see Hoffman

Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982) (upholding city drug paraphernalia ordinance which prohibited sales to minors and required retailer to obtain a license, screen employees for drug offenses, and keep a record of each sale of a regulated item – including the name and address of the purchaser – to be open for police inspection). In light of the Flipside rationale, we believe a court would likely conclude that protecting the public from by monitoring the sale of methamphetamine precursor substances is consistent with the proper goal of an exercise of police power – protection of the public health and welfare.[1]

We do not, however, address the reasonableness of the inclusion or exclusion of any particular substance from the list of methamphetamine precursors within the proposed Hazelton ordinance. This determination may be based upon the connection each substance has to the manufacture of methamphetamine – or likelihood that the substance may be used for this illegal purpose, the availability of the substance, and the extent to which the substance has legitimate uses. See Iowa Code § 124B.2(2) (2003) (setting forth the factors to be considered by the Board of Pharmacy Examiners in determining whether to add or remove a substance from the list of substances to which the state reporting requirement applies). These are fact-based inquiries which are not appropriately resolved through an opinion from this office. 61 Iowa Admin. Code 1.5(3)(c).

Having concluded that a city's home rule authority to exercise police power encompasses monitoring the sale of methamphetamine precursor substances, we now examine whether statewide regulation of this area preempts the proposed ordinance. See Goodenow v. City Council of Maquoketa, 574 N.W.2d at 25. While the concept of home rule clearly envisions the possibility that both the state and a city may regulate in the same area, a city's power to govern its local affairs may be preempted by state law. The concept of "preemption" finds its source in the constitutional prohibition against the exercise of a home rule power that is "inconsistent with the laws of the general assembly." Iowa Const. art. III, § 38A. "A local ordinance, however, is *not* inconsistent with a state law unless it is *irreconcilable* with the state law." BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes, 646 N.W.2d 857, 859 (Iowa 2002) (emphasis original), citing Goodell v. Humboldt County, 575 N.W.2d 486, 500 (Iowa 1998) and Iowa Code § 364.2(2). Preemption may be express or implied.

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[1] We caution, however, that although monitoring of the sale of precursor substances appears to be a legitimate use of municipal police powers, the purchase or possession of identified precursors is not in itself criminal activity. A person commits a crime only if the person possesses the substance "with the intent to use the product to manufacture [a] controlled substance." Iowa Code § 124.401(4) (2003); see United States v. Weston, 4 F.3d 672, 674 (8th Cir. 1993), accord State v. Baker, 666 N.W.2d 620 (table), 2003 WL 1971823 (Iowa App. 2003) ("It is not illegal to possess pseudoephedrine if there is no evidence of intent to use the pseudoephedrine to manufacture methamphetamine").

> Express preemption occurs when the general assembly has specifically prohibited local action in an area. Obviously, any local law that regulates in an area the legislature has specifically stated cannot be the subject of local action is irreconcilable with state law. Implied preemption occurs in two ways. When an ordinance prohibits an act permitted by a statute, or permits an act prohibited by statute, the ordinance is considered inconsistent with state law and preempted. Implied preemption may also occur when the legislature has covered a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law.

Goodell v. Humboldt County, 575 N.W.2d at 492 (internal citations and quotations omitted).

The Iowa general assembly enacted a statute requiring the reporting of certain sales of methamphetamine precursor substances in 1990. 1990 Iowa Acts, 73 G.A., ch. 1251, §§ 10-21. This statute, now codified as Iowa Code chapter 124B, requires a report to the Board of Pharmacy Examiners from anyone who "sells, transfers, or otherwise furnishes to any person" in Iowa one of the precursor substances listed in subsections 124B.2(2)(a) through (w). The list includes pseudoephedrine and red phosphorus, two substances which are also included on the list of products covered by the Hazelton ordinance. Prior to "selling, transferring, or otherwise furnishing" any of the listed substances, the vendor "shall require proper identification from the purchaser," which includes production of a driver's license and "motor vehicle license number of the vehicle owned or operated by the purchaser." Iowa Code § 124B.3(2)(a) (2003). This personal identifying information is then forwarded to the Board along with the report of the sale. The statute is not comprehensive and specifically exempts certain sales, including

> [a] sale, transfer, furnishing, or receipt of a drug containing ephedrine....pseudoephedrine or of a cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with chapter 126.

Iowa Code § 124B.6(4) (2003). Chapter 124B contains no express limitation on monitoring of the sale of methamphetamine precursors by political subdivisions. Therefore, this chapter does not expressly preempt local legislation on this subject.

In addition, during the past legislative session the general assembly enacted a statute regulating the retail display and sale of products containing pseudoephedrine as the sole ingredient. 2004 Iowa Acts, 80 G.A., ch. 127. The new provision, to be codified as Iowa Code section 126.23A, requires these products to be displayed "behind the counter," or within view of the counter, or with an anti-theft devise; prohibits the sale or purchase of more than two packages

of the products; requires retailers to post a notice regarding the two package limitation; and designates the sale or purchase of more than two packages of a product containing pseudoephedrine as the sole ingredient as a simple misdemeanor. Id. at § 1. Regarding local regulation, the act provides:

> Enforcement of this section shall also be implemented uniformly throughout the state. For purposes of uniform implementation, a county or municipality shall not set requirements or establish a penalty which is higher or more stringent than the requirements or penalties enumerated in this section.

Id., to be codified as Iowa Code § 126.23A(6)(b).

Subsection (6)(b) of new Code section 126.23A does expressly preempt local ordinances which impose requirements more stringent or penalties higher "than the requirements or penalties enumerated in [section 126.23A]" The new law does not, however, govern the same subject matter as the Hazelton ordinance. The ordinance imposes monitoring requirements, including verification of identity and maintenance of a log of sales, upon retailers who sell listed methamphetamine precursors. Section 126.23A will only regulate display and the quantity of sales and purchases of products containing pseudoephedrine as the sole ingredient. Because the activities regulated by the ordinance are different from the activities regulated by section 126.23A, we do not believe that the express limitation on local authority contained in section 126.23A(6)(b) would be interpreted by the Iowa Court as preempting the Hazelton ordinance. Compare Goodell v. Humboldt County, 575 N.W.2d at 494- 497 (concluding that expressed statutory prohibition upon the application of zoning regulations to land and buildings used for agricultural purposes did not expressly preempt other forms of county regulation of rural land use); with James Enterprises, Inc. v. City of Ames, 661 N.W.2d 150 (Iowa 2003) (holding that local ordinance prohibiting the designation of smoking areas in public places was expressly preempted by state statute regulating smoking in public places which expressly allowed the designation of smoking areas under certain conditions and preempted local regulation inconsistent or in conflict with the statute).

Having concluded that neither Iowa Code chapter 124B nor section 126.23A expressly preempts the proposed Hazelton ordinance, we must examine whether the statutes impliedly restrict local regulation. As noted above, implied preemption occurs in one of two ways: (1) if the state statute comprehensively covers a subject in a manner that shows legislative intent to preempt the field by state law; or (2) if the local regulation prohibits an act permitted by statute or permits an act prohibited by statute. Goodell v. Humboldt County, 575 N.W.2d at 492.

The proposed ordinance governs the transfer or sale of methamphetamine precursors. In section 2, the Hazleton City Council lists seven substances which are deemed to be "controlled substance precursors." Any person who sells, transfers or otherwise passes for consideration

"any substances containing the above described controlled substance precursors" must require the purchaser/receiver to produce photo identification and provide his or her name, address and telephone number. The vendor must keep this identifying information in a log "that shall be accessible to any law enforcement officer upon request." Although the ordinance does not apply to persons who "purchase one pre-packaged unit of substances containing pseudoephedrine," the vendor is authorized to require the identifying information when selling "only one package unit pseudoephedrine...". The ordinance contains remedies including a monetary fine and injunctive relief for violations.

We do not believe that Iowa Code chapter 124B addresses methamphetamine precursors in an all-encompassing or comprehensive manner that would indicate an intent to preempt or otherwise restrict local regulation on the same topic. The statute requires reporting of sales or transfers only to the Board of Pharmacy Examiners and does not expressly limit the authority of a political subdivision to enact regulations restricting the transfer of methamphetamine precursors or requiring the collecting of identifying information when a transfer of precursors occurs. We recognize that the statute and ordinance may both apply to a transaction involving the sale of a precursor substance. For example, pseudoephedrine or red phosphorus are identified as methamphetamine precursors by both the statute and the ordinance. This dual applicability does not necessarily creates an inconsistency between the ordinance and the statute. See BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes, 646 N.W.2d at 860-61 (upholding a city ordinance which imposed additional restrictions for tire recycling upon a corporation which was operating in the city under a DNR permit; noting that the ordinance merely enhanced already enforceable restrictions, did not attempt to bypass, contradict or override the state permitting process, and promoted the underlying policy of the state statutory scheme).

The Hazleton ordinance neither prohibits an act that is permitted by Iowa Code chapter 124B nor permits an act that is prohibited by the statute. Rather, the ordinance merely further regulates already regulated transactions, "thereby further promoting the underlying policy of [chapter 124B], but with greater force." BeeRite Tire Disposal/Recycling, Inc. v. City of Rhodes, 646 N.W.2d at 860. We do not believe that the ordinance is "irreconcilable with" Iowa Code chapter 124B. Similarly, as discussed above, new Iowa Code section 126.23A is not a comprehensive regulation or in direct conflict with the proposed ordinance. Therefore, we conclude that neither of these statutes impliedly preempts the proposed Hazelton ordinance.

Our conclusion is further supported by the strong policy on which Iowa courts rely to harmonize state and local regulatory schemes when public protection is at stake:

> In considering whether a particular ordinance violates the home rule provisions of the Constitution, the Supreme Court attempts to interpret state law to render it harmonious with the ordinance. The Court appears especially likely to find harmony between the

> ordinance and the statutory scheme where the ordinance addresses the health and safety of citizens.

Iowa Op. Att'y Gen. #00-11-5, at p. 2 (internal citations omitted). Hazleton Ordinance 02-03 by its express terms aims to protect the public against the "increase of crime, mental illness, and behavior contrary to the best interest of citizens" occasioned by the rampant production and use of methamphetamine.

In summary, we conclude that a city in Iowa may legitimately exercise its home rule power by enacting an ordinance requiring local retail vendors to record the name and address of persons who purchase identified methamphetamine precursor substances and that such an ordinance is not preempted by state law. We do not address the reasonableness of the inclusion or exclusion of any particular substance from the list of methamphetamine precursors within the proposed Hazelton ordinance.

Sincerely,

Christie J. Scase
Assistant Attorney General

TAXATION: PROPERTY TAX: Levee and drainage district taxes; administrative fee. Iowa Code §§ 331.553, 446.7, 468.39, 468.50-468.51 (2003). The five dollar administrative fee authorized by Iowa Code section 331.553(4) is applicable to each special assessment for levee or drainage district benefits certified to the county treasurer. The administrative fee is added to the lien of the unpaid assessment on each tract, parcel or lot on which the assessment is levied. If payment in the amount of the entire outstanding lien, including the administrative fee, is not made in a timely manner, the property is subject to sale at the annual tax sale. (Smith to Matthews, Louisa County Attorney, 7-12-04) #04-7-1

July 12, 2004

David L. Matthews
Louisa County Attorney
Louisa County Courthouse
Wapello, IA 52653

Dear Mr. Matthews:

You have requested an opinion concerning Iowa Code section 331.553(4), which authorizes the county treasurer to charge a $5.00 administrative fee on special assessments certified as a lien to the treasurer for collection. Specifically, you present a series of questions regarding application of this provision to levee and drainage district improvement and maintenance taxes.

Pursuant to Iowa Code section 331.553(4)

> The treasurer may . . . [c]harge five dollars, as an administrative expense, for every rate, charge, rental, or special assessment certified to the treasurer for collection. This amount shall be added to the amount of the lien, collected at the time of payment from the payor, and credited to the county general fund.

Iowa Code § 331.553(4) (2003). Your first question is whether the administrative fee is applicable to levee and drainage district improvement and maintenance taxes certified to the county treasurer, pursuant to Iowa Code chapter 468. Stated otherwise, your question is whether levee and drainage district taxes are "special assessments."

We look first at the constitutional provision authorizing creation of drainage and levee districts. Article I, section 18 of the Iowa Constitution expressly authorizes the general assembly to pass laws creating drainage and levee districts and vesting districts with power to construct and maintain facilities "by special assessments on the property

benefitted thereby." Iowa Const. Article I, §18 (as amended in 1908 by the 13th Amendment to the Iowa Constitution). Iowa Code chapter 468 establishes procedures for the creation and operation of levee and drainage districts, including a detailed process for the classification and reclassification of parcels of land within the district based upon the benefit received by each tract and the assessment of the costs of construction, repair, and maintaining of district improvements. Iowa Code §§ 468.38 - 468.53, 468.65, 468.126-468.127, 468.184 (2003); *see Fisher v. Dallas County,* 369 N.W.2d 426, 428 (Iowa 1985). Throughout this statute, drainage district improvement and maintenance taxes are consistently referred to as "assessments" levied by a district on benefitted tracts of land within the district. *See, e.g.*, Iowa Code §§ 468.3(5), 468.38, 468.50, 468.99, 468.121, 468.127, 468.189 (2003).

Drainage and levee district assessments are to be levied by the governing board as a tax and certified by the board to the county treasurer. Iowa Code §§ 468.50, 468.56 (2003). Upon receipt of certification of the special assessment from the board, the county treasurer is authorized to enter the assessment in the county property tax system for collection. Iowa Code §§ 445.11, 468.53 (2003). A special assessment levied by a drainage or levee district is made a lien on the benefitted parcel against all owners except the state. Iowa Code §§ 445.28, 468.51, 468.60 (2003). Thus, we conclude that drainage and levee district taxes certified to the county treasurer as liens are included in the term "special assessments" as used in section 331.553(4). This construction of the term "special assessments" is consistent with the purpose for authorizing the administrative fee, which is to offset the treasurer's expenses in administering the system for collection of various classes of assessments in the same manner as other taxes on real estate.

Your second question is whether an unpaid administrative fee subjects the real estate to potential tax sale. Section 331.553(4) expressly provides that the $5.00 administrative fee "shall be added to the amount of the lien" of a special assessment that is certified to the treasurer. Thus, the administrative fee added by the treasurer to a special assessment certified by a drainage or levee district is a lien against the tract, parcel or lot on which the special assessment was levied and included in the property taxes collected pursuant to Code chapter 445. *See* Iowa Code § 445.1(6), (7) (2003) (for purposes of tax collection statutes, the term "taxes" is defined to include "an annual ad valorem tax, a special assessment, a drainage tax, a rate or charge, and taxes on homes pursuant to chapter 435 . . .," and the "total amount due" is "the aggregate total of all taxes, penalties, interest, costs, and fees due on a parcel"). If any part of the combined amount is not timely paid, the tax becomes delinquent, and the tract, parcel or lot is

Your third question is whether it would be appropriate to charge the administrative fee per parcel of real estate or per individual taxpayer. Levee and drainage district special assessments are based upon the benefits received by individual tracts, parcels or lots of real estate. *See, e.g.*, Iowa Code §§ 468.39 (for purposes apportionment of benefits, all lands within the district are to be classified "in tracts of forty acres or less according to the legal or recognized subdivisions"); 468.49 (in the event any tract, lot, or parcel is divided into two or more tracts, "the classification of the original tract shall be apportioned to the resulting parcels . . .") (2003). The board certifies to the treasurer the amount of the special assessment against a specific tract, parcel or lot. Iowa Code § 468.50 (assessment levied upon "tract, parcel or lot within the district") (2003). The authorization in section 331.553(4) is to add a $5.00 administrative fee to the amount of the certified assessment. The statute clearly makes the administrative charge applicable to the certified special assessment levied on each tract, parcel or lot.

In summary, we conclude that the five dollar administrative fee authorized by Iowa Code section 331.553(4) is applicable to each special assessment for levee or drainage district benefits certified to the county treasurer. The administrative fee is added to the lien of the unpaid assessment on each tract, parcel or lot on which the assessment is levied. If payment in the amount of the entire outstanding lien, including the administrative fee, is not made in a timely manner, the property is subject to sale at the annual tax sale.

Sincerely,

Michael H. Smith
Assistant Attorney General