

**LETTER OPINION
2001-L-46**

October 23, 2001

Mr. James D. Gion
Hettinger County State's Attorney
PO Box 101
Regent, ND 58650-0101

Dear Mr. Gion:

Thank you for your letter asking whether the Legislature intended to limit all park districts' general fund levy to 35 mills when it enacted 2001 House Bill 1031.

The 2001 Legislative Assembly enacted, and the Governor approved, House Bill 1031, which, among other things, amended N.D.C.C. § 57-15-12 to read as follows:

The aggregate amount levied for park district general fund purposes, exclusive of levies to pay interest on bonded debt and levies to pay and discharge the principal thereof, and levies to pay the principal and interest on special assessments assessed and levied against park board properties by other municipalities, may not exceed the sum of the number of mills levied by the park district in taxable year 2000 for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60. A park district may increase its general fund levy under this section to any number of mills approved by a majority of the electors of the park district voting on the question at a regular or special park district election, up to a maximum levy under this section of thirty-five mills on the dollar of the taxable valuation of the district for the current year.

The first sentence of the section as amended provides for a park district general fund levy not to exceed the sum of taxable year 2000 mill levies for seven listed statutory purposes. The second sentence of the section as amended allows a park district to increase its general fund levy by a majority vote of the park district electors to a maximum of 35 mills. You ask how to treat a park district whose taxable year 2000 mill levy for the seven purposes listed in N.D.C.C. § 57-15-12 exceeded 35 mills.

At first glance, the two sentences of N.D.C.C. § 57-15-12 might appear to conflict. However, 2001 House Bill 1031 also amended N.D.C.C. § 57-15-01.1 by changing the definition of “base year” in N.D.C.C. § 57-15-01.1(2)(a) to define that term more specifically with respect to park districts. The amended definition defines “amount levied in dollars in property taxes” by listing the same seven statutory purposes as contained in N.D.C.C. § 57-15-12 for the general fund.

In 1996, the Attorney General described the effect of N.D.C.C. § 57-15-01.1 in relation to a maximum levy for school districts whose electors voted to discontinue an unlimited levy. The Attorney General stated:

Absent elector-authorized levies for either a specific number of mills or an unlimited mill levy, N.D.C.C. § 57-15-14 provides for a 185 mill limit for the purposes provided in N.D.C.C. § 57-15-14.2.

However, since 1981, the Legislature has enacted two-year temporary authority for North Dakota taxing districts to increase their mill levies in dollars by certain percentages. . . . In 1995, the Legislature enacted similar legislation, but without an ending date. Consequently, the authority for tax levy increases now appears as N.D.C.C. § 57-15-01.1. Under N.D.C.C. § 57-15-01.1(6), “a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section.” . . . This section, therefore, provides options to taxing districts for levying taxes for the purpose, as indicated in the title of the section, of “protection of taxpayers and taxing districts.” Under that section, the taxing district board must take conscious action in its budget and tax levy processes to determine which of its sources of authority it will use. See 1994 N.D. Op. Att’y Gen. L-323. . . .

1996 N.D. Op. Att’y Gen. L-80.

The reasoning from the 1996 opinion is applicable to your question. When the Legislature enacted the amendments to N.D.C.C. §§ 57-15-01.1 and 57-15-12, it recognized not only

LETTER OPINION 2001-L-46
October 23, 2001
Page 3

the need to consolidate certain mill levies and set a general fund limit but also that park districts could employ the authority of N.D.C.C. § 57-15-01.1. Thus, a park district (a "taxing district" under N.D.C.C. § 57-02-01(9)) may levy the lesser of the amount in dollars as certified in its budget, or the amount in dollars as allowed in N.D.C.C. § 57-15-01.1.

It is therefore my opinion that park districts may exercise their option to use N.D.C.C. § 57-15-01.1, which may result in superseding the 35-mill levy limitation in N.D.C.C. § 57-15-12.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg