

**LETTER OPINION
2001-L-05**

February 26, 2001

Ms. Linda Hickman
Williams County State's Attorney
PO Box 2047
Williston, ND 58802-2047

Dear Ms. Hickman:

Thank you for your letters requesting an opinion relating to the funding of a multi-county health district.

Your first question relates to the manner of determining how much each county in the health district must pay towards the health district budget. You state:

Prior to the enactment of N.D.C.C. § 23-35-07, the Health District would certify a prorated dollar amount to each county. The counties would each forward the certified amounts to the Health District. Each county determined what funds that county would utilize to meet its obligation to the Health District and if a health district tax was levied, the individual county determined the levy required for that county. Last year, following the enactment of N.D.C.C. § 23-35-07 and discussion between auditors, the health district and the state tax department, the Williams County Auditor ascertained a valuation for each member county and determined a flat mill levy applicable to all member counties based on valuation. Williams County has the largest population and valuation of the member counties.

Some counties also contribute a portion of the State Aid Distribution to the Health Unit while others do not. Under the flat mill levy, such contributions result in those counties paying more than their proration.

Under N.D.C.C. § 23-35-07, can the member counties continue with the method utilized prior to its enactment? If not, what method is required by the statute?

N.D.C.C. chapter 23-35, including N.D.C.C. § 23-35-07, was passed during the 1999 Legislative Session and was a rewrite of various other chapters in the state code, which were then repealed. 1999 N.D. Sess. Laws ch. 242. N.D.C.C. ch. 23-14 was one of the chapters that was repealed. The substance of the new N.D.C.C. § 23-35-07 is very similar to the old N.D.C.C. § 23-14-11, which was effective until section 23-35-07 became effective. N.D.C.C. § 23-14-11 provided, in relevant part:

The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the health district

N.D.C.C. § 23-14-11(1). The relevant language in N.D.C.C. § 23-35-07 currently provides:

The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the assessed valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district.

N.D.C.C. § 23-35-07(1). Thus, the only substantive change is the addition of the second sentence relating to an equalized mill levy throughout the district. This sentence was not included in the original bill draft submitted to the Legislature in the 1999 legislative session. It was added as an amendment proposed by the North Dakota State Health Department. Debra Anderson of the Health Department stated that the effect of the amendment would be that if a county joined a multi-county health district, the county would have to levy the same number of mills as was levied in the counties in the current health district. Hearing on S.B. 2045 Before the House Comm. on Political Subdivisions 1999 N.D. Leg. (Mar. 5) (Statement of Debra Anderson). She stated that this was called an equalized mill levy. Id.

There is an inherent conflict between the first and second sentences quoted above in N.D.C.C. § 23-35-07 because the first sentence determines what each county pays based on assessed valuation, and the second sentence determines what each county pays based on taxable valuation, which is what mill levies are applied against to acquire the money needed. See N.D.C.C. § 57-15-02. Because taxable valuation is nine or ten percent of the assessed valuation, depending on whether the property is residential or non-residential, and because each county has different amounts of residential and non-residential property, the resulting amount each county will need to pay will differ to

some degree depending on whether the computations are based on the first sentence or the second sentence. See N.D.C.C. § 57-02-27.

Thus, the two quoted sentences in N.D.C.C. § 23-35-07 conflict. “[W]henever, in the same statute, several clauses are irreconcilable, the clause last in order of date or position shall prevail.” N.D.C.C. § 1-02-08. The first sentence, basing computations on assessed valuation, was in the law, though in a repealed chapter, before the second sentence regarding an equalized mill levy was added by the 1999 Legislative Session. Thus, the sentence regarding the equalized mill levy, which is last in position and added during a later legislative session by amendment, is controlling.

Therefore, it is my opinion that because each member county’s contribution must be based on an equalized mill levy throughout the district, every county that is a member of the health district must levy the same number of mills as the other counties in the health district.

Your second question is whether the Williams County auditor is responsible for collecting the information and making the calculations necessary to implement an equalized mill levy throughout the health district. You state that the health district which encompasses Williams County has its offices in Williams County.

N.D.C.C. § 23-35-07 provides that “the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies of the counties.” N.D.C.C. § 57-15-02 states:

The tax rate of all taxes, except taxes the rate of which is fixed by law, must be calculated and fixed by the county auditor within the limitations prescribed by statute. If any municipality levies a greater amount than the prescribed maximum legal rate of levy will produce, the county auditor shall extend only such amount of tax as the prescribed maximum legal rate of levy will produce. The rate must be based and computed on the taxable valuation of taxable property in the municipality or district levying the tax. The rate of all taxes must be calculated by the county auditor in mills, tenths, and hundredths of mills.

Thus, the county auditor is responsible for calculating and fixing the tax rate of all taxes, other than those fixed by law. The tax rate must be calculated in mills. In other words, the county auditor in each county is responsible for determining the number of mills which are to be levied, unless that number is already specified in state law.

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For health districts comprised of several counties, the law does not specify which county auditor is responsible for determining the mill levy. Thus, the Williams County auditor does not have any unique obligation to perform services for other counties in the health district. Based on N.D.C.C. §57-15-02, it is my opinion that the county auditors of each of the counties included in the health district are responsible for making the computations required by N.D.C.C. §23-35-07. See letter from Attorney General Nicholas Spaeth to Gayle Syverson (Feb. 16, 1990). Because each member county's contribution must be based on an equalized mill levy throughout the district, all the county auditors must work together to determine what the mill levy must be.

Sincerely,

Wayne Stenehjem
Attorney General

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