

**LETTER OPINION
2002-L-43**

July 19, 2002

Ms. Merle A. Torkelson
McLean County State's Attorney
PO Box 1108
Washburn, ND 58577-1108

Dear Ms. Torkelson:

Thank you for your letter requesting an Attorney General's opinion on whether a rural ambulance service district may increase its levy from five mills to ten mills without approval of the electors in the district.

The 2001 Legislative Assembly authorized the levy for a rural ambulance service district to be increased from five mills to up to ten mills. 2001 N.D. Sess. Laws ch. 511, § 3, codified as N.D.C.C. §57-15-26.5.¹ That tax levy must be made "in accordance with chapter 11-28.3." N.D.C.C. § 57-15-26.5. Section 11-28.3-02, N.D.C.C., requires an election to determine whether a rural ambulance district should be formed. Section 11-28.3-04, N.D.C.C., requires the ballot on the question regarding the formation of a rural ambulance service district to be in substantially the following form:

¹ Although N.D.C.C. § 11-28.3-09 continues to provide for a maximum levy of five mills because the increase from five to up to ten mills was passed later by the legislature, the latter provision prevails. See N.D.C.C. § 1-02-08; State ex rel. Moug v. North Dakota Auto Assigned Claims Plan, 322 N.W.2d 245 (N.D. 1982). The Legislature should amend N.D.C.C. §11-28.3-09 to change five mills to ten mills to be consistent with N.D.C.C. § 57-15-26.5.

Shall (name of taxing district or districts) levy a tax of not to exceed _____ mills for the purpose of forming a rural ambulance district?

Yes ?
No ?

If a majority of all the votes cast on the question of levying a tax and forming a rural ambulance service district are in favor of such a tax levy, then the formation of the district is approved.

Thus, in order to form a rural ambulance service district and levy a tax to support that district, the matter must be submitted to a vote of the electors.

Not only does the question put before the voters under N.D.C.C. § 11-28.3-04 address whether to form a rural ambulance service, but it also specifies the maximum mill levy for support. This office previously addressed a similar issue regarding county road levies and determined that an election was required before the mill levy may be raised, noting that “[a]lthough the approval of the program and the levying of taxes are submitted as one measure, they do not merge into one for the purpose of authorizing the board ... to increase the tax levy without having an election on the question.” 1982 N.D. Op. Att’y Gen. 52. Specific legislation authorizing a mill levy increase without an election would be required in order to bypass this requirement. 1996 N.D. Op. Att’y Gen. L-219.

Similarly, chapter 11-28.3, ND.C.C., does not authorize a levy by a rural ambulance service district except by a vote of the electors as indicated in N.D.C.C. §11-28.3-04, quoted above. Therefore, it is my opinion that a rural ambulance service district may increase its levy up to ten mills only by approval of a majority of the electors in the district.

Sincerely,

Wayne Stenehjem
Attorney General