

**LETTER OPINION  
2004-L-70**

November 18, 2004

Mr. Terry Elhard  
McIntosh County State's Attorney  
PO Box 248  
Ashley, ND 58413-0248

Dear Mr. Elhard:

Thank you for your question regarding the ability of a county board of commissioners to raise the tax levy for emergency medical services from the amount previously approved by the voters to a new maximum levy set by the Legislative Assembly without a new vote of the electors. It is my opinion a county must submit a proposed increase of the mill levy, up to the maximum amount authorized, to the voters pursuant to N.D.C.C. § 57-15-50 prior to increasing that levy.

ANALYSIS

Section 57-15-50, N.D.C.C., allows a board of county commissioners to levy a tax "for the purpose of subsidizing county emergency medical services" if that levy is approved by a vote of the electors. The maximum a county may levy pursuant to N.D.C.C. § 57-15-50 is ten mills. N.D.C.C. § 57-15-06.7(23). In 1974, when McIntosh County submitted the question to its voters, the maximum levy was one-half mill. 1969 N.D. Sess. Laws ch. 479, § 1; 1979 N.D. Sess. Laws ch. 171, § 4. You question whether the board of county commissioners may increase the levy up to the current ten mill limit without another vote of the electors.

In a 1996 opinion, this office considered a question involving the farm-to-market roads program, the tax levy for which is provided by N.D.C.C. § 57-15-06.3. N.D.A.G. 96-L-219. The opinion concluded that a county taxing district could increase a tax levy over that approved by the electors if the district "properly employed the . . . succession of temporary mill levy increase laws or N.D.C.C. § 57-15-01.1." Id. Section 57-15-01.1, N.D.C.C., is the culmination of several years of temporary mill levy increase laws that permits taxing districts to increase levies in certain circumstances. Id. Specifically, N.D.C.C. § 57-15-01.1 allows a taxing district to increase its levy in mills in order to raise the same dollar amount of tax revenue if the value of taxable property in the district has declined within the prior three years. This results in an increase of the mill levy, but only for the

limited purpose of protecting the taxing district from a revenue shortfall as authorized by this statute.

Section 57-15-50, N.D.C.C., states that a county may levy a tax for emergency medical services, "provided, that this tax must be approved by a majority of the qualified electors of the county voting on the question at a regular or special countywide election." Pursuant to N.D.C.C. § 57-15-01.1, as it was interpreted by N.D.A.G. 96-L-219, a county could increase a levy to maintain a steady dollar amount of tax revenue without a vote if it followed the requirements of N.D.C.C. § 57-15-01.1. However, nothing in N.D.C.C. § 57-15-01.1 allows a taxing district to permanently increase a tax levy from a previously voter-approved amount up to a new maximum created by statute.

I note that N.D.C.C. § 57-15-01.1(4), when read by itself, states that, "[i]n addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district." However, the statute must be considered as a whole, and its purpose may only be determined by reading together each subsection as part of a whole. See Thompson v. N.D. Dept. of Agriculture, 482 N.W.2d 861, 863 (N.D. 1992). When subsection 4 is read together with the rest of section 57-15-01.1, it does not allow taxing districts to raise mill levies without approval from the voters. Instead, subsection 4 makes clear that taxing districts may make use of the authority of section 57-15-01.1 to stabilize tax revenues and also to separately raise their mill levies under the legal authority governing the levy, whether that legal authority is direct authorization from the Legislative Assembly or if it is a vote by the electors of the taxing district.

The legal authority governing the tax levy for emergency medical services is not an authorization from the Legislative Assembly to the county to unilaterally establish or raise a tax levy. Instead N.D.C.C. § 57-15-50 allows a county to levy a given amount only after the tax is authorized and approved by the voters. Thus, even though the maximum amount a county can levy has increased, the county is only authorized to levy the tax if the levy is approved by the voters. Accordingly, it is my opinion a county must submit a proposed increase up to the maximum amount authorized pursuant to N.D.C.C. § 57-15-50 to the voters prior to increasing that levy.

The legislative history of N.D.C.C. § 57-15-50 supports that conclusion. In 1979, while testifying regarding an increase in the maximum mill levy pursuant to N.D.C.C. § 57-15-50 from one-half mill to five mills, the sponsor of the bill stated that a raise in the mill levy "would be totally up to the voters to decide." Hearing on H.B. 1375 Before the Political Subdivisions Comm., 1979 N.D. Leg. (Jan. 26) (Statement of Rep. Black). Thus, the legislative intent of the very first increase in the maximum mill levy for emergency medical services shows that it is the voters', not the county's, ultimate decision whether the levy should be increased to the new maximum.

LETTER OPINION 2004-L-70  
November 18, 2004  
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Stenehjem". The signature is fluid and cursive, with the first name being more prominent.

Wayne Stenehjem  
Attorney General

vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).