

**LETTER OPINION
2005-L-10**

March 3, 2005

The Honorable John Warner
State Senator
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Senator Warner:

Thank you for your letter asking whether the board of the newly reorganized Lewis and Clark Public School District is bound for five years by the general fund mill levy proposed in its reorganization plan, or whether the board is allowed to increase the mill levy based on current needs. It is my opinion that the board of the Lewis and Clark Public School District may increase its general fund mill levy above the amount proposed in its reorganization plan.

ANALYSIS

The Berthold, North Shore, and Plaza Public School Districts decided to pursue a plan for reorganizing their districts into a new school district. See N.D.C.C. § 15.1-12-09. The reorganization plan received approval by the State Board of Public School Education, and thereafter received approval of more than 50% of the voters in each of the three school districts. See N.D.C.C. §§ 15.1-12-10, 15.1-12-11. The reorganization plan, which resulted in the formation of the new Lewis and Clark Public School District, became effective on July 1, 2003. See N.D.C.C. § 15.1-12-18.

State law provides that a reorganization plan must “[i]nclude a proposed budget for the new district and a proposed general fund levy and any other levies” N.D.C.C. § 15.1-12-10(1)(o) (emphasis added). State law also provides that the published notice of the election whether to approve the reorganization plan must include a “proposed tax levy.” N.D.C.C. § 15.1-12-11(2), (3)(c). After approval by the voters, the provisions of a reorganization plan, except for the boundaries of geographic voting areas, may be changed only upon the concurrence of a majority of the qualified electors in the new reorganized school district voting on the question. N.D.C.C. § 15.1-12-21(1). However, beginning five years after the effective date of the reorganization, the board of a reorganized school district may exercise its powers, regardless of any limitations in the reorganization plan, except when changing geographic voting areas. N.D.C.C. § 15.1-12-22.

The reorganization plan for the Berthold, North Shore, and Plaza School Districts states:

The combined 2003-2004 projected general fund revenue budget of the Berthold, North Shore, and Plaza School Districts is \$3,000,000.00. It is anticipated that the 2003-2004 general fund expenditures will be \$3,000,000.00. The projected cash balance of the Berthold, North Shore, and Plaza School Districts for 2003-2004 is projected to be \$604,198.12 brought in from each district plus \$500,000 from the state's incentive bonus.

The mill levy will be uniform throughout the proposed district, and will include general, building, and technology levies. The average mill rate of the three districts is 174.97 for general fund levy and 10.00 for the building fund levy. Based on 2001 taxable valuations, the combined district mill rate will be approximately 140 mills for the general fund levy, 10.00 mills for the building fund, and 5.00 mills for the technology fund levy.

Reorganization Plan for the Berthold, North Shore, and Plaza School Districts (emphasis added).

During the first year of the reorganization, the Lewis and Clark School District's budget resulted in a general fund levy of 139.85 mills, rather than the estimated 140 mills. During the second year of the reorganization, the board of the Lewis and Clark School District determined that it needed more money in its budget and requested the county auditor to levy an amount that would have resulted in a levy of approximately 149.55 mills for the general fund. The county auditor indicated to the board of the Lewis and Clark School District that its general fund levy was limited to 140 mills because of the reorganization plan; thus, the county auditor levied only 140 mills for the general fund. The question raised is whether the board of the Lewis and Clark School District is bound for five years by the 140 general fund mill levy proposed in its reorganization plan, or whether the board may increase the general fund levy above the proposed 140 mills.

As indicated previously, state law requires that a reorganization plan include a "proposed budget for the new district and a proposed general fund levy." N.D.C.C. § 15.1-12-10(1)(o). School boards have to determine their budgets annually. See N.D.C.C. §§ 15.1-09-33(32), 57-15-13. Having the reorganization plan include a proposed budget and a proposed general fund levy implies that it is the proposed budget and general fund levy for the year immediately following the effective date of the reorganization plan. Nothing in the state law or the reorganization plan indicates that the proposed budget and general fund levy are intended to apply to each of the five years after the reorganization plan becomes effective. It is virtually impossible for a school district to plan its budget for numerous years into the future. I think this difficulty is recognized in state

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law by the requirement that a reorganization plan include a proposed budget and proposed general fund levy for the new school district. See N.D.C.C. § 15.1-12-10(1)(o).

Thus, it is my opinion that a proposed budget and a proposed general fund levy included in a reorganization plan are intended to apply to the first budgeting year after the reorganization plan becomes effective. The board's decision to increase its budget and general fund mill levy in subsequent years would not be contrary to the reorganization plan such that a vote would be required under N.D.C.C. § 15.1-12-21.

Sincerely,

Wayne Stenehjem
Attorney General

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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).